

Criminal Liability for Damaging Environment- Method to Revolutionize Sustainability- Analysis of Legal Framework on Environmental Crime and International Criminal Law

Prof (Dr.) Nandini C P*

Introduction

Natural Resources are finite, but its exploitation is infinite. The world users are not overusing, but abusing the natural resources collectively. The overuse of natural resources has affected every living being's normal lives. It impacts the food we eat; water we drink; and the air we breathe. Without an inkling, nature's abuse has harmful impact on both i.e. living and non-living things. In this context humans as perpetrators and all living and non-living things as victims. For this reason, the Municipal and International Law have attempted to control and regulate the exploitation due to the greed of humans that has laid to thoughtlessly intensifying the use of natural resources without sensibly accustoming the sustainability notion. The future of the Earth is grim as environmental hazards and disasters are common across the world. The overuse and abuse of natural resources has caused enormous damage to the earth, the biodiversity leading to climate change.

The primary question to be understood here is; is the progress initiatives of state, a major contributor to the commission of crimes by violating Environmental laws. The statistics show, that during the year 2021, the NCRB of India had a total of 64,471 cases that were registered under Environment Related Offences, with an increase of 4.4% under various existing statutes. At the International level, abuse of the environment stood as fourth largest criminal activity. The crime rate on an average is increasing by 5-7% YoY, converging with other forms of International Crimes. As per the studies, it is estimated that annually criminals of the Environmental Crimes globally amass USD 91-259 billion in their sacks. Environment Crime (EC) is one of the profitable and fastest growing International Criminal Activity. EC is rampant since the growth of industrialization. These crimes deprive the Governments of taxes and revenue and facilitates terrorist funding, organized crimes, and illegal activities.

EC or crimes against environment are defined to mean an act that is destructive to the environment and that has been criminalized by statutes. Though, individual harms are not

* Professor of Law at DSNLU, Visakhapatnam.

popular in EC, its harm or no-harm to the public at large and to the Earth as such are well-admitted and accepted by the courts also.¹ The perpetrators of harm under this category may be individuals, collective groups, corporations, governments and organized criminal groups. The past six decades, has witnessed 40 % of conflicts among nations for control and use of natural resources and it is certain to increase or relapse into conflict within next few decades. UN has taken initiatives with appeal of regulations for Environment Protection. In one of its goals UN pursues to “Promote and enforce non-discriminatory laws and policies for sustainable development.” These goals are attainable when a link is created between environment and human security. This relationship becomes a vital and pertinent fact for effective conflict prevention, post-conflict reconstruction and promotion of peaceful and inclusive societies. It also deprives people of sustainable livelihoods because such unscrupulous actors and perpetrators take advantage of communities from the under-privileged to engulf natural resources. Basically, EC damage peace, security, and stability of countries. As these crimes do not have specific victims, they are not well-understood as crimes by common man. The law enforcement agencies and investigating teams are not interested or highly valued, when they bust EC, in comparison to a blue/white -collar crimes like Rape, Murder, etc., unless a tragedy like Bhopal Gas leakage befall.² Even citizens do not count it as a serious crime to themselves or mother nature. However, since 1900, there is continuous efforts from the States all over the world in bringing legislative reforms with Administrative, Civil and Criminal liability on both natural and legal persons, imposing Corporate Criminal Responsibility and ‘*the Polluter Pay Principle*’.³ The law relating to corporate criminal liability is well established in many landmark judgments of the SC. However, even individual criminal liability needs an understanding beyond the territorial jurisdiction. The existing ‘*Polluter Pay*,’ Class Actions Suits, Civil and Criminal liability under Strict Liability or Absolute liability, Vicarious liability are now questioned, if it could achieve the target SDG. So, should the States go back to stricter criminal liability to even minor offences for the environmental crimes are to be deliberated.

¹ Tignino, M., Bréthaut, C. The role of international case law in implementing the obligation not to cause significant harm. *Int Environ Agreements* 20, 631–648 (2020). <https://doi.org/10.1007/s10784-020-09503-6>

² 1989 SCC (2) 540 (See *Union Carbide Corporation v. Union of India*, AIR 1988 SC 1531); Also see *State of Madhya Pradesh vs. Warren Anderson and Others* Cr. Case No. 8460. / 1996; <https://www.ielrc.org/content/c1004.pdf> (accessed May 15, 2025)

³ Literally means “the absolute liability for harm to the environment that extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation” as observed in *M.C. Mehta vs Union Of India And Ors* 1996 (4) SCC 351 and in the case of *Vellore Citizens' Welfare Forum v. Union of India* 1996 (5) SCC 647 [Where Civil and Criminal liability on the individuals and company are well established <https://www.bhopal.net/what-happened/the-immediate-aftermath-1984-1989/the-case-against-ucc-and-warren-anderson/> (accessed May 15, 2025)]

So, the author in this paper primarily is keen to study and understand EC as a National and International Level crime and attempts to insist that, even the individuals shall have liability criminal liability is put forth. However, the Cross-Border nature of these crimes has made it more challenging to impose liability. Therefore, the author here suggests that a possible solution to curb such activities is to make EC a universal offence and punishable under the Universality Principle. States would be eager to extent their territorial laws beyond boundaries for the protection of nature. Alternatively, the International Criminal Law (though weak law) is the new and emerging area that can be a response to the newer challenges on EC. Jurisdiction to bring EC within the ambit of International Criminal Court as per the Rome Statute may also be one of a possible choice. In conclusion, the author would attempt to highlight the need for sterner criminal liability to curb EC to achieve SDG 16 and 17 of the UN Goals by 2030.

Natural or environmental disasters are common causes for death of living beings and property loss. The states are improvised due to lack of facilities to prevent and promote the welfare of living beings and protecting the Planet, which is a factor voiced, attempted, but adapted less in reality. There is a need for the world to raise and repair the damage and bring in sustainable methods to protect this planet. Despite varied types on liability imposed by the existing municipal and international laws, the reality of nature's fury strikes at us and loudly voices the concern. It is thereby expected that we walk an extra mile and furthermore work towards improving the health and well-being of all creatures. The International laws sanctions (if any) are part of soft law⁴ not stringent enough as hard law⁵, may lack to have an effective method to curb the polluters that includes individuals. It becomes mandatory for us to delve upon and understand whether development of International Criminal law, a novel and emerging area that includes EC to be part to find better answer to the newer challenges on Environment issues, especially EC. So, the next question should be will grant of Jurisdiction to bring EC within the ambit of International Criminal Court or other international courts/tribunals for punishment, especially under the Rome Statute is one such question that has been thought-out. The author in this paper would also try to highlight the need for criminal liability to curb environment crime to achieve SDG 16 and 17 of the UN Goals by 2030 with the use of not only criminal

⁴ "The term soft law is used to denote agreements, principles and declarations that are not legally binding. Soft law instruments are predominantly found in the international sphere. UN General Assembly resolutions are an example of soft law." <https://www.ecchr.eu/en/glossary/hard-law-soft-law/> (accessed May 16 2025)

⁵ "Hard law refers generally to legal obligations that are binding on the parties involved and which can be legally enforced before a court." <https://www.ecchr.eu/en/glossary/hard-law-soft-law/> (accessed May 16 2025)

liability, but also International Criminal liability as EC have no territorial limits and suggest to make such crimes as Universal Crimes with states given liberty to take criminal action against the perpetrators.

Abuse of Nature and Resources- A Prolog of Facts on Health and Climate

Exploitation of anything available is common and its abuse in the world is natural since ages. Natural Resources is one such component that fulfills the need of humans and for this reason abuse of it is rampant. The overuse has affected everyday lives of living beings. The food to be eaten, water to be drank, and the air to be breathed are all contaminated to the extent that death of living creatures is widespread. The abuse has caused environmental health hazard; it is a substance that could cause an adverse health incident.⁶ It is a known factor that living and non-living things are the victims of such human manipulation and greed. As humanity consumes unsustainably; the overuse of resources is reported to be a fifty percent faster than they are reproduced by the planet.⁷ Recklessly intensifying the use of natural resources without prudently adapting sustainability is a known factor and commonly heard. Though there seems to be some serious and some pretentious actions, the future of this planet looks bleak due to an increasing environmental hazards and disaster. The global awareness of the Environmental Hazards is been regulated by Municipal/Domestic and International Law. From strict liability to negligence of human actions are regulated, yet very less achieved to make people responsible. The Triple Planetary Crisis i.e. climate change, pollution, and biodiversity loss are immense, so the UN has a slogan to ‘Act Now’ for the 17 SDG’s.⁸ As per the SD Growth Target i.e., 3.8⁹ and 3.9¹⁰ the WHO aims to protect health of all individuals, as a Universal Vision. Mortality from environmental pollution is aimed to diminish demises and illnesses that are caused from hazardous chemicals that cause impurities in air, water soil etc., as their

⁶ <https://www.cdc.gov/> (accessed 16 May 2025)

⁷ Teresa Parejo Navajas and Nathan Lobel, Framing the Global Pact for the Environment: Why It’s Needed, What It Does, and How It Does It, 30 Fordham Envtl. L. Rev. (2018). Available at: <https://ir.lawnet.fordham.edu/elr/vol30/iss1/3>

⁸ <https://unfccc.int/news/what-is-the-triple-planetary-crisis/> (accessed May 16 2025)
<https://www.un.org/en/actnow>

⁹ SDG Target 3.8- “Achieve Universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality, and affordable essential medicines and vaccines for all”; [https://www.who.int/data/gho/data/themes/topics/indicator-groups/indicator-group-details/GHO/sdg-target-3.8-achieve-universal-health-coverage-\(uhc\)-including-financial-risk-protection](https://www.who.int/data/gho/data/themes/topics/indicator-groups/indicator-group-details/GHO/sdg-target-3.8-achieve-universal-health-coverage-(uhc)-including-financial-risk-protection) (accessed May 15, 2025)

¹⁰ “Mortality from environmental pollution: Reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination;” visit <https://www.who.int/data/gho/> ((accessed May 16 2025) (accessed May 15, 2025)

contamination causes environmental hazards. These hazards are causing around 13 million deaths at the rate of 1/4th of all types of deaths as an average; each year.¹¹ It is estimated that 6.2% of Global GDP i.e. 4.6 trillion economic outputs lost due to the human health effects of toxic pollution.¹²

As per the reports, the diseases attributable to the environment is higher and growing persistently. The main reason discussed and highlighted are climate change (including in Coastal Areas) and rapid urbanization, it seems that states and people lack seriousness of the issues and challenge in any forms.¹³ Each State is expected to make efforts to bring new global strategy on health, environment and climate change that are developed and supported by countries as discussed in the 72nd World Health Assembly that was held in May 2019. The combined effects of ambient air pollution and household air pollution are associated with 6.7 million premature deaths annually.¹⁴ In 2019, an estimated 6.7 million deaths, or 12 percent of all deaths worldwide, were attributable to outdoor or household air pollution.¹⁵ So, the assembly aimed in transforming the methods to tackle environmental risks to health by accounting for health in all policies and scaling up disease prevention and health promotion. If the world leaders and people have to achieve this target, it needs to be supported by a strengthened health sector, adequate governance mechanisms, and enhanced communication creating a demand for healthy environments.

One such strategy propagated to respond and which is in line with 2030 SDG Agenda of SDG 16¹⁶ & 17¹⁷ and the General Programme of Work (GPW) 13¹⁸: “Promote health, keep the world

¹¹ These deaths are a “result of living or working in an unhealthy environment in 2012 – nearly 1 in 4 of total global deaths, according to new estimates from WHO. Environmental risk factors, such as air, water and soil pollution, chemical exposures, climate change, and ultraviolet radiation, contribute to more than 100 diseases and injuries.” <https://www.who.int/> (accessed May 15 2025)

¹² <https://pmc.ncbi.nlm.nih.gov/articles/PMC8294505/> (accessed May 16 2025)

¹³ MOEFCC, (2018). Climate Change and the Vulnerable Indian Coast Edited by Ramesh. R, Bhatt J.R. Ministry of Environment, Forest and Climate Change, New Delhi. ISBN 978-93-5346-195-9

¹⁴ <https://www.who.int/news-room/fact-sheets/detail/household-air-pollution-and-health>

¹⁵ <https://world-heart-federation.org/> (accessed May 15 2025)

¹⁶ “Promote just, peaceful, and inclusive societies”: <https://sdgs.un.org/goals/goal16/> (accessed May 15 2025)

¹⁷ Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development <https://www.un.org/sustainabledevelopment/globalpartnerships/> (accessed May 16 2025)

¹⁸ “The 2030 Agenda for Sustainable Development views health as vital for the future of our world. With a commitment to achieve Goal 3, which calls on all stakeholders to “Ensure healthy lives and promote well-being for all at all ages,” WHO will lead a transformative agenda that supports countries in reaching all health-related SDG targets”. “GPW 13 is based on the SDGs and is relevant to all countries—low, middle, and high income. Health is fundamental to the SDGs and, in an interconnected world, WHO’s role in providing global public goods that help to ensure health for all people within and across national boundaries has never been more relevant” Visit https://apps.who.int/gb/ebwha/pdf_files/EB142/B142_3-en.pdf?ua=1 (accessed 16 May 2025)

safe, serve the vulnerable”.¹⁹ GPW 13 is structured around three interconnected strategic priorities to ensure healthy lives and well-being for all- at all ages: “advancing universal health coverage, addressing health emergencies, and promoting healthier populations. These strategic priorities are supported by three strategic shifts: stepping up leadership; driving impact in every country; and focusing global public goods on impact...the reflection of WHO’s six core functions. Lastly, these strategic priorities and shifts are supported by five organizational shifts.”²⁰

The strategic priorities of GPW 13 are three: [Source- WHO]

Healthier Population	Universal Health Coverage	Health Emergencies
1 billion more people enjoying better health and well-being	1 billion more people benefitting from universal health coverage	1 billion more people better protected from health emergencies

After identifying the problem, it becomes relevant for us to understand as to how and from when these problem and challenges are ongoing and augmented.

Environmental Hazards- History, Facts and Future

Environmental hazards are basically of two types; one is traditional and the other modern. This classification is further have been stated to have three interrelated categories i.e., biological, chemical, and physical. These are based on the properties of their origin or cause. Though, they are not mutually exclusive with the traditional or modern hazards. Indoor Air pollution²¹ is categorized as traditional. The Chemical hazard, can cause damage to respiratory tissues, and infect as a biological hazard that weakens the immune system. Physical hazard like Floods is common in the recent past and when it strikes, it can spread waterborne disease that can be a

¹⁹ Overview of WHO’s Draft Thirteenth General Programme of Work 2019–2023: See strategic priorities and shifts <https://www.who.int/about/what-we-do/thirteenth-general-programme-of-work-2019---2023> (accessed 16 May 2025)

²⁰ Ibid

²¹ “Indoor pollution sources that release gases or particles into the air are the primary cause of indoor air quality problems. Inadequate ventilation can increase indoor pollutant levels by not bringing in enough outdoor air to dilute emissions from indoor sources and by not carrying indoor air pollutants out of the area.” <https://www.epa.gov/indoor-air-quality-iaq/introduction-indoor-air-quality> (accessed May 16, 2025)
See Tran VV, Park D, Lee YC. Indoor Air Pollution, Related Human Diseases, and Recent Trends in the Control and Improvement of Indoor Air Quality. *Int J Environ Res Public Health*. 2020 Apr 23;17(8):2927. doi: 10.3390/ijerph17082927. PMID: 32340311; PMCID: PMC7215772. <https://www.epa.gov/indoor-air-quality-iaq/introduction-indoor-air-quality> (accessed May 13, 2023; 23:25 PM)

biological and chemical hazard too. Different hazards can fuse and exacerbate one another.²² Among them Urban Air pollution is rated highest in China and India in Asian Region and in Latin America. India's average annual PM_{2.5} concentration fell seven percent year-on-year in 2024, to 50.6 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$), which India is attempting to regulate through law.²³ As per WHO, 99% of the world's population live in places where air pollution levels exceed its guideline limits.²⁴ About 2.0 million deaths annually are due to Air Pollution due to house hold fuel from biomass like wood, crop residues, charcoal, dung or coal as fuel for cooking and heating.²⁵ Many deaths are due to pneumonia, stroke, ischemic heart disease, chronic obstructive pulmonary disease (COPD), and lung cancer.²⁶

The impact of these hazards is calculated in both Low- and High-Income Groups (LIG and HIG), however the LIG pay "double burden" of traditional and modern environmental health risks than the HIG. The rich countries also have 10% death due to environmental risks.²⁷ 24 % of all estimated global deaths are linked to the environment hazards either directly or indirectly. 3.8 million deaths every year results due to the exposure to indoor smoke from cooking fuels.²⁸ As per the Lancet Commission report on pollution and health, it is stated that pollution was solely responsible for 9 million premature deaths by 2015, which is considered to be the world's largest environmental risk factor for disease.²⁹ The date of the Global Burden of Diseases, Injuries, and Risk Factors Study of 2019 shows that pollution is mainly responsible for about 9 million deaths per year (1 in 6 deaths worldwide i.e., 16% of all deaths globally).³⁰

As per the World Meteorological Organization's (WMO) report a disaster related to a weather, climate or water hazard occurred every day on average over the past 50 years. It kills at least 115 people and causes US\$ 202 million losses every day.³¹ Mortality and Economic Losses from Weather, Climate and Water Extremes in the past 5 decades is more than 11,000 reported disasters attributed globally, with over 2 million deaths and US\$ 3.64 trillion in losses.

²² <https://bio.libretexts.org/> (accessed 2 February 2023 18.27 PM)

²³ <https://www.statista.com/topics/12351/air-pollution-in-india/> (accessed May 16, 2025); MOEFCC, (2018). Climate Change and the Vulnerable Indian Coast Edited by Ramesh. R, Bhatt J.R. Ministry of Environment, Forest and Climate Change, New Delhi. ISBN 978-93-5346-195-9

²⁴ <https://www.who.int/data/gho> (accessed May 16, 2025)

²⁵ Ibid

²⁶ <https://www.undrr.org/understanding-disaster-risk/terminology/hips/en0001/> (accessed May 16, 2025)

²⁷ Martin WJ 2nd, Glass RI, Balbus JM, Collins FS. Public health. A major environmental cause of death. Science. 2011 Oct 14;334(6053):180-1. doi: 10.1126/science.1213088. PMID: 21998373; PMCID: PMC5101929. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5101929/> (accessed May 16 2025)

²⁸ <https://www.who.int/data/gho> (accessed May 16, 2025)

²⁹ [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(22\)00090-0/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(22)00090-0/fulltext) (accessed May 16 2025)

³⁰ <https://www.thelancet.com/action/showPdf?pii=S2542-5196%2822%2900090-0> (accessed May 16, 2025)

³¹ <https://wmo.int/about-us/world-meteorological-day/wmd-2022/rising-risks> (accessed May 16, 2025)

Economic losses due to storms (36%) and floods (45%) only in the US is US\$ 521 billion and US\$ 115 billion respectively. Whereas in Asia for the same period, there were 3,454 disasters and lives lost were 9,75,622 with US\$ 1.2 trillion economic damage. Globally 31 % i.e. 1/3rd deaths are due to weather; climate; and water-related disasters accounting for nearly half of deaths (47%) and one third (31%) of associated economic losses.³² With 72% lives lost, Storms had the highest impacts on life, while floods led to the greatest economic losses (57%). The real costs of illegal logging, fishing, and wildlife trade: \$1-2 trillion per year.³³ Even by, 2022, it was roughly counted that 31,000 reported fatalities were caused by natural disasters worldwide. In 2024 it accounted for roughly 18,100 worldwide. The economic losses are approximately US\$ 4.6 trillion in 2015 i.e., around 6.2% of global economic output. The total global economic loss due to natural disaster worldwide amounted to about 313 billion U.S. dollars in 2022.³⁴ 18,100 reported fatalities caused by natural disaster, as per this report, the economic losses due to natural disaster globally amounted to about 368 billion U.S. dollars in 2024, from last two decades, natural disaster events, tropical cyclones were the main causes.³⁵ These disasters are said to be direct causes of climate change and global warming that counts for 80 % of such calamities. As the results of these hazards the weather conditions are extreme and unpredictable; humans are to be blamed for the same. Despairingly people will pay back for the harm that we cause to the nature. There are large incidents of damage to bio-diversity and climate change.³⁶ So, the most significant examination after understanding the facts, it is now our duty to know, how to make or impose liability including on individuals.

The Liability Issues and Challenges- A Legal Perspective

The Environmental Hazards have led to many wrongs/crimes committed under the existing Environmental laws. As it is well-established Environment related crimes are the fourth largest criminal activity in the world. During the year 2021, India itself, accounted for a total of 64,471 cases registered under Environment Related Offences, an increase of 4.4% under various statutes.³⁷ As per the 2022 NCRB Report a total of 52,920 environmental-related crimes were

³² WMO Atlas Of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019); available at <https://sidsport-climateadapt.unctad.org> [2022/06/] (accessed May 16, 2025)

³³ <https://blogs.worldbank.org/voices/real-costs-illegal-logging-fishing-and-wildlife-trade-1-trillion-2-trillion-year> (accessed May 16, 2025)

³⁴ <https://www.statista.com/statistics/510952/number-of-deaths-from-natural-disasters-globally/> (accessed May 16 2025)

³⁵ Ibid

³⁶ <https://www.unodc.org/unodc/en/environment-climate/> (accessed 9 January 2023. 00:50AM)

³⁷ Marcantonio R, Javeline D, Field S, Fuentes A. Global distribution and coincidence of pollution, climate impacts, and health risk in the Anthropocene. *PLoS One*. 2021 Jul 21;16(7): e0254060. doi:

recorded across India, surprisingly a decrease of 17% decrease in comparison to 2021. On an average it is increasing by 5-7 % every year and converging with other forms of international crime, which makes it more challenging to regulate and curb.³⁸ It is estimated that the EC put USD 91-259 billion in the pockets of criminals annually.³⁹ The FATF the global AML Watch dog estimates that EC is one of the most profitable criminal enterprises, generating around USD 110 -281 billion in criminal gains each year. However, when it comes to recovery of the illegally gained amount it is less than 1 percent of the profits.⁴⁰

Such crimes depriving governments of taxes and revenue. It also deprives people of sustainable livelihoods because such unscrupulous actors and perpetrators take advantage of communities that are under privileged, to engulf natural resources. Basically, environmental crimes, damage, peace, security, and stability are the primary concern to all states.⁴¹

Environment Legislations in India- A Preview

India has assured to be bound by International Conventions, through its Constitution in Article 48-A⁴² and Article 51-A⁴³ and widely under Article 21.⁴⁴ It has enacted laws to as per its ratification or accession. India now been the fifth largest economy in the world is also member to almost all major conferences, conventions, and protocols of the UN dedicated to

10.1371/journal.pone.0254060. PMID: 34288922; PMCID: PMC8294505.: https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf (accessed 16 May 2025)

³⁸ <https://www.unep.org/news-and-stories/speech/environmental-crime-and-sdgs> (accessed 16 May 2025)

³⁹ Ibid

⁴⁰ <https://blogs.worldbank.org/en/psd/following-the-money-from-environmental-crimes---a-call-to-action>

⁴¹ Supra (F N 38)

⁴² Article 48-A- It is under part IV of the Indian Constitution, under the Directive Principle of State Policies, it is titled as Protection and improvement of environment and safeguarding of forests and wildlife it is interoperated that the government has the responsibility to safeguard the forest and wildlife. The court has the power to apply financial sanctions on the wrong doers, but recently they have started using imprisonment, as a tool, under the jurisdiction of the court and the intensity of the crime.

⁴³ Article 51-A, it is under the Part V of the Indian Constitution, under the fundamental duties, it is titled as fundamental duties there was an addition of a duty (g) which is interpreted that the people have the duty and the obligation towards the environment, that they need to protect the rivers, wildlife, and they are needed to have compassion for all the living creatures around them.

⁴⁴ Right to Life is a Fundamental Right which includes the Right of enjoyment of pollution free water and air for full enjoyment of life. Article 21 and its judicial interpretation in various landmark judgments have also created awareness and implementation of the environmental protection legislation. Other Article in the Constitution Art 19; Art 253; Art 246; Art 47 and Art 32 and 226 for remedies for such Environmental Wrongs as a Fundamental Right and Legal Right

environment.⁴⁵ To mention a few like the Stockholm Declaration, United Nation Environment Program, Rio Declaration,⁴⁶ Kyoto Protocol etc.⁴⁷

List of Few Environment laws in India⁴⁸

- The Water (Prevention and Control of Pollution) Act, 1974
- The Forest (Conservation) Act, 1980
- The Air (Prevention and Control of Pollution) Act, 1981
- The Public Liability Insurance Act and Rules 1991 and Amendment, 1992
- The National Environment Appellate Authority Act, 1997
- The Biomedical Waste (Management and Handling) Rules, 1998
- The Environment (Siting for Industrial Projects) Rules, 1999
- The Municipal Solid Wastes (Management and Handling) Rules, 2000
- The Ozone-Depleting Substances (Regulation and Control) Rules, 2000
- The Energy Conservation Act, 2001
- The Biological Diversity Act, 2002
- The Batteries (Management and Handling) Rules, 2001
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- The National Green Tribunal Act, 2010
- The Noise Pollution (Regulation and Control) (Amendment) Rules, 2010
- The National Environmental Tribunal Act, 1995, Amendment, 2010
- The Compensatory Afforestation Fund Act, 2016
- The Coastal Regulation Zone Notification, 2018
- The Wildlife Protection Act, 1972; The Wildlife (Protection) Amendment Bill, 2021

⁴⁵ <https://articles.manupatra.com/article-details/Legitimate-Standards-for-Criminalization-of-Climate-Change-Violations-in-India> (accessed May 16, 2025)

⁴⁶ John E. Scanlon, "CITES: From Stockholm in '72 to Rio+20 - Back to the future," Guest Article #13, Sustainable Development Policy and Practice, 6 July 2012, <http://www.cites.org/eng/prog/iccwc.php> (accessed 19 September 2012).

⁴⁷ Sharma, Yuvraj, Criminal Law and Environmental Pollution (Feb 20, 2022). Yuvraj Sharma, Criminal Law and Environmental Pollution, Vol IV Issue I, Indian Journal of Law, and Legal Research, pg-1-14, 2022.<https://dois.org/doi/10.2022-88534588/IJLLR/V4/I1/A131>, Available at SSRN: <https://ssrn.com/abstract=4051125> or <http://dx.doi.org/10.2139/ssrn.4051125>

⁴⁸See <https://www.ecology.edu/environmental-legislation.html> & <https://blog.ipleaders.in/environment-legislation-in-india/> (accessed 12 February 2023 21:13 PM)

The above are few legislations (List not exhaustive), Rules, Regulations and Notifications that impose Administrative, Civil and Criminal liability.⁴⁹ The conviction rates are very low. As per the Government Data, it is stated that amidst the 1,737 criminal cases filed, only 39 are convicted in 3 years for violating Environmental Laws.⁵⁰

Environmental Crimes- A Premise on Individual Harm and Liability- Is International Law a Dream Unachieved?

As EC is rampant since the growth of industrialization. EC or crimes against environment⁵¹ are defined to mean an act that is destructive to the environment and that has been criminalized by statute.⁵² Though individual harms are not popular in EC, its harm to the public interest and environment as such are well- admitted and accepted by all the stakeholders. The perpetrators of harm under this category are individuals, collective groups, corporations, governments and organized criminal groups.⁵³ As provided for, EC is one of the most profitable and fastest growing international criminal activity.⁵⁴ The other proposed alternative definition of environmental crime can be “any act that violates an environmental protection statute”.⁵⁵ ‘An environmental crime is an act of violation of an environmental protection statute that applies to the area in which the act occurred and that has clearly identified criminal sanctions for purposes of police enforcement’.⁵⁶ EC are “serious, transnational and organized crimes” as per the Environmental Investigation Agencies.⁵⁷ The Transnational Environmental Crimes (TEC)

⁴⁹ With new Rules and Regulations like The Environment (Protection) Amendment Rules, 2022 and many more through proposed amendments; see <http://www.indiaenvironmentportal.org.in/content/472602/environment-protection-amendment-rules-2022/> (accessed 18 February, 2023 19:58 PM)

⁵⁰ <https://economictimes.indiatimes.com> (accessed May 16, 2025)

⁵¹ Environment crime also called as *Crime against the environment*. (Black, 8th Edn., 2004)

⁵² P Ramanatha Aiyar Advanced Law Lexicon LexisNexis India (a division of Reed Elsevier India Pvt Ltd)

⁵³ Eileen Skinnider, Effect, Issues and Challenges for Victims of Crimes that have a Significant Impact on the Environment, United Nations Crime Prevention and Criminal Justice Programme Network of Institutes Workshop on “Emerging forms of crime that have an impact on the environment: lessons learned” United Nations Commission on Crime Prevention and Criminal Justice; March 2013 https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/PNI_Workshop/Paper_ICCLR_CJP_PNI-Workshop.pdf (accessed 16 May 2025)

⁵⁴ Ibid; Environment crime also called as Crime against the environment. (Black, 8th Edn., 2004)

⁵⁵ Ibid (accessed 16 May 2025)

⁵⁶ M. Clifford and Terry D. Edwards, —Defining Environmental Crime, Environmental Crime: Enforcement, Policy and Social Responsibility, Aspen Publishers Inc., Gaithersburg, (1998)

⁵⁷ https://ir.bellschool.anu.edu.au/sites/default/files/publications/attachments/2016-07/elliott_ipe_of_tec_chapter.pdf (accessed 16 May 2025)

involves “the movement across borders of species, resources, and pollutants in contravention of domestic law or in violation of prohibition or regulation regimes established by multilateral environmental.” TEC includes the transboundary dumping of toxic and hazardous waste including electronic waste (e-waste).⁵⁸ Parallel trafficking—moving environmental contraband along the same trade routes as other illegal commodities, combining illegal shipments, or using ostensibly legal shipments to conceal other forms of illegal goods and resources—has become part of the repertoire of criminal expertise that facilitates effective TEC chains of custody. Protected turtles and marijuana are uncovered in the same shipment.⁵⁹

Crimes associated with Illegal Extraction, Harvest, and Waste are serious types and leads to environmental consequences that destabilize the rule of law and good governance and links to Violence, Corruption, Range of Cross-Over Crimes and facilitates Money Laundering and legitimizing it with financing through Banking System.⁶⁰ In the recent past, Environmental Security⁶¹ and Human Security are part of National Security Agenda.⁶² The past six decades, has witnessed about 40 % of conflicts among nations for control and use of natural resources and it is known fact that this is bound only to increase or relapse into conflict within next few decades.⁶³ Though, they are long existing Crimes like the Wild Animal Traffic; Indiscriminate Logging; Electronic Waste Mismanagement; Finning; Dumping In Rivers and Aquifers etc., there are new forms forthcoming like the Deep-Sea Mining, where their impact is still not understood. Mere elephant poaching is a multi-million-dollar criminal enterprise through Central and East Africa with brutal conflicts.⁶⁴ It is one of the most heavily poached mammals in the world, with a staggering 90% of African elephants by poachers since last 100 years.⁶⁵ Within two years customs and enforcement personnel working across Europe and Central Asia has intercepted more than 3,000 refrigerant cylinders containing over 60 metric tons of illegally

⁵⁸ <https://www.unodc.org/unodc/en/speeches/2020/wildlife-100720.html> (accessed 16 May 2025)

⁵⁹ Dee Cook, Martin Roberts, and Jason Lowther, *The International Wildlife Trade and Organized Crime: A Review of the Evidence and the Role of the UK* (WWF-UK, Godalming, Surrey:2002)

⁶⁰ Kristiina Kangaspunta and Ineke Haen Marshall; *Eco-Crime and Justice; Essays on Environmental Crime*; Debbie Banks et al., https://unicri.org/sites/default/files/2021-06/Eco-crime_and_Justice.pdf (accessed 16 May 2025); See also “Environmental Crime: A Threat to Our Future,” (London: EIA, 2008)

⁶¹ Marc A. Levy, *Is the Environment a National Security Issue?* *International Security*; Vol. 20, No. 2 (Autumn, 1995), pp. 35-62 (28 pages)-Published By: The MIT Press

⁶² Riccardo Trobbiani; *How Should National Security and Human Security Relate to Each Other?* *E-International Relations* ISSN 2053-8626 Page 1/7 Apr 26, 2013 <https://www.e-ir.info/pdf/36454> (accessed 16 May 2025)

⁶³ <https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-16> (accessed 16 May 2025)

⁶⁴ Lorraine Elliott; *Fighting Transnational Environmental Crime*; *Journal of International Affairs*, Fall/Winter 2012, Vol. 66, No. 1, *Transnational Organized Crime* (FALL/WINTER 2012), pp. 87-104

⁶⁵ <https://www.ifaw.org/international/journal/elephant-poaching-problem> (accessed 16 May 2025)

traded Ozone-Depleting Substances (ODS).⁶⁶ With these few illustrative activities, it is understood that EC and related crimes are common and are categorised as Organised Crimes.

As EC are elusive, they are not well-understood by individuals or society, as identification of specific victims of such crimes [either directly or indirectly] are not popular by the investigating authorities. The investigation of heinous crimes or harms like Murder, Rape are given importance, as they immediately connect and harm the society. EC affect all living creature; but not much attention is given to such crimes and it lacks common understanding and seriousness in the society. So, States locally, Countries regionally and Institutions globally have not realized the seriousness of such crimes till date. However, since 1900 Nation States has attempted to enact laws that imposes civil and criminal liability on natural and legal persons.⁶⁷ The study in this area has increased tremendously since 1960s, as UN has taken initiatives with clamor of Regulations for Environment Protection with Sustainable Development.⁶⁸ It aims in Strengthening Institutions, Rule of Law and enforcement contribute to support the implementation of multi-lateral environmental agreements and progress towards internationally agreed Global Environmental Goals.⁶⁹ This goal can be achieved and better understood only when a link is created between Environment and Human Security, which becomes vital and relevant for effective conflict prevention, post-conflict reconstruction and promotion of peaceful and inclusive societies. Varied types of liability are imposed by the existing laws for protection of environment.⁷⁰ Despite Laws at all levels i.e., Local- Global, it is perturbing to know that extensive environment harm/damage to the planet continues.⁷¹

Global Pact for the Environment has been suggested. The proposal can be traced to Amedeo Postiglione and his advocacy for an International Court for the Environment (ICE).⁷² It is intended that creation of two New International Environmental Bodies:

⁶⁶Ozone depleting substances are chemicals that destroy the earth's protective ozone layer. <https://www.dcceew.gov.au/environment/protection/ozone/ozone-science/ozone-depleting-substances> (accessed May 16, 2025)

⁶⁷<https://www.umweltbundesamt.de/en/envirom-liability-a-envirom-damage-law-envir#environmental-criminal-law> (accessed May 16, 2025)

⁶⁸ <https://www.un.org/development/desa/disabilities/envision2030-goal16.html> (accessed May 16 2025)

⁶⁹ <https://www.mdpi.com/2071-1050/12/17/7098> (accessed May 16 2025)

⁷⁰ <https://www.umweltbundesamt.de/en/envirom-liability-a-envirom-damage-law-envir> (Supra)

⁷¹ https://cpcb.nic.in/uploads/hwmd/Guidelines_Environment_Damages_Costs_200116.pdf (accessed May 16, 2025)

⁷²Tim Stephens, International Courts, and Environmental Protection 56–57 (2009). <http://ndl.ethernet.edu.et/bitstream/123456789/19424/1/540.pdf>(accessed May 16, 2026)

a) an International Court for the Environment at the UN to have “new legal State liability rules and consequently, compulsory and efficient conflict regulation procedures, supported by a permanent authority” and concurrently,

b) a World Commission on the Environment as a Human Rights, to evaluate, investigate, and seek resolution before the International Court for the Environment.⁷³

The aim remains unachieved and ICE has failed due to lack of representation of cases by countries.

Civil Liability-Is it Futile on Environmental Wrongs?

The Environmental Damage in all the countries has both civil and criminal liability or both. Many wrongs are non-contractual. In India, the provisions are the Code of Civil Procedure, 1908, The Code of Criminal Procedure, 1973 (Now BNSS, 2023) and other Special statutes has been well- established. The uncoded Tortious Liability like Nuisance, Negligence, strict liability- Absolute liability, Trespass etc are the wrongs and general remedies through under the Provisions of the CPC, 1908 based on statutory and common law remedies are provided for in landmarks judgments by the High Court and Supreme Court of India. Even the Authorities under the Statutes and NGT are active in providing remedies. In the process of deciding the judgements, the Supreme Court has used the principle of ‘Sustainable Development’ and the ‘Precautionary Principle’,⁷⁴ The Public Trust Doctrine⁷⁵ and beyond all the ‘Polluter Pays Principle,’ are well established by courts all over the world.⁷⁶ The same is supported by the Constitutional Provisions of India provided in Part III and Part IV and declared to be part of Environmental Law and its jurisprudence of the country. These principles were adopted at International Level in the 1972 by OECD Council Recommendation on Guiding Principles concerning the International Aspects of Environmental Policies. The 1974 principle experienced revival by OECD Council in 1989 as its Recommendation on the Application of the ‘Polluter Pays Principle’ to Accidental Pollution also, and the principle was not to be restricted to chronic polluter. In 1991, the OECD Council reiterated the Principle in

⁷³ “World Bank. 2019. Illegal Logging, Fishing, and Wildlife Trade: The Costs and How to Combat it. © World Bank, Washington, DC. <http://hdl.handle.net/10986/32806> License: CC BY 3.0 IGO.” URI <http://hdl.handle.net/10986/32806>

⁷⁴ Vellore Citizens Welfare Forum v. Union of India 1996(5) SCC 647

⁷⁵ M.C. Mehta vs Kamal Nath & Ors

⁷⁶ Section 20 in The National Green Tribunal Act, 2010 provides for various principles to be applied while deciding cases under its jurisdiction: - “The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

its Recommendations on the Uses of Economic Instruments in Environmental Policy.⁷⁷ The Civil Liability especially the Corporate Criminal Responsivity for environmental wrongs are well-established nationally and globally.⁷⁸

The Supreme Court of India has not only decided on the offences and penalties, but also applied upon the Sustainability of Environment as a prime goal in its judgments.⁷⁹ The Role of National Green Tribunal needs a special appreciation in contributing towards Environment Protection.⁸⁰ The National Green Tribunal Act, 2010 and through its Punitive Penalties has been effective to a certain extent in the damage caused to the environment.⁸¹ Its decision in LG Polymers to Pay damages of INR 500 million for the death of 11 victims and Indian Oil Corporation for INR 250 million for Surface Water Contamination and Illegal Discharge of Gases and cause of Oxygen Depletion. For the Volkswagen emission scandal in 2019,⁸² it ordered an enhanced penalty of INR 1 billion. Even before this in the Vedanta case,⁸³ it had imposed INR 1 billion penalty in 2013 on Sterlite Industries, in 2020 the Madras High Court has confirmed the Permanent closure of this industry. The recent judgments like Waris Chemicals Pvt Ltd vs Uttar Pradesh Pollution Control Board⁸⁴ for polluting groundwater through hazardous chromium waste disposal and M.K. Ranjitsinh v. Union of India⁸⁵, which states the importance of solar power as a source of renewable energy to combat climate change.⁸⁶ Even the Central Pollution Control Board has continuously strived to control the illegal acts of discharging untreated industrial waste into sewage with penalty amounting to billions.⁸⁷

In the UK, there is the Comprehensive Environmental Pollution Index (CEPI) assessment that was undertaken in 2009, updated in 2016 and the final report on CEPI was issued in 2018. After that, the NGT directly supervised the enforcement of the CEPI criteria by the regulatory authority. Industrial clusters are now categorised under the CEPI as Polluted Industrial Areas

⁷⁷ Vellore Citizens 1996(5) SCC 647

⁷⁸ Ananya Agarwal, Redefining Corporate Criminal Liability With Respect To Environmental Crimes International Journal Of Legal Science And Innovation Volume 2 ,Issue 3 2020 ISSN 2581-9453 [<https://www.ijlsi.com/wp-content/uploads/Redefining-Corporate-Criminal-Liability-with-respect-to-Environmental-Crimes.pdf>] (accessed 16 May 2025)

⁷⁹ Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh AIR 1987 SC 2187

⁸⁰ Els Reynaers Kini and Gautambala Nandeshwar, M V Kini; Environmental Law and Practice in India: Overview <https://uk.practicallaw.thomsonreuters.com> (accessed 16 May 2025)

⁸¹ <https://www.indiacode.nic.in/handle/123456789/2025> (accessed 16 May 2025)

⁸² Case No. 2:16-cr-20394-SFC-APP (E.D. Mich.)

⁸³ Orissa Mining Corporation v. Union of India and Ors (2013) 6 SCR 881

⁸⁴ Civil Appeal No. 6398 OF 2024

⁸⁵ (2024) 3 SCR 1320

⁸⁶ <https://www.jsalaw.com> (accessed 16 May 2025)

⁸⁷ <https://cpcb.nic.in> (accessed 16 May 2025)

(PIAs) and are criteria based on The Critically Polluted Area (CPA), A Severely Polluted Area (SPA) and Other Polluted Areas (OPAs).⁸⁸ In India also based on the CPA, severe punishment must be imposed, mere civil liability and award of damages have proved to be futile in curbing the environmental damage and harm. In this part it is not only corporate liability, even the individual liability needs to be extended for EC.

Criminal Liability with Special Reference to India⁸⁹

Since ages criminal law is primarily believed to regulate and bind human behavior. So, to control the destruction of the environment or to stop Illegal Exploitation of Natural Resources or the Illegal Dispossession of Land, Criminal Law seems to be the best possible solution. Now that is well-established that environment crime is cross-border or transnational in nature, should it be made a universal crime like that of Piracy for the best interest of this world.⁹⁰ States would be eager to extent their territorial laws as to expand their jurisdictional⁹¹wings beyond boundaries for the protection of environment like application of Personal Jurisdiction.⁹²

The first and foremost legislation that create Criminal Liability for Environmental related issues was the Indian Penal Code, 1860 (Now BNS, 2023).⁹³ Various provisions under IPC are concerned with public health with provisions relating to public nuisance and safety⁹⁴. Sections 268-Sections 294-A; Sections 269-277;; Section 290; Section 426; Section 430; Section 431; Section 432, which the state can take action against the perpetrator that includes Fine and Imprisonment or both.⁹⁵ Other than IPC other Special Legislation relating to

⁸⁸ Supra (FN 80)

⁸⁹<https://www.informe.org/en/court-decision/vellore-citizens-forum-petitioner-v-union-india-and-others-respondents> (accessed 16 May 2025)

⁹⁰ <https://globalnaps.org/issue/extraterritorial-jurisdiction/> (accessed 16 May 2025)

⁹¹ Viñuales, Jorge E., A Human Rights Approach to Extraterritorial Environmental Protection? An Assessment, in Nehal Bhuta (ed.), The Frontiers of Human Rights (Oxford, 2016; online edn, Oxford Academic, 21 Apr. 2016), <https://doi.org/10.1093/acprof:oso/9780198769279.003.0006>, accessed 19 May 2023. (Accessed May 19, 2023 13:21PM)

⁹²<https://iow.eui.eu> (accessed 28 June 2023 12:17 PM) Personal Jurisdiction (Jurisdiction Ratione Personae): As per Article 5 of the Rome Statute the Court has jurisdiction over any individual accused of a crime within the jurisdiction of the ICC, except for any person who was under the age of 18 at the time of the alleged commission of the crime.

⁹³ Dagrás, Mansi, Crime against Environmental Law in India (June 13, 2021). Available at SSRN: <https://ssrn.com/abstract=3866168> or <http://dx.doi.org/10.2139/ssrn.3866168>

⁹⁴ Chapter XV Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals; Ss 270-297

⁹⁵ Ibid Dagrás, Mansi, Crime against Environmental Law in India (June 13, 2021). Available at SSRN: <https://ssrn.com/abstract=3866168> or <http://dx.doi.org/10.2139/ssrn.3866168>

Environmental Protection⁹⁶ are legislations relating to Water⁹⁷&⁹⁸, Air,⁹⁹ Environmental Protection¹⁰⁰ including Animal Rights¹⁰¹&¹⁰², Protection of Forest & Forest dwellers rights¹⁰³ in general at times specifically provide for offences committed by person that include companies.¹⁰⁴ The Corporate Criminal Liability makes them guilty of the offences and liable to be prosecuted and punished accordingly including punishment for marine protection.¹⁰⁵ Many times, even the officers of the company can be prosecuted like in the case of Bhopal Gas Tragedy¹⁰⁶ and Sriram Fertilizers Case¹⁰⁷. The determination of the liability of directors is based on factors other than just been a directors or other designated officer of the company, and includes the role of such officers in the affairs of the company, only when the prosecution

⁹⁶ M. C. Mehta v. Kamal Nath and Ors (1997) 1 SCC 388

⁹⁷ M.C. Mehta vs. Union of India AIR 1988 SCR (2) 538: A case related to pollution of the Ganga River by the hazardous industries located on its banks and ordering the closure of several polluting tanneries near Kanpur.

⁹⁸ Indian Council for Enviro-Legal Action v. Union of India, 1996 SCC (3)212(Toxic H Acid - polluter pays principle; industrial pollution in Bichhri Village due to Industrial Pollution).

⁹⁹ M.C. Mehta vs. Union of India (Taj Trapezium Case) 1987 SCR (1) 819: The emissions from industries near the Taj Mahal are causing the white marble surface of Taj Mahal to discolour. To protect the monument from pollution, the central government had demarcated a trapezoid shaped area of 10,400 sq. km around the Taj, called the Taj Trapezium Zone (TTZ)

¹⁰⁰ Subhash Kumar v. State of Bihar 1991 SCC (1) 598 (Waste & hazardous substances) <https://www.informea.org/en/court-decision/subhash-kumar-v-state-bihar> (accessed 12 February 2023 22:16 PM) Section 15(1) in The Environment (Protection) Act, 1986

¹⁰¹ Animal Welfare Board of India v. A. Nagaraj and Ors. (2014) 7 SCC 547” interpreting section 3 and section 11 of the Prevention of Cruelty to Animals Act, 1960 (Jallikatu)

¹⁰² Animal. Welfare Board of India v. A. Nagaraja and Ors, MANU/SC/0426/2014

¹⁰³ The livelihood of forest dwellers in the Nilgiris Region of Tamil Nadu was affected by the destruction of forests. The Supreme Court in “TN Godavarman Thirumulpad v. Union of India and Ors.” (1997) 2 SCC 267 (The Final Judgment in 2014)

¹⁰⁴ Municipal Corporation, Ratlam v. Vardhichand AIR 1980 SC 1622

¹⁰⁵ S. Jagannath v. Union of India (1997) 2 SCC 87 protection and conservation of India’s coastal environment. “In the context of the proposed amendments to the Coastal Regulation Zone (CRZ) Notification 2011, a law that permits varying degrees of land use in demarcated coastal areas, Ghosh looks at three judgments of the Supreme Court. These judgments not only express deep concern about the state of India’s coastal environment and the urgent need to protect it, but also establish the principles that the Court thinks should guide government’s action on the environment generally and the coasts specifically.” See also: Enviro-legal Action v Union of India [(1996) 5 SCC 281]; Vaamika Island v Union of India and Ors [(2013) 8 SCC 760]; See <https://cprindia.org/the-supreme-courts-guiding-principles-for-coastal/> (accessed 12 February 2023 22:46 PM)

¹⁰⁶ 1989 SCC (2) 540 (UCC V UOI) The Union Carbide Corporation applied to the Supreme Court concerning S. 155 of the CPC, in a claim for damages made by the Union of India against the order of the Bhopal District Court, on behalf of all the claimants under the Bhopal Gas Leak Disaster Act, 1985. The Union Carbide Corporation, and the Union of India, both filed discrete appeals in the Supreme Court against the judgment of the Madhya Pradesh High Court, both of which were heard simultaneously. Settlement for 750 Crores to Victim of the Gas Leak; See <https://lexpeeeps.in/union-carbide-corporation-v-union-of-india/> (accessed 12 February 2023 22:38 PM) Also see COLIN GONSALVES, The Bhopal Catastrophe: Politics, Conspiracy and Betrayal Economic and Political Weekly Vol. 45, No. 26/27 (JUNE 26-JULY 9, 2010), pp. 68-75 (8 pages) <https://www.jstor.org/stable/40736695>

¹⁰⁷ AIR 1987 SCR (1) 819 (Oleum Gas Leakage)

proves the specific averments of the role of the Individuals, the officers may be liable individually also.¹⁰⁸

Environmental Crimes and International Criminal Court

In India, the Chapter X of The Code of Criminal Procedure 1973,¹⁰⁹ provides preventive and mitigating measures for public nuisance cases pertaining to Water, Air, Soil, and Unsanitary/Unhygienic conditions causing harm to public. Even section 133 empowers Magistrate to preventive measures to stop nuisance that includes disposal of substances that are dangerous to humans and animals, when there is an imminent danger to the public.¹¹⁰ The actions under this section is in addition to the Special and Local laws prevalent in India. The Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986 provides for Criminal Liability.¹¹¹ Though, few sections were regarded to be the saviour and guardian against E C, but these have been found to be inadequate since the violation of these sections attracts a meagre amount of penalty, even imprisonment is not seriously imposed against the perpetrators, as they are rare incidents of imprisonment, that would deter the prosecution from initiating any proceedings.¹¹²

As the domestic criminal liability is not actually effective or the States are not serious on E C, the author here suggests that there must be a strong Domestic and International Law.¹¹³ If the ICC is referred, the only reference to the environment that appears in the Rome Statute is included in Article 8.2(b)(iv), which lists among the activities constituting a war crime the act of, “intentionally launching an attack in the knowledge that such attack will cause . . . widespread, long-term and severe damage to the natural environment.”¹¹⁴ The ICL is the new

¹⁰⁸Securities and Exchange Board of India v Gaurav Varshney, (2016) 4 SCC 430 <https://www.lexology.com/library/detail.aspx?g=ee60c873-1bd3-494e-826c-0619b0438d90> (accessed May 16, 2023 00:20 AM)

¹⁰⁹ Chapter XI of the Bharatiya Nagarik Suraksha Sanhita (BNSS)

¹¹⁰ Govind Singh v. Shanti Sarup AIR 1979 SC 143

¹¹¹ <https://nyaaya.org/legal-explainer/what-are-the-offences-under-this-law/> (Imprisonment is also provided for in both the statutes) (accessed May 16 2025)

¹¹² Pattnaik, Annapurna; Das, Sabyasachi; and Pradhan, Banalata, “Environmental laws and restrains of criminal sanctions in India” (2019). Library Philosophy and Practice (e-journal). 2959. <https://digitalcommons.unl.edu/libphilprac/2959> (accessed 16 May 2025)

¹¹³Sairam Bhat and Rohith R Kamath; Comparative Enforcement Mechanisms and Pinning of Liability In Environmental Crimes in India and Asia Pacific Region available at <https://ceerapub.nls.ac.in/wp-content/uploads/2023/01/Comparative-Enforcement-Mechanisms-and-Pinning-of-Liability-in-Environmental-Crimes-in-India-and-Asia-Pacific-Region.pdf> (accessed May 16 2025)

¹¹⁴ Mistura, A. (2019) “Is There Space for Environmental Crimes Under International Criminal Law? The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritization on the Current Legal Framework,” Columbia Journal of Environmental Law, 43(1). doi: 10.7916/cjel.v43i1.3740.

and emerging area that can be seen as a better answer to the newer challenges on Environment issues. So, the next question should be will grant of Jurisdiction to bring E C within the ambit of International Criminal Court (ICC) or other international courts for punishment. Especially under the Rome Statute it is one such question that has been thought-out.¹¹⁵ It can be an added advantage that ICC has concurrent Jurisdiction with that of States under the Domestic Law. The misconduct in environment issues extends beyond national borders and thereby the traditional concept of territoriality of punishing the E C may lack effectiveness in curbing and controlling such crimes and thereby it has necessitated that the international bodies to pay attention to punish the perpetrators of such crimes with suitable penal enforcement.¹¹⁶

Few conventional laws and domestic laws criminalize international environmental misconduct effectively, but there is deficiency that needs to be corrected.¹¹⁷ In 2016 the Policy Paper by the Office of the Prosecutor of ICC has reignited and re-stated the much-awaited discussion about the status of E C under international law. The policy intends to the selection of crimes to be submitted to the jurisdiction of the ICC, those committed through, or resulting in, “the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.” The discussion gained much attention that the ICC would focus on prosecuting “Environmental Crimes.”¹¹⁸ However the ICC’ s jurisdictional issues are still critiqued, as its limited jurisdiction will have to face challenges, because, the main aim is to punish only “the most serious crimes of International Concerns, and are identified as the Genocide, War Crimes, Crimes Against Humanity, and Aggression. Its complementary jurisdiction can be beneficial, but India not been a member to ICC, may not be inclined to add Ecocide as a Crime, but rather inclined to have Terrorism becoming part of the ICC Statute. The only reference in the Rome Statute is included in Article 8.2(b)(iv), which lists among the activities constituting a war crime the act of, “intentionally launching an attack in the knowledge that such attack will cause . . . widespread, long-term and severe damage to the natural environment.”

¹¹⁵ Ibid

¹¹⁶ Aurelie Lopez; Criminal Liability for Environmental Damage Occurring in Times of Non-International Armed Conflict: Rights and Remedies; Fordham Environmental Law Review Vol. 18, No. 2 (SPRING 2007), pp. 231-271 (41 pages)

¹¹⁷ Cho, Byung-Sun Emergence of an International Environmental Criminal Law? UCLA Journal of Environmental Law and Policy, Vol 19 Issue (1) 2000 <https://escholarship.org/uc/item/0ph8h7r5>

¹¹⁸ Supra FN 114

The limited attention to Environmental damage at national and international level, may make it challenging to impose or maintain ICC's jurisdiction as it is already considered to be weaker body and complained of bias against the African Countries, forcing many African Countries to withdrawal thoughts. ICC's weakness has been already under the scanner, even in the existing four Major Crimes, unless the prosecution can show that the jurisdiction may either:

- (i) "Be derived implicitly from the current description under the Rome Statute..." or
- (ii) "has been extended by virtue of the creation of a new rule of international law, either customary or treaty-based."¹¹⁹

There is already an anticipation that "Ecocide" as a fifth Crime Against Peace, and to the amendment of the description of the crimes provided under the Rome Statute through customary international law is a pressing need.¹²⁰ Indeed, to make it convenient, the only international instrument that comes close to providing such a definition is the Council of Europe Convention on the Protection of the Environment through Criminal Law (the "COE Convention"). The COE Convention lists five detailed categories of crimes posing a threat, or harm, to the environment and requires their criminalization at the domestic level.¹²¹

¹¹⁹ It may be worthwhile to recall here that rules of customary international law arise when the following elements are present:

- (i) "The widespread repetition by States of similar international acts over time (State Practice);" and
- (ii) "The requirement that States repeat such acts because they believe they have a legal obligation to do so (*Opinio Juris*)."

See Malcolm N. Shaw, *International Law* 53–54 (8th ed. 2017)

¹²⁰ Crimes against peace are those prosecuted by the ICC.

¹²¹ Convention on the Protection of the Environment Through Criminal Law art. 2, 4, Nov. 4, 1998, E.T.S. 172 "(Article 2 requires the criminalization of: "(a) the discharge, emission or introduction of a quantity of substances or ionizing radiation into air, soil or water which: (i) causes death or serious injury to any person, or (ii) creates a significant risk of causing death or serious injury to any person; (b) the unlawful discharge, emission or introduction of a quantity of substances or ionizing radiation into air, soil or water which causes or is likely to cause their lasting deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants; (c) the unlawful disposal, treatment, storage, transport, export or import of hazardous waste which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; (d) the unlawful operation of a plant in which a dangerous activity is carried out and which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; and (e) the unlawful manufacture, treatment, storage, use, transport, export or import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants." Criminalization of other offenses or, alternatively, the imposition of administrative sanctions is required by Article 4 with respect to: "(a) the unlawful discharge, emission or introduction of a quantity of substances or ionizing radiation into air, soil or water; (b) the unlawful causing of noise; (c) the unlawful disposal, treatment, storage, transport, export or import of waste; (d) the unlawful operation of a plant; (e) the unlawful manufacture, treatment, use, transport, export or import of nuclear materials, other radioactive substances or hazardous chemicals; (f) the unlawful causing of changes detrimental to natural components of a national park, nature reserve, water conservation area or other protected areas; and (g) the unlawful possession, taking, damaging, killing or trading of or in protected wild flora and fauna species.")"

The emphasized connection between Environmental Damage and Genocide, however, seems restricted to a theoretical level. In practice, the cause of environmental damage is not sufficient to constitute, by itself, a conduct relevant for the commission of the crime of Genocide. This possibility is faced with an immediate and unassailable obstacle, represented by the subjective element required with respect to Genocide. In this respect, Article 6 of the Rome Statute requires that the relevant conduct be carried out “with the intent to destroy”. This direct *mens rea* requirement, however, is considered too restrictive to encompass episodes of Environmental Damage occurring for the purpose of attaining economic development, such as the ones caused by extractive activities, or those caused by negligence.¹²² Due to lack of clarity and prevalent confusion with limited attention to E C in the Rome statute, the ICC will have difficulty for the application of Universal Jurisdiction unless a new rule of international law, either customary or treaty-based are agreed upon. Even now major countries like US, Russia (has withdrawn)¹²³, China also is not member to the ICC Statute,¹²⁴ which makes it even more difficult for application of the law laid down in Rome Statute. Even the definitions of War Crime under Article 8 (2) ¹²⁵ that include the word environment and the mental elements¹²⁶ required are not well interpreted. It still lacks authoritative and well- defined ingredients for criminal liability specifically. The international treaties are still silent on such issues, doubts, and concerns.¹²⁷ There must be clarity in understanding the fundamental difference between

¹²² Robert Cryer, The Doctrinal Foundations of International Criminalization, in International Criminal Law: Sources, Subjects and Contents 107, 108 (M. Cherif Bassiouni ed., 3d ed. 2008).

¹²³ <https://foreignpolicy.com/2016/11/16/why-russia-just-withdrew-from-icc-putin-treaty-ukraine-law/> (accessed May 16, 2025)

¹²⁴ <https://promiseinstitute.law.ucla.edu/wp-content/uploads/2022/02/Report-of-the-Expert-Workshop-ICL-and-environment-v2.pdf> (accessed May 16, 2025)

¹²⁵ Article 8 War crime- Article 8 (b) (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term, and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed 16 May 2025)

¹²⁶ Article 8 (2) (b) (iv) War crime of excessive incidental death, injury, or damage: Elements of Crimes in the Explanatory note states:

1. The perpetrator launched an attack.
2. The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term, and severe damage to the natural environment and that such death, injury, or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
3. The perpetrator knew that the attack would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term, and severe damage to the natural environment and that such death, injury, or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

<https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf> (accessed 16 May 2025)

¹²⁷ “Indeed, such definitions indiscriminately consider: (i) the criminal liability of an individual arising from the breach of a rule of national environmental law; (ii) the criminal liability of an individual arising from the breach

“crimes under international law” and “transnational crimes” and the differences in the regimes applicable to each.¹²⁸ The ICC should not only include E C, but also to include Environmental destruction.¹²⁹ Instead of all the confusion that the law under national and international law have created: there must be a definition to bring such offences under the named as “Ecocide”¹³⁰ or “Green Crimes”¹³¹. It can be one of the crimes against humanity or crimes against peace under ICC. Unless the definitions and punishments are not clearly laid down, the possibility of making ‘Ecocide’ or ‘Green Crimes’ as a crime will lead to delay in implementing the criminal liability. That also leads to failure of protecting environment and the attaining SDGs goals.

A Way Forward- Towards achieving SDG Goals

The goals aim at promoting peace and inclusive society. For this there is no other way to bring in environmental protection and promotion of sustainable development through use of natural resources with caution and kindness to other living beings of the planet. The individuals and other legal personalities including states, own a liability to protect the world and the planet from exploitation. It is a mandate for all States and participation of all the States towards achieving this goal is still a contemplation and quite difficult to achieve. There is ardent need to promote and enforce non-discriminatory laws and policies for sustainable development in matters related to Environment.¹³² Towards achieving these, the countries must come together to achieve this SDGs on Health and Environment¹³³ through partnerships to achieve the same

of a rule of international environmental law; and (iii) the liability of the State arising from the breach of a rule of international environmental law, whether customary or treaty-based. Of these three options, only the second would seem viable to serve as a foundation of the ICC’s jurisdiction over environmental crimes.”

¹²⁸ Gillett, M. (2013). Environmental Damage and International Criminal Law. In S. Jodoin & M. Cordonier Segger (Eds.), Sustainable Development, International Criminal Justice, and Treaty Implementation (Treaty Implementation for Sustainable Development, pp. 73-99). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139507561.008;

https://assets.cambridge.org/97811070/32934/frontmatter/9781107032934_frontmatter.pdf (accessed 16 May 2025)

¹²⁹ Supra FN 124

¹³⁰ In 1970 First coining of the term ‘ecocide’ was by Professor Arthur W. Galston at the Conference on War and National Responsibility in Washington, where he also proposed a new international agreement to ban ecocide.

See also meaning of “Ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts. By Independent Expert Panel for the Legal Definition of Ecocide, June 2021 <https://www.stopecocide.earth/> (accessed 16 May 2025)

¹³¹ The term “Green crimes and defined it as “Harms caused to living beings through the creation of environmental hazards existing at local and global levels”. “Green criminology” was introduced by Michael J. Lynch in 1990, and expanded upon in Nancy Frank and Michael J. Lynch’s 1992 book, Corporate Crime, Corporate Violence, which examined the political economic origins of green crime and injustice, and the scope of environmental law. See Nancy Frank & Micheal J. Lynch, Corporate Crime, Corporate Violence: A Primer 81–82 (1992).

¹³² <https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-16> (accessed 16 May 2025)

¹³³ <https://www.un.org/development/desa/disabilities/envision2030-goal17.html> (accessed 16 May 2025)

by enhancing policy coherence for sustainable development, it can be achieved only with multilateral collaboration and partnerships with PPP models and through civil societies that actively involve towards achieving this goal. If Rio+ 20 Conference and 2030 agenda needs to be attained, there is an enthusiastic need for the consolidation of law and stringent application of principles of Environmental jurisprudence developed at National Level and to be extendable to International Law.¹³⁴ In line with SDG's lot needs to be aimed, primarily to control and curb the businesses. The businesses are worldwide judged by stakeholders, civil societies, regulations on the ESG's (Environment, Social and Governance) Practices of the companies. ESG metrics and their profiling are playing a vital role in categorising companies, because investors rely on these assurances. So, whenever the companies fail in their duty, it is duty on regulators to make the necessary declarations to have a negative impact on the perpetrators of E C, that may have near anticipation of its impact on the society.

It is commonly agreed that Human Rights and the environment are inseparable and interdependent.¹³⁵ For achievement of the SDG and effective protection of Human Rights, which extends to protection as Fundamental and Natural rights for all living beings, there is a need for an international judicial body. Though the establishment of International Court for the Environment under the umbrella of the ICJ, the State parties failed to appreciate its existence, so it was shut in 2006. The non-compliance of the required Environment standards, the soft law attitude towards international law, differentiated responsibilities, and an absence of clear, precise, and actionable obligations reduce the likelihood of international environmental litigation and necessary civil. criminal and other sanctions, which can fail as other International law has failed. Domestic laws at times have been more comprehensive and effective than international law. But the Environment crimes by nature are cross-border and transnational by nature, the domestic law application, may not have an impact on the global challenges international justice in most cases, has remained optional like that of ICC jurisdiction, a mandate of compulsory actions on par with Piracy laws are ardently required. At present resuming ICE seems non-feasible, so the best alternative is expanding the future Global Pact and provide for adjudication of international disputes related to such crimes for members and

¹³⁴ IUCN & INT'L COUNCIL OF ENVTL. L., *Draft International Covenant on Environment and Development: Implementing Sustainability*, Portals.Iucn. Org,

<https://portals.iucn.org/library/node/46647> [<https://perma.cc/64ST-7JRC>]

¹³⁵ John H. Knox, Statement at the Sixth Meeting of the Parties to the Aarhus Convention (Sept. 14, 2017) (transcript available at

https://www.unece.org/fileadmin/DAM/env/pp/mop6/Statements_and_Comments/HLS_4_Thematic_OHCHR_SR_Knox_statement.pdf. (accessed May 16, 2025)

non-members, thereby to provide for a criminal justice mechanism, to act on members of any nationality through robust language to provide jurisdiction over cases on matters of E C.¹³⁶

Conclusion

There is no doubt that the civil and criminal liability to a certain extent has fetched some awareness at Local, National, and International Environmental law and Liability. The law can provide compensation for transboundary or extraterritorial damage incurred by the polluter and control some behaviour pattern of the people. As the laws still needs to develop progressively. Due to lack of comprehensive International Environmental Court, a reconstruction of the complex subject matter of International Environmental Liability law has yet to be undertaken. Many questions, including fundamental one like definition of the E C remains un/under developed. It is well-recognised that Criminal law is the intense weapon of any legal system as proved in history, so it is suggested that it is prime time to make provisions necessary to define and explain the ingredients, for investigations and prosecution in line with a probable ICC jurisdiction.

In India, the recent development in consultation papers, that the Central Government in India has suggested for financial penalties are the best to be replaced with the Criminal liability at least for certain offences that harm the existence of any creature. The attempt to decriminalise violations of certain provisions in the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981 is to be reconsidered.¹³⁷ There is also need for further research in Environmental Criminology, to provide facts and proper statistical study to understand the problem.¹³⁸

Despite ongoing efforts by UN agencies, committed groups, committed individuals, and some national governments, there are few success stories of slowing of depletion of Ozone layers, carbon emissions: but parallelly the growth of technology has added to the traditional pollution with e-wastes and other emerging new crimes are emerging. By the time older hazards are controlled, newer forms attain their place with new challenges. There is a pressing need to

¹³⁶ Le Club Des Juristes, Increasing the Effectiveness of International Environmental Law 15, http://www.fondation-droitcontinental.org/fr/wp-content/uploads/2015/11/CDJ_Rapports_Increasing-the-effectiveness_Nov.2015_UK_web-VDEF.pdf. [hereinafter Increasing Effectiveness].

¹³⁷<https://theprint.in/environment/finest-not-jail-time-how-modi-govt-aims-to-make-environment-laws-tougher/1025478/> (accessed May 16, 2025)

¹³⁸<https://www.ojp.gov/ncjrs/virtual-library/abstracts/environmental-criminology-theory-urban-planning-practice> (accessed May 16, 2025)

control and prevent pollution and its effect on living beings and diseases caused through them. Pollution, Climate Change, and Biodiversity loss are closely linked. Global support with stringent actions against the states and individuals and corporates with policy interface, to inform interveners, influence research, and funding are a must, to guide us further. It is a concept of Local-Global actions that must be stringently taken with imposition of criminal liability. As not much has been achieved with penalties, civil actions, and tortious liabilities. National, Regional and Global or transnational solutions and policies through stringent sanctions or penal actions is the only possible way to regulate the planetary threats. Global efforts are the only solution with strict criminal actions and sustainability as a mantra is an effective strategy for preventing pollution and achieve a safe and healthy life.¹³⁹ Indian Philosophy of '*Vasudhaiva Kutumbakam*'¹⁴⁰ and its attainment can be the 'mantra' for future and overall existence and development of the World.

¹³⁹ [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(22\)00090-0/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(22)00090-0/fulltext) (accessed 12 February 2023, 19:59 PM)

¹⁴⁰ "वसुधैव कुटुम्बकम् (vasudhaiva kuTumbakam) Vasudhaiva Kutumbakam (Sanskrit: वसुधैव कुटुम्बकम्. from "vasudha", the earth; "iva", is; and "kutumbakam", family) is a Sanskrit phrase that means that the whole world is one single family. So here the Vedic sages are saying that the entire world is truly just one family. <https://vasudaikakutumbam.wordpress.com/2015/03/05/vasudhaiva-kutumbakam> accessed May 19, 2023 15:47PM)"