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Environment crime crises: How to protect

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Abstract

The research paper is mainly focused on safeguards measures of environmental crime. The main object of this paper is to define protective laws regarding environmental crime. Under the introductory portion, there is define illegal activity conducted by human beings which are directly harmed to the environment that is wildlife crime, illegal fishing, illegal logging and pollution crime. This chapter also included the application of economic theories of criminal law to environmental pollution and their safeguards.

It describesthe effectiveness of environmental criminal law is generally addressed and the consequences of various possible enforcement strategies. It describes environmental degradation and global environmental crimes due to this environmental degradation, Impacts on human beings'lifestyle and what issues are conducted. There are many laws to define how to protect the environment, but the necessity is to execute punishment provisions as well. So the provisions relating to the execution of punishment aredefined in our research paper. In this paper, we also discuss the provisions related to an international level, like provisions given in international conferences and different treaties.Lastly,itdescribed the role of the judiciary to protected environmental crime and critical analysis of environmental laws and suggestions about how to protect environmental crime.

Key Words: -

Sustainable Development, Global Environmental crime, Judicial activism, Environmental degradation, Wildlife crime.

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"Environment is no one's property to destroy;
It iseveryone's responsibility to protect."

-By MohithAgadi

Introduction

At the beginning of human civilization, man has destroyedthe environment for fulfilling our basic needs, such as flooding, cultivation, fishing, timber for cooking food. This situation was continuously run-up to many centuries but in 14th to 15th centuries world mechanism are move to developing of infrastructure in countries. As a result, it generates a problem of crime against the environment and wildlife. These mechanisms of development are cause damage to the environment and wildlife around us.

In the world scenario, they are considered as a category under the organized criminal activities. It is taken the fourth most significant area of crime in the list of organized crime in the world. These types of crimes are also called green-collar crimes.

There is various type of crime included Under green-collar crimessuch as Poaching, illegal Trade of wildlife, Trade of unregulated or illegal product for financial and material gains. Hence, to stop this type of activity in Stockholm first conference was held in 1972 for the protection of the environment. (S.R. Myneni, 2013) Similar situations Earth-summit, Agenda-21, Reo-conference are held.

Indian status-At Present, there are many laws to protect the environment in India like Environmental Protection Law 1986, Air and water protection Law. (S.C. Tripathi, 2005),However, due to no penal provision in the laws but the laws are continuously violated by the people due to which environmental crimes are increasing. Incorporating penal provisions in environmental legislation is necessary to reduce the increasing environmental offences.

Research Methodology

For thepresent research paper, the researcher has adopted both Doctrinal and non-Doctrinal research, but mainly non-Doctrinal research or experience-based research has been used by the researcher, as well as the research created by the researcher through a case study.

The research has been done by the researcher based on his experience or observation, who has tried to verify his hypothesis from the study material collected through observation and case study. The purpose of conducting non-Doctrinal research by the researcher is closer to originality and judicial decisions also prove to be very useful in empirical research. Theoretical research has also been used by the researcher in the said research paper. That is, secondary sources have been used by the researcher for theoretical research.

Statement of Problem

Over the past decades, the international agencies have playeda significant role in codifying laws related to environmental protection; their examples are the Stockholm conference, Earth conference. (A.Usha, 2007). Although by international efforts, India has also made legal provisions for environmental protection and then in 1986, the Environment Protection Act 1986 was passed.

The laws in India for environmental protection are not enough because there is no penal provision anywhere in those laws. Due to the absence of penal provisions, there is a continuous violation of these laws, which shows the inadequacy of these laws. The main problem before the researcher is to protect the legislation related to the environment so that environmental crime can be stopped. To prevent the environment, penal provisions should be included in the environmental legislation so that the justification of the environmental legislation remains and the environment can be protected.

A problem before the researcher is also to establish a balance between environmental protection and development. All the countries are moving towards development, so environmental crimes are increasing continuously, but the methods for environmental protection are insufficient because there is a lack of penal provisions.

Review of literature

After independence, many important laws related to the environment have been made in the Indian Constitution; the most critical step in this was the 40th constitutional amendment of the supreme legislation. By this, the provisions related to environmental protection were included in Article 48 (A), after which, by the 42nd Constitutional Amendment, the duty was imposed on the citizens in Article 51 (A) that they would protect the environment.

If we talk about special laws, then there are Environmental Protection Law 1986, Water Pollution Law 1974, and Air Pollution Law 1981 related to the environment; the primary purpose of the laws related to environmental protection is to protect and improve the environment. (S.C. Tripathi, 2005) Apart from this, to implement the decision of the Stockholm Convention, to protect human beings, animals, and plants from hazards, to enact a general and comprehensive law for environmental protection, to create authorities for environmental protection, to those who threaten human-environmental safety and health. The primary purpose of the above laws was to provide for preventive punishment.

These methods have been successful in their purpose to some extent, but even today, the purpose of the system of punishment could not be fulfilled, due to which environmental crimes are increasing, and we are continuously increasing the need for laws, and there is also a need for such methods which were in the past. protect the laws made.

Under the environmental legislation, all the powers have been centralized in the central Government, which is not necessary; despite forest maintenance being the most important subject, there is no provision in the environmental legislation, not only this but in case of damage due to pollution, a private suit is filed for damages. There is a lack of provision to do so.

The High Court and Supreme Courts have taken a progressive approach under the writ jurisdiction in protecting the environment. Courts have also played an essential role in protecting the environment through public interest litigation and have guided for environmental protection through various litigations(Areti Krishna Kumari, 2007) such as-

Rural Litigation and Entitlement Center Dehradun[1], the Court has propounded the principle that-

i. Environment and Any kind of business cannot be allowed at the cost of ecological balance
ii. There is a conflict between development and environment and ecology, there must be harmony between the two.(J.J.R.Upadhya, 2016)

Similarly, guidelines were given in other important cases, but there is still a lack of penal provisions in the laws.

[1] A.I.R. 1985 S.C. 652

Research Questions: -

The following questions have been created by the researcher in the said research paper-

i. Are there any methods to balance development and environmental protection?
ii. Are there enough laws for increasing environmental crime?
iii. Whether the environmental law is currently protected, or is it being violated continuously?
iv. Whether it is necessary to provide punitive to preserve environmental law?

The objective of the research: -

The purpose of the researcher in the research paper is not only to suggest measures to prevent environmental crime from happening in the Present, as well as to present suggestions to preserve the methods which are there in the past for environmental protection.

The researcher's objective is to suggest measures to harmonize environmental protection and development. All the nations are moving towards development, so they are constantly harming the environment in some way or the other, so the researcher aims to suggest measures to prevent environmental crime at the international level.

Judicial activism in the development of environmental legislation

The Court's primary function is to interpret the existing law and formulate rights and duties between the parties concerned. In the backdrop of the emergence of environmental law and international commitment in the last three decades and the new interpretation of Article 21 given in the case of **Smt. Maneka Gandhi v. Union of India**[2], the Supreme Court has emphasised public interest litigation to protect the environment. Be sure to start. In order to protect the environment, the Supreme Court resorted to progressive elections and tried to implement them effectively by ignoring their enforceable nature to make the Directive Principles of State Policy and Fundamental Duties meaningful. All these steps have been possible only because of judicial creativity.(Aniruddh Prasad, 2018)

The Court tried to fill the administrative void by taking over administrative activities and resorted to judicial activism to fill the void created by the farewell inaction. Not only this, but the Court also converted the centuries-old *"Principle of strict liability"* as *"principle of Absolute liability"* in the context

[2] A.I.R. 1978 S.C. 587

of the industrial revolution in the new angel crisis. The Supreme Court, through the principle of *"polluter, pays"*, not only compensated the people who were hurt by pollution on the polluter but also passed an order to repair the damage caused to the environment itself. The Supreme Court issued directions to the Central Government, State Governments and Central Pollution Boards and State Pollution Boards and various municipal corporations intending to give effect to the principle of prior caution. Cases of judicial mobility include cases propounding the principle of unlimited liability, cases implementing the principles of prior due diligence and polluters pay the principles, monitoring, giving directions for setting up of green bench and environment protection fund. Departing from tradition, judicial innovation has been initiated.

Principle ofAbsolute Liability–

TheEmergenceSupreme Court propounded the *principle of Absolute liability* by adopting a new revolutionary approach regarding the liability of hazardous and hazardous industries.(S.Shanthakumars, 2016) The Supreme Court rejected the principle of strict liability as propounded in the centuries-old **Rylands vs flecther**[3] and applied the principle of absolute liability.

The Supreme Court said that-

"We are of the view that an enterprise which is blood in peril or an inherently hazardous industry, which is beneficial to the health of the people working in the industry and the people in the immediate neighbourhood. Furthermore, may effectively endanger safety, he assumes a full and non-plan duty to the community to ensure that the angel conducted by him is in danger or caused by the activity of an inherently dangerous nature."

The Court held them that-

"An enterprise must be deemed to be liable to conduct the hazardous or inherently dangerous activity with the highest standards of safety and if such activity results in any loss, the enterprise shall and no reply will be acceptable on the part of the enterprise that it had exercised reasonable care and caused damages without negligence on its part".

Polluter pays principle and principle of due diligence-

The promulgation of the Pollutants Pay principle is a part of rudimentary internationallaw, but the Supreme Court of India has applied it in tannery cases by introducing judicial activity.(Aniruddh Prasad, 2018)

[3] (1868) L.R. 3 H.L. 330.

The Supreme Court has expressed that the *"principle of due diligence"* and *"the polluter pays principle"* are essential characteristics of sustainable development. Where did the polluter pay principle go in explaining that entire liability for environmental damage includes not only paying compensation to the victims of pollution but also the cost of correcting environmental damage?(I.A.Khan, 2002) Damage treatment is part of a sustainable development process that requires payment for repairing individual victims and ecological damage.

Propounded Principles-

i. Precautionary Doctrine and Pollutants Pay Principle are accepted as the law of the land Article 21, 48A and 51A (g) and Environment Protection Act are the means of implementing these principles.
ii. Rudigenous international law shall, if not inconsistent with the law of the country, be deemed to be subsumed into domestic or civil law.
iii. An "environmental protection method" can be established to implement the polluter effectively pays principle.
iv. In the event of failure on the part of the Government to constitute regulatory/decisive statutory officers, it is for the Court to pass appropriate necessary directions.
v. High Court specific "Green Bench" can be constituted to deal with the matters related to environmental law.(Anriuddh Prasad, 2018)

Principle of Public Credit for Ecological Protection-

The Supreme Court, while applying the principle of *"Public Credit"*in environmental matters, clarified that people have the right to expect that certain lands and natural areas will maintain their natural characteristics. The people developed by the Roman Empire is based on the core principle that specific resources such as air, sea, water and forests are essential to people, that making them subjects of private ownership would be Annapurna. Resources are the gift of nature and should be made readily available to every person in this life without any attention from the applicant. The High Court, like American courts, accepted this principle to distribute water to rivers and lands important to ecology; the Court clarified that it is part of our jurisprudence. All resources are required by nature to be used and consumed by the public. Seacoasts are the fathers of water, air and ecologically soft land. Protect natural resources that are required for use and cannot be converted into private ownership.

Based on the principle of the Court, three restrictions on the power of the state were hunted-

i. Trust property should not be used only for public purposes but should be held to make it available for ordinary people.
ii. The property cannot be sold even if it has a fair cash value.
iii. Property should be held for specific types of uses.(Anriuddh Prasad, 2018)

The Supreme Court made it clear that in the absence of a legislative act, the people cannot convert them into private ownership or commercial use by absolving them of their obligations regarding natural resources due to the principle of cooperation. The aesthetic sense and new dignity of natural resources cannot be subjected to private or commercial use.

The environmental laws have failed to fulfil the intended purpose due to a lack of enforcement process and neglect of officials. The Court can give directions, but it cannot be a substitute for administrative officers. Therefore, there is a need that the information related to environmental impact assessment should be widely disseminated, the government organizations should be made more active, and the general public should be made aware by informing about the dangers arising out of environmental pollution so that they can choose to solve the environmental problem. To put pressure on the bodies and officials.

The role of the judiciary in reconciling between development and environmental protection: -

The environment is not only a problem of developed countries, but it is also a problem of developing countries, and development is an important problem of developing countries. Since India is a developing country and due to increasing industrialization, environmental problems are increasing continuously. The Court has an important role to play in bringing about harmony between development and the environment. The development of the country is necessary, and at the same time, it is also the responsibility of the Government to protect the human right to a clean environment, which is our fundamental right, so the damage caused to the environment by the industrial establishment also violates our fundamental right, hence environmental protection. Moreover, in order to harmonize the development, the Supreme Court has presented a guide through various cases.

Tehri Dam case[4]-

This case is related to environmental aspect and safety, in this case, the judges gave their opinion that-

i. The balance between environmental protection and development works is possible only by strict adherence to the principles of sustainable development;a sustainable development environment Ensures development while preserving Sustainable development works for all people and all generations. It is a guarantee of the Present and a will of the future.
ii. The right to a clean environment is our fundamental right.
iii. Ensuring sustainable development is one of the objectives of the Environment Law 1986.(Aniruddh Prasad, 2018)

Indeed, through the suit, the Court created the concept of sustainable development. Sustainable development is a vital link to establish a balance between environmental protection and development.

Narmada Bachao case[5]-

After the above said, many problems, including rehabilitation of people affected by dam construction and the environment started arising, while giving judgment in the ratio of 3:2 in this case, Judge B.N. Kripal said that-

i. The water requirement of the increasing population For this, the construction of the Sardar Sarovar Dam is in the public interest.
ii. Displacement of people due to dam construction will not be considered a violation of fundamental rights.
iii. Damage caused to the environment by constructinga dam can be compensated by planting a forest on another land.
iv. A mere change in environmental conditions cannot be assumed that the construction of a dam will lead to ecological disaster.

But Judge Bharucha gave his decision disproportionately and said that-

i. The clearance given in the absence of data on environmental impact cannot be considered correct.
ii. If the plan is not completed, there should be an option that the displaced people can return to their former place provided that place remains habitable.

[4] S.C.C. (2004)9, 362
[5] A.I.R. 2000 S.C. 3751

iii. Public interest litigation should not be dismissed merely on the ground of inordinate delay.(Aniruddh Prasad, 2018)

In both the above cases, a guide was provided by the Court for environmental protection, but if the condition of forestation is not fulfilled, then the penal provisions have not been mentioned in the decision, as a result of which the damage to the environment has been compensated till date was not done. The main reason for this is the absence of penal provisions in our environmental law.

Environmental Crime and legitimacy of law: -

Environmental law has not been defined the environmental crime anywhere environmental protection, and it has gone to provide power to the central Government in environmental legislation to improve but if any person or entity environmental Humor If he does, there is still a lack of legislation to punish him. Measures have been suggested for environmental protection by the guidelines obtained through the decisions of the courts. However, there is no punitive legislation for the protection of the measures, due to which they are being violated continuously because of environmental protection law and justifypower has continued to decline.

Environmental crimes are increasing continuously; there are many reasons for this, such as population abundance and continuous increase in it, competition for industrial development and misuse of resources, urbanization, highly technical reasons and development of scientific technology, excessive use of energy, unplanned development, unlimited mining, natural Destruction of flora and fauna.

The ever-increasing population is putting a burden on natural resources. In order to meet the convenience of the growing population, nature is being mistreated due to industrialization, the use of heavy machinery and chemicals is increasing,and industrial progress is being considered necessary for economic development and social progress. Industrial development is becoming the benchmark of modernity. Due to industrial development, the environment is being damaged, due to which environmental crimes are increasing continuously, this work is continuously harming the country like slow poison, and due to which the environment is gradually being destroyed, similarly due to urbanization, the trees around the city Unplanned development of river valley project is also becoming a cause of the environmental crisis. Similarly, human beings knowingly or unknowingly are committing crimes against the environment continuously, but there is no penal provision for crimes in the environmental law.

Under the environmental protection law, the Central Government has been empowered to protect and improve the environment; the Government passed the National Green Tribunal Act in 2010 to protect the environment. This law was passed for environmental protection, protection of any legal right including forest protection environment and protection of other natural resources and relief and compensation for the damage caused to the people and property. It also aims at effective and speedy disposal of issues related to environmental protection.

Under this method, if anyone fails to comply with the order or the Pan-chat or the decision, he will be punished with imprisonment of up to 3 years or with ₹ 100000000 or both. The biggest drawback of this method is that if someone causes damage to the environment, no other person would spend his time and money and bring a suit in the Court for environmental protection. This Tribunal also suo-moto does not bring any guidance or suit so that the environment is protected. If all the people keep ignoring environmental protection, then surely there will be no justification for such tribunals and environmental protection laws. The greatest need is to protect the laws related to the environment.

Critical Analysis

Efforts have been made not only at the national level but also at the international level to preserve the environment. It is the result of efforts at the international level that today there are many methods for environmental protection in India.

This law makes provisions for environmental protection, but its biggest drawback is that if anyone violates this law, then there is a lack of penal provisions for it. It lacks methods to preserve the environmental protection method. To fill this gap, in the year 2010, the Government of India passed another law, the National Green Tribunal Act, 2010.(Aniruddh Prasad, 2018) Although there is a penal provision in this Tribunal, the vital drawback of thisTribunal is that it has not met the criterion of speedy disposal, due to which the number of cases pending before the Tribunal is increasing, some examples of this are as follows-

i. In Tamnar of Chhattisgarh,the power plant case lay more than two years for.
ii. The matter of work pollution from coal mine activities and thermal power plant of Singrauli district went before the Tribunal from September 2013, which remained pending for years.
iii. The matter of non-acceptance of coal quality by Maharashtra State Power Generation Company remained before the National Green Tribunal without any definite order.

Another drawback of Tribunal is-

i. That there are only five green tribunal benches in the whole of India which are out of reach of the general public, and hence it is not accessible to the general public.
ii. It can also be criticized for the formation of the Green Tribunal, being a judicial person in the National Green Tribunal, the views of the technical expert are not considered, for example, an expert with experience in the forest department for a long time, to deal with the issues arising from industrial pollution will not be able to understand.
iii. Although the power of the Tribunal to take suo-moto cognizance is not explicitly mentioned in the law, but the Green Tribunal can initiate suo-moto proceedings under the broad powers in the law. However, despite having the power, the National Green Tribunal is indifferent in the matter of protecting the environment.(Aniruddh Prasad, 2018)

The laws for which environmental protection have been made for, there is a need to protect those laws so that they cannot be violated, and their justification remains.

Conclusion and Recommendation

To protect the environment, the most important thing is that from the most minor punishment to the significant punishment, provisions should be made. An explicit provision should be made in the Act to suo-moto an institution like National Green Tribunal.

Conservation of environmental law at the international level requires that the principle of sustainable development be followed. There should be an obligation to comply with the principles that have been brought from the conferences held at the international level; the nation which does not obey these rules should be excommunicated from the member of the United Nations. Do not cooperate with such a nation as a punishment to understand the importance of the environment.

In addition to this, the following suggestions are presented to protect the environment and to protect the laws related to it-

i. The nations should receive the annual report to ensure that the rules are made by organizing conferences every year to protect the environment at the international level.

ii. If the environment is polluted more than the standard level by any nation, then it should be directed to the plantation, and if that nation does not follow it, then there should be the provision of penal provisions for the exclusion of the nations.

iii. All nations should be directed to make provisions to include environmental protection laws in their national laws.

iv. Penal provisions should be included more and more for environmental protection, and there should be many types of these penal provisions.

v. Institutions like the National Green Authority for Environment Protection should be established in all the districts so that the claims can be settled at the earliest.

vi. It is the responsibility of all persons to protect their environment, but if they are causing damage or seeing the environment around them causing damage, they should impose the duty of suing the Tribunal.

vii. The laws which are made for environmental protection should be reformed, and provision of various types of penal provisions should be made.

viii. Development work should be done only by establishing a balance between environmental protection and development.

ix. The concept of sustainable development should be strictly followed.

x. Environment-related methods should be included in school education so that all children can become aware of environmental protection and provide a clean environment for their coming generation.

If we follow the above suggestions, then undoubtedly our environment will be protected. Only then the purpose of environmental law will also be successful and environmental law will be protected only when we will discharge our duties successfully by following the above suggestions.

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