

# The Contemporary Legal Framework for Protection of Indian Flora and Fauna

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**Abstract:** “Man is both creature and moulders of his environment, which gives him physical substance and affords him the opportunity for intellectual, moral, social and spiritual growth”. – The Preamble of the United Nations Declaration on Human Environment, adopted in Stockholm in June 1972.

The Bhopal accident has led to a greater awareness and concern for safety, environmental degradation and hazardous spills and storage, in India, where it gave a strong impetus for implementing environmental regulations.

The essence of environmental regulation is to make public goods (such as the environment) take precedence over private economic interests, through creation of bureaucracies equipped with legal sanctions to regulate economic activities. The Indian Penal Code 1860, the Criminal Procedure Code 1973, the Forest Conservation Act 1980, Wildlife Protection Act 1972, etc provide for penal provisions in case of environment pollution.

**Keywords:** Indian Penal Code 1860, Criminal Procedure Code 1973, Forest Conservation Act 1980, Wildlife Protection Act 1972.

## I. INTRODUCTION

In India, pollution and environmental degradation have reached alarming dimensions due to poverty, deforestation, industrial development without adequate environmental safeguards, and sheer greed. Fortunately public concern, rooted in India's past, has revived. Major pollutants and critically affected areas have been identified. Pollution control of water, air and land has been established by both public and private organisations and the work on environmental pollution is growing. The Ganga purification is a representative case study.

In 1980, the Department of Environment was established in India. Later on it became the Ministry of Environment and Forests in 1985. EPA, 1986 came into force soon after the Bhopal Gas Tragedy. Its objective is to provide the protection and improvement of environment.

In EPA, article 48A, specify that the State shall protect and improve the environment. Also, to safeguard the forests and wildlife of the country.<sup>1</sup> Acc. to sec 51(A) every citizen shall protect the environment. EPA is applicable to whole India, including J&K.<sup>2</sup>

### POWERS PROVIDED BY THE ACT TO CENTRAL GOVERNMENT

1. To make rules to regulate environmental pollution;
2. To notify standards and maximum limits of pollutants of air, water, and soil for various areas and purposes;
3. Prohibition and restriction on the handling of hazardous substances, and location of industries (Sections 3-6).

*Under Sec (3)<sup>3</sup>:* may constitute authority or authorities for the purpose of exercising of performing such of the powers and functions.

*Under Sec (4)<sup>4</sup>:* may appoint a person for inspection.

*Under Sec (5)<sup>5</sup>:* may issue directions in writing to any officers or any authority to comply.

*Under Sec (6)<sup>6</sup>:* it empowers the government to make rules to achieve the object of the Act.

*Under Sec (7)<sup>7</sup>:* persons carrying on industry, operation etc. not to allow emission or discharge of environmental pollutants in excess of the standards; Under Sec (8): persons handling hazardous substances must comply with procedural safeguards.

### PENALTY

Whoever Person found to be the cause of pollution, may be liable for punishment for a term which may extend to five years or with fine which may extend to one lakh rupees or both (Sec 15, 16, 17). If not comply fine of Rs.5000 per day extra, still if not comply for more than one year, then imprisonment may extend up to 7 years.

Section 17<sup>8</sup> specifies that Head of the department/ in charge of small unit may be liable for punishment if the owner /occupier produce enough evidence of innocence. The state government has power to close or cancel or deny the authorization to run the factory/institution/hospital whichever is causing pollution.

## II. CONVENTION ON BIODIVERSITY (CBD)

India ratified the Convention on Biodiversity in 1994. *Following that steps were taken to meet the commitments under the Convention and to realize the opportunities offered. These changes included bringing legislative, administrative and policy regimes in tune with the objectives of the CBD. India enacted the Biodiversity Act in 2002.*<sup>9</sup>Following steps were taken under this act

1. National Biodiversity Authority (NDA) was set up at the national level. State Biodiversity Boards (SBBs) were set up at the state level and Biodiversity Management Committees (BMC) were set up at the local level. NBA and SBB are

<sup>1</sup> Section 48A, Environment Protection Act, 1986

<sup>2</sup> <https://saferenvironment.wordpress.com/2010/04/01/the-environment-protection-act-1986-in-india/>

<sup>3</sup> Section 3, Environment Protection Act, 1986

<sup>4</sup> Section 4, Environment Protection Act, 1986

<sup>5</sup> Section 5, Environment Protection Act, 1986

<sup>6</sup> Section 6, Environment Protection Act, 1986

<sup>7</sup> Section 7, Environment Protection Act, 1986

<sup>8</sup> Section 17, Environment Protection Act, 1986

<sup>9</sup> <http://www.environmentallawsofindia.com/the-environment-definitions-and-acts.html>

required to consult BMCs in decisions relating to use of biological resources/related knowledge within their jurisdiction and BMCs are to promote conservation, sustainable use and documentation of biodiversity.

2. All foreign nationals/organizations require prior approval of NBA for obtaining biological resources and/or associated knowledge for any use.
3. Indian individuals/entities require approval of NBA for transferring results with respect to any biological resources to foreign nationals/organizations for commercial purpose.
4. Provision is made to set up a framework to protect traditional knowledge.

### III. FOREST AND WILDLIFE CONSERVATION

The Forest (Conservation) Act 1980 came into effect from 25 Oct 1980 which provides for prior approval of the central government for diversion of forest lands for non-forestry purposes<sup>10</sup>. This act regulates indiscriminate conversion of forest lands for non-forestry uses and maintains a balance between developmental needs of the country and the conservation of national heritage.<sup>11</sup> The government declares biosphere reserves to promote conservation of the ecosystem and promote research and development in biodiversity.

**Biosphere Reserves** are area of terrestrial and coastal ecosystems which are internationally recognized within the framework of **Man and Biosphere (MAB) Program** of the UNESCO.<sup>12</sup> These reserves are required to meet a minimal set of criteria and adhere to minimal set of conditions before being admitted into the World Network of Biosphere Reserves designated by the UNESCO. Biosphere Reserves listed in the World Network of Biosphere Reserves are devoted to:-<sup>13</sup>

1. Conserve biological diversity
2. Promote research and monitoring as well as seek to provide model for sustainable development in the service of humankind with special reference to local communities with mostly consist of traditional societies.
3. To provide facilities for education, awareness and training.<sup>14</sup>

The Wildlife Wing of the Ministry of Environment and Forests along with the three autonomous bodies – Wildlife Institute of India (WII)<sup>15</sup>, Central Zoo Authority (CZA)<sup>16</sup> and the National Tiger Conservation Authority (NTCA)<sup>17</sup>

look after the conservation and development of wildlife in India.

The following initiatives have been taken in the direction of conserving Wildlife in India

1. **Central Zoo Authority**<sup>18</sup> : The Central Zoo Authority was established in 1992 to oversee the functioning of zoos in the country with the view to enhance their role in conservation.
2. **Project Tiger**<sup>19</sup> : Project Tiger was launched in 1972 with the objective to ensure a viable population of Tigers in India for scientific, economic, aesthetic, cultural and ecological values and to preserve for all times areas of biological importance as a national heritage for the benefit, education and enjoyment of the people.
3. **Project Elephant**<sup>20</sup> : Project Elephant was launched in 1991-92 with the objective to protect the elephants, their natural habitat and corridors, to address the issues of man animal conflict and welfare of domesticated elephants.

### IV. ENVIRONMENT PROTECTION AND PENAL LAWS

In many countries there are now laws and statutes in place specifically to deter environmental crime. Criminal prosecutions to tackle crimes against the environment have increased considerably in developed countries over the last few decades.<sup>21</sup> In India, however, although the number of criminal provisions punishing environmental violations both under the environmental statutes and the other general laws [including the Penal laws] are large, actual prosecution is rare. This is largely the result of ambiguity and ineffectiveness in the drafting of these criminal provisions, and the lack of adequate political will to enforce those provisions. Together, these considerably reduce the deterrent effect of these criminal provisions.

Criminal law has certain distinguishing characteristics - e.g. the greater role of 'intent' in the provisions of law, a strong basis in societal moral values, the special character of incarceration as a sanction, and the law's greater reliance on public enforcement.<sup>22</sup> These are more easily applied to individuals, and offences listed under criminal law are prohibited. Civil law, on the other hand, is often held up to be 'morally neutral'; i.e. its penalties are not directed towards punishment but the prevention, cessation or correction of harmful activity. Civil law also side-steps the difficulty of proving mensrea [criminal intent] on the part of the offender.<sup>23</sup>

<sup>10</sup><http://envfor.nic.in/division/forest-conservation>

<sup>11</sup> Id.

<sup>12</sup>[http://forestsclearance.nic.in/writereaddata/public\\_display/schemes/998759240\\$3-5-2010.pdf](http://forestsclearance.nic.in/writereaddata/public_display/schemes/998759240$3-5-2010.pdf)

<sup>13</sup><http://whc.unesco.org/en/forests/>

<sup>14</sup><http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/man-and-biosphere-programme/>

<sup>15</sup><http://www.wiienvis.nic.in/>

<sup>16</sup><http://timesofindia.indiatimes.com/topic/Central-Zoo-Authority>

<sup>17</sup><http://www.tigernet.nic.in/Alluser/AboutNTCA.aspx>

<sup>18</sup><http://www.gktoday.in/central-zoo-authority/>

<sup>19</sup><http://endangered-tiger.blogspot.in/2010/02/project-tiger.html>

<sup>20</sup><http://envfor.nic.in/division/introduction-4>

<sup>21</sup><http://www.environmentallawsofindia.com/the-environment-definitions-and-acts.html>

<sup>22</sup>[http://shodhganga.inflibnet.ac.in/bitstream/10603/6565/9/09\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/6565/9/09_chapter%204.pdf)

<sup>23</sup>Use of Criminal Law Machinery for Environment Protection

While this distinction may be sound, in practice, in India the field of environment tort, remediation and compensation are not well developed and the court process has been rather sluggish. The costs of violations have been too small, and as a result much environmental degradation has been rendered permissible.

Environmental offences, unlike traditional offences, generally are strict liability offences. These must be assessed in two ways: by determining consequentiality (i.e., what is the consequence of a given action or inaction), and by assigning moral responsibility for certain outcomes (known in legal parlance as a deontological perspective).<sup>24</sup> The intent of the offender is not very important for strict liability offences; the penalties are to be borne simply because some barred outcome occurred.<sup>25</sup>

#### V. THE LIABILITY UNDER ENVIRONMENTAL LAWS: CORPORATIONS

Under the environment statutes if a company performs the illegal act, it is held liable. Imposing liability on corporation is very important as the majority of environment crimes are committed by companies, merely prosecuting the corporate officers for such offences would not sufficiently deter the company. By application of the principle of "*respondeat superior*"<sup>26</sup>, the company is held vicariously responsible for the actions of its employees in the course of employment and for the benefit of the company.<sup>27</sup> Such liability would be especially useful when it is difficult to pin liability on one particular official, as the environmental violations are the result of the actions of several different officers.

But individuals aren't totally exempt from penalties. *If the offence has been committed by the company, then in addition to the company, every person who is directly in charge of and responsible to the company for the conduct of the business of the company shall also be liable. Such corporate officers would escape liability if they can prove that the offence was committed without their knowledge or that there was exercise of due diligence to prevent the commission of the offence.*<sup>28</sup>

*But these Acts also contain a contradiction. Other clauses in each of the Acts require the prosecution to establish the connivance, consent or negligence of the 'director, manager, or other officer' before an offence is established.*<sup>29</sup>

by K. Rama Joga Rao, (2001) 7 SCC (Jour) 58, <http://www.ebc-india.com/lawyer/articles/2001v7a7.htm>  
<sup>24</sup> Id.

<sup>25</sup>[http://shodhganga.inflibnet.ac.in/bitstream/10603/6565/9/09\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/6565/9/09_chapter%204.pdf)

<sup>26</sup>[https://www.law.cornell.edu/wex/respondeat\\_superior](https://www.law.cornell.edu/wex/respondeat_superior)

<sup>27</sup><https://www.justia.com/injury/negligence-theory/vicarious-liability-respondeat-superior/>

<sup>28</sup><http://www.youthkiawaaz.com/2011/11/corporate-social-responsibility-and-the-environmental-liability/>, Corporate **Social Responsibility and the Environmental Liability By Adeena Jamal, The Impact of Environmental Law on Corporate Governance By David M.Ong**

Against this background of the laws' purposes and methods, the environmental offences should be divided into two categories with accordingly different punishment –

(1) The intentional or knowing desecration of the environment, and

(2) The accidental damage of the environment despite the exercise of due care and diligence.

This distinction on culpability should be significant, it should not be left to the enforcement authorities and sentencing authorities to determine whether to prosecute. There is no such categorization presently under Indian law. *With nearly complete prosecutorial discretion the deterrent value and the moral message behind the criminal punishment is vastly reduced. Instead, where crimes are found to be intentional, severe prison sentences and fines should be imposed.*<sup>30</sup>

A satisfactory solution requires not merely a simple criminal prohibition model, say, on the lines of the statute against homicide or burglary, but an elaborate scheme of regulation, administered by a State agency empowered to grant, withhold and suspend licenses, following rules designed to promote fairness and efficiency.<sup>31</sup> Imposing civil liabilities can check a lot of harms for which criminal sanction cannot provide a solution. The role of criminal law would then be a derivative one - to provide backup sanctions to enforce authoritative and/or administrative orders.<sup>32</sup>

#### VI. INDIAN PENAL CODE AND ENVIRONMENT PROTECTION

Indian Penal Code, 1860 makes various acts affecting environment as offences. IPC can be used to prevent pollution of atmosphere. Thus *no trade, business or manufacturing process can be carried out in residential area which produces noxious and offensive smell.*<sup>33</sup> Chapter XIV of IPC containing *Sections 268 to 290*<sup>34</sup> deals with offences affecting the public health, safety, convenience, decency and morals. Its object is to safeguard the public health, safety and convenience by causing those acts punishable which make environment polluted or threaten the life of the people.

*Section 268 & 290*<sup>35</sup> of IPC defines public nuisance and provides for punishment of fine Upto Rs. 200 for public nuisance respectively. Under these provisions any act or omissions of a person which caused injury to another by

<sup>29</sup> Id.

<sup>30</sup> SHOULD COMPANY DIRECTORS AND OFFICERS BE PERSONALLY LIABLE FOR ENVIRONMENTAL CONTAMINATION THEY DID NOT CAUSE?, BY DIANNE SAXE, ONTARIO ENVIRONMENTAL LAWYER.

<sup>31</sup> Id.

<sup>32</sup> Id.

[http://shodhganga.inflibnet.ac.in/bitstream/10603/37611/9/09\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/37611/9/09_chapter%204.pdf)

<sup>33</sup><http://sharvani-shukla.blogspot.in/2008/02/indian-penal-code-and-environment.html> ,

<sup>34</sup> Section 268 & 290, IPC

<sup>35</sup> Id.

polluting the environment can be controlled.

*Public Nuisance: a person is guilty of public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger to the people in general who dwell or occupy the property in the vicinity or cause injury, danger, obstruction to persons who use any public right.*<sup>36</sup> Section 269 & 270<sup>37</sup> of IPC provides, whoever negligently or malignantly does any act which spreads the infection of disease dangerous to life, can be controlled by punishing the person responsible for such act with imprisonment up to six months to six years or with fine or both respectively. Section 277<sup>38</sup> provides, whoever voluntarily fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment for three months or with fine of five hundred rupees or with both. Section 278<sup>39</sup> provides whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons dwelling or carrying on business in the neighborhood or passing along the public way, shall be punished with fine Upto Rs.500. Section 284<sup>40</sup> provides, whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, shall be punished with imprisonment for a term of 6 months or with fine up to Rs.1000 or with both. Section 285<sup>41</sup> provides, whoever does, with the fire or any combustible matter, any act rashly or negligently as to endanger human life, to be likely to cause or injury to any other person, shall be punished with imprisonment for a term of 6 months, or with fine up to Rs.10000 or with both. Section 286<sup>42</sup> provides, whoever does, with any explosive substance, any act rashly or negligently as to endanger human life, to be likely to cause or injury to any other person, shall be punished with imprisonment for a term of 6 months, or with fine upto Rs.10000 or with both. Under sections 426,430,432 of IPC general pollution caused by mischief can be controlled and the same is punishable.

**SECTION 269<sup>43</sup>:** Negligent act likely to spread infection of disease dangerous to life.-- Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**SECTION 270<sup>44</sup>:** Malignant act likely to spread infection of disease dangerous to life.-- Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.<sup>45</sup>

<sup>36</sup>Id.

<sup>37</sup> Section 269 & 270, IPC

<sup>38</sup>Section 277, IPC.

<sup>39</sup>Section 278, IPC.

<sup>40</sup>Section 284, IPC.

<sup>41</sup>Section 285, IPC.

<sup>42</sup>Section 286, IPC.

## VII. CRPC AND ENVIRONMENT PROTECTION

Section 133 CrPC provides a speedy and summary remedy in case of urgency where damages to public interest or public health etc. are concerned. It runs as under:

For invoking jurisdiction under Section 133(1) CrPC it is not necessary that there should always be danger or inconvenience to public at large but even if danger or inconvenience is about to be caused, it is actionable under Section 133(1) and 138 CrPC. But the Magistrate has to act purely in the interest of the public. Drastic powers are conferred by Section 133(1). Those powers should be sparingly used. Any order made under Section 136 without notice under Section 133(1) is bad, consequential order under Section 144 is also bad.

### **Conditions precedent for the application of Section 133 CrPC, 1973**

In order to provide a sanction under Section 133 the Magistrate must be satisfied that-

1. It is a public nuisance i.e. the number of persons injuriously affected is so considerable that they may reasonably be regarded as the public or a portion of it.
2. It is not a private dispute between different members of the public for which the proper forum is the civil court.
3. It is a case of great emergency of imminent danger to the public interest.

### **Section 133 CrPC vis-a-vis other Special laws**

There are other special or local laws dealing with nuisance. But the Magistrate's power to act under Section 133 is not affected by them. Even the Water (Prevention and Control of Pollution) Act, 1974 has not taken away powers of the Sub-Divisional Magistrate under Section 133 CrPC. The Sub-Divisional Magistrate has power to close a factory causing pollution, when appreciation certificate from the Pollution Control Board is not produced. Section 24 of the Environment (Protection) Act, 1986 reads:

"24. (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act."

Therefore using criminal law machinery is not a bar even as per the Environment (Protection) Act, 1986.

In *Lakshmi Cement case*<sup>46</sup> it was held that Section 133 CrPC does not automatically or impliedly get repealed after the commencement of the Air (Prevention and Control of Pollution) Act, 1981. So proceedings under Section 133 CrPC are not barred.

<sup>43</sup>Section 269, IPC.

<sup>44</sup>Section 270, IPC.

<sup>45</sup> <http://indiankanoon.org/doc/1164731/>

<sup>46</sup> I.T.A No. 1275/Kol/2010

### VIII. JUDICIAL DECISIONS

To analyze the use of criminal sanctions for abatement of environmental nuisance it is essential to consider the various precedents in this regard.

In *Ajeet Mehta v. State of Rajasthan*<sup>47</sup> it was held that stocking of fodder on a certain plot in a residential colony constitutes pollution of atmosphere and hence public nuisance. The order directing removal of this nuisance was held valid and the respondents were directed not to do any business of fodder on that plot.

In another case there was fodder tail in a residential colony to which fodder was brought daily during the night by trucks which were unloaded in the morning. This caused intolerable noise, emanating offensive smell and spreading dust-containing particles of fodder cut. It was held as public nuisance<sup>48</sup>

In *Nagarjuna Paper Mills's case*<sup>49</sup> it was observed by the A.P. High Court that the power relating to air and water pollution, the Water Act, 1974 has taken away the power of the Sub-Divisional Magistrate to pass an order to close a factory causing pollution.<sup>50</sup> The above said view was also confirmed by the Supreme Court in

In *Ratlam case*<sup>51</sup> where Their Lordships held that "when on disclosure of existence of a public nuisance from information and evidence, the Magistrate considers that such unlawful obstruction or nuisance should be removed from any public place which maybe lawfully used by the public, he is to order removal of such nuisance"

In *Sachidanand Pandey v. State of West Bengal*.<sup>52</sup>, the Supreme Court observed "whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A (g).

### IX. CONCLUSION

India - The land of spirituality and philosophy-is also the land of rivers as it harbors 14 large, 44 medium, and 55 minor rivers. From the Ganges in the north to the Cauvery in the south, most devout Hindu pilgrims consider the waterways sacred since the religious texts hold that Ganges purifies the bather of sins - merely catching the sight of Narmada is said to do the same. However, India's rivers are increasingly becoming the dump sites for domestic, industrial, and agricultural wastes. Polluted environment endangers the human race by threatening its survival on planet earth. Boundaries of any nation cannot limit these environmental problems to a particular country and region, but its impact is global one. This large scale environmental

degradation has caused a global concern about the conservation and protection of the earth's environment. Hence, efforts are being made for inculcating environmental consciousness or awareness among the masses. It is education which can make the human being conscious and knowledgeable about environment and environmental problems. The environment is clearly at risk from a variety of sources of harm, mostly of human origin. In order to tackle this problem it is important that we develop strategies for modifying human behavior towards environmentally benign practices and away from environmentally damaging ones.

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<sup>47</sup>1990 Cri LJ 1956 (Raj)

<sup>48</sup>Himmat Singh v. Bhagwana Ram, 1988 Cri LJ 614 (Raj)

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup>1983 Cri LJ NOC 203 (Cal)

<sup>52</sup> AIR 1987 SC1109