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Environmental crimes: An analysis

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Introduction

Environmental statutes by and large provide for both civil and criminal enforcement. According to Robert I. McMurry and Stephen D. Ramsey, earlier than 1981, ―the government's approach to judicial enforcement of environmental statutes and regulations was almost exclusively to seek civil sanctions, penalties and injunctive relief. Little thought was given to using the criminal provisions of environmental statutes or traditional criminal law [1].

Environmental laws contain penalties for violation of their provisions and the consequent harms such violation causes to human beings and the environment. These statutes and regulations are often complex and thus a question arises whether criminal enforcement was appropriate for their violations. Another area of concern is regarding the mental state requirements for environmental crimes which were minimal and bordered on strict liability, particularly when corporate officials were prosecuted under the 'responsible corporate officer 'doctrine for environmental crimes [2]. Those arguing for criminal enforcement are of the view that ―the exercise of prosecutorial discretion would filter out cases that were too technical or where evidence of criminal intent was weak. Nevertheless, as is England, ―the criminal provisions of the environmental laws were too broad, and that too much discretion has been given to the prosecutors to decide which environmental violations were criminal [3].

1. Environmental Crime

The concept 'Environmental Crime' has been defined variously from different perspectives. The term has been used ―almost indiscriminately and without any universally accepted definition [4]. It has been classified as a sub-set of white-collar Crime [5]. Mary Clifford and Terry D. Edwards [6] offer a few definitions of environmental crime from different perspectives. One definition includes the functions of the environmental law enforcement agencies as well as the statutory provisions pertaining to it area of operation. Thus: -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. This definition is also for the purpose of those practitioners who need a legal framework [7]. From a broader philosophical perspective, these authors offer the following definition: [8] ―An environmental crime is an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage.

For Y. Situ and D. Emmons, [9] ―an environmental crime is an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanction. This offence harms or endangers people's physical safety or health as well as the environment itself. It serves the interests of either organizations – typically corporations – or individuals.

Another definition of environmental crime includes activities such as littering, abandoned vehicles, graffiti, fly-posting, dog fouling, fly-tipping, dumped business waste, vandalism, abandoned shopping trolleys and noise nuisance [10].

The House of Commons Environmental Audit Committee, in its report, gives a statutory meaning of environmental crime in the following words: [11]

―Environmental crime includes all offences either created by statute or developed under the common law that relate to the environment. The environment is, in simple terms, the surroundings in which we live.

Section 1 of the Environmental Protection Act 1990 defines the environment as 'all, or any, of the following media, namely the air, water, and land'. That Section also defines pollution of the environment as pollution 'due to the release, into any environmental medium from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment.' Successive governments have legislated to give powers to executive agencies to protect the environment and enforce environmental legislation. International environmental law and principles have been transposed into national law to ensure compliance with state commitments. Environmental crime has not been codified or consolidated into a single Act but is found in a range of separate pieces of legislation. Some of the most frequently used criminal sanctions are found in the Environmental Protection Act 1990 (as amended) and the Water Resources Act 1991.

According to the Royal Institute of International Affairs, [12] environmental crime can be broadly defined as illegal acts which directly harm the environment, which include illegal trade in wildlife, smuggling of ozone-depleting substances (ODS), illicit trade in hazardous waste, illegal, unregulated, and unreported fishing; and illegal logging and the associated

trade in stolen timber Environmental crimes involve the breach of international treaties designed to curb trade in substances harmful to the environment or to restrict trade in endangered species.

These illegal activities have direct impacts the environment and the society. For example illegal logging results in large scale deforestation. It deprives forest communities of their livelihoods; causes ecological problems like flood, soil erosion, and contributes to climate change. Illicit trade in Ozone Depleting Substances (ODS), like the refrigerant chemicals chlorofluorocarbons (CFCs), contributes to a thinning ozone layer, which causes human health problems like skin cancer and cataracts [13].

The above definitions reflect various aspects of environmental crime, ranging from moral and philosophical, to legal and local perspectives [14]. These definitions are important in view of many considerations such as the nature of the activities against the environment, liability for environmental crimes, extent of criminality of offenders, attitude towards enforcing the law and the sanctions that should be imposed for breach of the law [15].

The Legal Dimension of the Definitions

The legal dimension includes ―only those actions or omissions that directly or indirectly damage the environment and which are prohibited by law [16]. This approach is advantageous because it is value-free and objective. However, this legalistic and positivist approach has a number of problems. First, there exists a problem and uncertainty in the definition of environmental law; therefore, it raises the question of 'where the outer boundaries of environmental crime are located. 'Secondly, a legal definition is uncertain because 'there is such a wide range of activities and offenders to which the phrase could be applied. 'Thirdly, a legalistic approach to the definition 'has jurisdictional and geographical limitations [17].

The Moral Dimension of Environmental Crime

One underlying principle for criminal enforcement arises due to the failure of the civil or administrative law to sufficiently deter violations; another possibility is that ―society prefers to call certain actions 'criminal' in order to express its moral outrage and to prohibit the activity unconditionally [18]. Criminal law punishes unacceptable behavior that harms the society and its environment. The concepts of 'harm', 'culpability' and 'deterrence' are central to traditional criminal law theory. Criminal statutes address the concept of social harm caused by the prohibited act or omission. Theft or murder is considered inherently immoral. However, harm to the environment, in many situations, is considered inevitable, even acceptable. Few would question the morality of polluting a small stream. Emission of smoke from an industrial factory is permitted to a controlled and a licensed limit. What if the environment is highly polluted on account of accumulation of smoke emitted from many industrial units operating within their permitted license limit? There is need of a framework that determines whether the benefits outweigh the harm caused. One of the main purposes of criminal law is ―prevention of unjustifiable harm, however proximate the actor is to actually causing it [19]. Environmental standards should be maintained and damage minimized. There is an increased public awareness of human beings 'special relationship with the environment and the human capacity of improving it.

Responsibility for causing harm is not a sufficient predicate for imposing criminal liability. The criminal law, besides the illegal act or omission, also requires a *mens rea*; this brings in a measure of blameworthiness, which largely depends on the offender's state of mind. In the United States, the case of *Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon*, [20] gives an example of the essential part *mens rea* plays in defining which environmental violations call for criminal sanction. In *Ufzired States* v. *MacDopluEd* & *Watson Oil Co.*, [21] a corporate president, along with others, was convicted of violating the *Resource Conservation and Recovery Act* (RCRA) of 1976, (for knowing disposal of hazardous wastes without a permit) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, (knowing failure to report the release of a hazardous substance).

One who intentionally/willingly, knowingly, negligently and recklessly exposes another to unreasonable risk of serious harm is deemed by society to be morally blameworthy. The degree of blameworthiness depends on what level of culpability the statute prescribes [22].

Owing to notorious environmental damages caused by pollution, environmental crimes should be dealt with severely – strictly and absolutely. The prospect of jail, fine and the stigma of criminal conviction will act as deterrence for individuals as well as corporations that do business at the cost of the environment. However, ―criminal sanctions should be reserved for the more culpable subset of offenses and not used solely for their ability to deter [23].

2. International Environmental Crime

The Environmental Investigation Agency, London, for the purpose of its report [24] defines International Environmental across five broad areas of offences, which have been recognised by bodies such as the G8, Interpol, EU, UN Environment programme and the UN Interregional Crime and Justice Research Institute. These are:

1. Illegal trade in wildlife in contravention to the 1973 Washington Convention on International Trade in Endangered Species of fauna and Flora (CITES);
2. Illegal trade in ozone-depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;
3. Dumping and illegal transport of various kinds of hazardous waste in contravention of the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal;
4. Illegal, unregulated and unreported (IUU) fishing in contravention to controls imposed by various regional fisheries management organisations (RMFOs);

5. Illegal logging and trade in timber when timber is harvested, transported, bought or sold in violation of national laws (There are currently no binding international controls on the international timber trade with the exception of an endangered species, which is covered by CITES).

Other environmental offences having similar features of the above category include: [25]

1. Bio-piracy and transport of controlled biological or genetically modified material (a possible offence under the 2000 Cartagena Protocol on Bio-safety to the Biodiversity Convention);
2. Illegal dumping of oil and other wastes in oceans [i.e. offences under the 1973 International Convention on the Prevention of Pollution from Ships (MARPOL) and the 1972 London Convention on Dumping];
3. Violations of potential trade restrictions under the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
4. Trade in chemicals in contravention to the 2001 Stockholm Convention on Persistent Organic Pollutants.
5. Fuel smuggling to avoid taxes or future controls on carbon emissions.

3. Trans-boundary Nature of Environmental Crime

Environmental crimes by their very nature are trans-boundary and involve cross-border criminal syndicates. In this age of globalization and free trade, the easy mode of communication and flow of goods and money facilitate the illegal business group involved in environmental crimes. For instance, a tiger skin or an ivory tusk passes through many hands from the poaching site to the final buyer; a tree that has been illegally cut down can pass through around the world from the forest via the factory to be sold on the market as a finished wood product.

Environmental crime generates tens of billions of dollars in profits for criminal enterprises every year, and it is growing partly due to the ―proliferation of international and regional environmental agreements, leading to more controls on a range of commodities. It is also due to mutations in the operations of criminal syndicates, which have been diversifying their operations into new areas like counterfeiting and environmental crime [26].

Environmental crime is grave, transnational and organised. According to a report, environmental crime: [27]

―[I]s currently one of the most profitable forms of criminal activity and it is no surprise that organised criminal groups are attracted to its high profit margins. Estimating the scale of environmental crime is problematic but Interpol estimates that global wildlife crime is worth billions of dollars a year; the World Bank states that illegal logging costs developing countries $15 billion in lost revenue and taxes. In the mid-1990s around 38,000 tonnes of CFCs were traded illegally every year – equivalent to 20 per cent of global trade in CFCs and worth $500 million; and in 2006 up to 14,000 tonnes of CFCs were smuggled into developing countries. The 'raw materials' which live or grow freely can be harvested or poached at minimal cost. Organised criminals are adaptable and resourceful; they thrive in conditions where others would fail. By definition, they build networks and cast their nets wide to avoid detection. With the collusion of corrupt officials, certification, concealment and transportation are easily facilitated. With this combination of huge profits, low risk of detection and ineffective penalties, environmental crime is extremely lucrative.

4. Extent of Environmental Crimes

The main motive for environmental crime is financial gain. The United Nations Convention on Corruption seeks to identify the links between corruption, organised crime, money laundering and economic crime [28]. Its characteristics are: organised networks, porous borders, irregular migration, money laundering, corruption and the exploitation of disadvantaged communities. Wildlife felons are just as ruthless as any other, with intimidation, human rights abuses, impunity, murder and violence the tools of their trade. The indicators of environmental crime are evident in many areas of international development activities. Significant global threats, including the challenges addressed through the Millennium Development Goals (MDGs) are connected to, and exacerbated by, environmental crime, affecting development, peace, security and human rights. Increasingly, illegal logging and wildlife-trafficking are driven by organised groups who exploit natural resources and destroy habitats: robbing communities of their livelihoods, compromising the wider economy and further endangering threatened species and ecosystems [29].

5. Nature of Environmental Law *Vis-À-Vis* Criminal Law

For R. J. Lazarus, environmental law has assimilated so poorly into criminal law for two reasons: one, ―policy makers have not yet directly faced the difficult issues presented by such an assimilation, but instead have just assumed them away by criminalizing virtually all environmental violations. Policy makers in both the legislative and executive branches need to focus more carefully on the purpose of criminal law and the design of environmental laws in defining the types of conduct warranting criminal sanctions. Moreover, without a shared definition of what constitutes such conduct, the current environmental crimes controversy will continue to plague and hinder effective enforcement. More environmental criminal enforcement is therefore needed, but more than additional resources are required to make that happen. Secondly, according to the author, ―prosecutors in leadership positions lack expertise in both environmental and criminal enforcement policy. Assimilation will only occur once individual prosecutors gain expertise in both areas of the law [30].

Whether it is desirable or appropriate to incorporate the general principles of criminal law into environmental law or whether a different approach is needed [31]. In order to appreciate this point we should know the nature of environmental law and juxtapose it with criminal law. In

the context of the United States, the author Brickey (in agreement with other environmental scholars) outlines the following characteristics of environmental law: [32]

1. *Aspirational Qualities*: Environmental law has aspirational qualities, in the sense that ―it seeks to bring about radical change. For instance, the United States' *Clean Air Act* of 1970 directs the States to achieve ambient air quality standards which could only be achieved by radical changes [33]. However, the aspirational qualities of environmental law ―make criminal enforcement less appropriate [34].
2. *Evolutionary Nature*: Environmental law is in a ―constant state of flux. Constant change in environmental regulation is inevitable, which is a response to prevailing scientific, political and social norms. Public opinion and political conflict over competing values and interests are reflected in the environmental policy-making. This characteristic of environmental law is in contrast with the relative stability associated with traditional criminal law.
3. *High Degree of Complexity*: Environmental law is highly complex; it involves
4. ―highly technical scientific, engineering and economic jargon, [35] making it all the more difficult to ascertain what conduct ―will be deemed to be in compliance [36]. The relevance of criminal enforcement amidst such uncertainty is thus in question.

6. Models of Criminalisation of Environmental Harm

Environmental criminal law is not found integrated in penal codes of many legal systems, as ―the major part of environmental criminal law simply consists of provisions incorporated in environmental statutes of an administrative nature (for example, a Clean Water Act) and have as their main function the enforcement of compliance with administrative obligations [37] Nevertheless, we find the interweaving of administrative and criminal environmental law in many countries in the administrative control of pollution. Environmental laws function to help ensure that control. However, this model punishes only administrative disobedience while ―other types of pollution may go unpunished, thus limiting the ability of the criminal law to protect ecological values [38] As a matter of fact, ―actual harm to the environment― and the threat of such harm―is more serious than mere administrative disobedience [39] While focusing on the act element of a crime, Faure proposes the following four models of criminalization of environmental harm on the basis of which a ―graduated punishment approach (depending upon the degree of seriousness of the crime) is advocated:

1. *Abstract Endangerment*: A model that criminalises disobedience to administrative rules and requirements *per se*. Crimes under this model may be classified into three categories: (i) operating without a required license or permit; (ii) violating paperwork, monitoring, or inspection requirements; (iii) other regulatory violations that do not involve harm or threat of harm to the environment. Most western countries have ample examples of crimes that fit this model. For example, in the United States, storing hazardous waste without a permit is an environmental crime that fits the Abstract Endangerment Model [40].

Concrete Endangerment Crimes with Administrative Predicates ("Concrete Endangerment"): Concrete Endangerment crimes involve behavior that both violates regulatory law and poses a threat of harm to the environment; thus, on the surface, these crimes target two social harms. This model differs from the first model in that the crimes also either presume or require proof that the unlawful activity involved a threat of harm to the environment [41]. The model assumes two variations: (i) ―presumed endangerment, where statutes criminalise *per se* the unlawful contact of some quantity of pollutant with the environment on the assumption that such contact necessarily causes at least some threat of harm; (ii) ―demonstrated endangerment, where these require affirmative proof of a threat to the environment beyond the mere fact of an unlawful emission or release. ―Presumed endangerment crimes are easiest to prove and thus allow earlier and more frequent governmental intervention. Further, 'presumed endangerment' statutes provide the greatest protection for ecological values because the government can obtain a conviction with the least amount of proof [42]. In contrast, ―demonstrated endangerment statutes require affirmative proof of a threat to the environment beyond the mere fact of an unlawful emission or release [43].

1. *Concrete Harm Crimes with Administrative Predicates*: the third model is similar to the second one in that the crimes in both require proof of violation of administrative rules. But these crimes go beyond threats and require proof of actual environmental harm. Hence it requires a definition of the concept of

―environmental harm, which is a tricky issue [44]. Secondly, the issue causation, which requires proof of actual harm, is another problem commonly faced by the prosecution.

Serious Environmental Pollution: Eliminating the Administrative Link: This model punishes very serious environmental harm regardless of whether there is any underlying regulatory violation, that is, even if the activity at issue was not otherwise unlawful; these appear to be aimed at preventing or punishing only harm to the environment itself. It involves environmental crimes of magnitude beyond that contemplated by the administrative rules with which the entity complied [45] This model differs from the third one in that it severs the connection between the criminal law and existing administrative decisions: crimes fitting this model are independent in the sense that the criminal law can intervene irrespective of administrative law.

7. Use of Traditional Criminal Law to Address Serious Environmental Pollution

In the United States, the number of criminal prosecutions increased considerably during the 1980s and 1990s, after Congress amended the environmental statutes and elevated most environmental crimes to felonies [46]. In cases involving very serious environmental pollution that has caused the loss of lives and property, ―a prosecutor might charge the

responsible parties with assault, homicide, property destruction, or some other traditional crime [47]. For instance, in the United States, *People* v. *Roth*, [48] and *People* v. *Thoro Products Co*. [49] can be cited as examples of the use of traditional homicide law. In India, in *State of Madhya Pradesh* v. *Warren Anderson and Others*, [50] (the Bhopal gas leak criminal case) the magistrate convicted eight persons including the then chairman of Union Carbide India Ltd (UCIL) and other senior officers for offences under Section 304A of the Indian Penal Code (IPC) and imposed the maximum penalty of two years. Originally, the main charge had been under section 304 (Part II) of the IPC. On a plea by UCIL, a two-judge bench of the Supreme Court in 1996 held that the offence under Section 304 was not made out, and the accused could only be charged under Section 304A of the IPC. [51].

8. Criminal law or administrative law?

Faure highlights a few points, from the economic perspective, in favour of public regulation rather than criminal law enforcement in cases of environmental pollution. One argument is that private law remedies will not adequately deter potential offenders. The arguments are familiar: [52]

―[E]nvironmental pollution often has no individual victim that could file a liability suit; causation may be difficult to prove and the long time lapse may make it impossible to recognize that, for example, health damage has been caused through environmental pollution, let alone that a tort claim could still successfully be brought.

The main argument (again from the economic point of view) in favour of public regulation is from the viewpoint of low probability of detecting environmental crime. However, this problem could well be compensated by imposition of heavy fine on the polluter. Fines would add to public budget as well. ―Monetary sanctions can, in principle, have both a criminal and an administrative nature [53]. ―For optimal deterrence, a higher sanction has to be imposed in order to compensate for this low detection rate. This cannot be provided through private law, and hence explains the need for public sanctions which permit compensation for the lower detection rate [54]

In the opinion of Michael G. Faure and Hao Zhang: [55]

―[E]nforcement through criminal law is preferred when the harm to society, or benefit to the offender, is large, the probability of detection is low, and when criminal law can provide additional stigma and/or an educative role (expressive function). In these circumstances, administrative law might not suffice. In addition, enforcement through administrative law could give rise to problems of capture (collusion between the regulator and the regulated) and to high error costs (as the standard of proof is much lower than under criminal law). Most importantly, administrative sanctions might be too low to provide sufficient deterrence.

9. Environmental Crime: An Over Criminalization?

Over-criminalization generally presents the following characteristics: [56]

1. Enacting criminal statutes lacking meaningful mens rea requirements;
2. Imposing vicarious liability with insufficient evidence of personal awareness or neglect;
3. Expanding criminal law into economic activity and regulatory and civil enforcement areas;
4. Creating mandatory minimum sentences un-related to the wrongfulness or harm of the underlying crime;
5. Federalizing crimes traditionally reserved for state jurisdiction; and
6. Adopting duplicative and overlapping statutes.

The criminalization of environmental violations poses at least two theoretical problems: one, ―the moral content of the proscribed conduct is not as well established as it is for common law crime, which has prompted concerns about over-criminalization; two, ―the complexity of environmental law raises issues about whether it can be integrated effectively with traditional approaches to criminal liability [57]. As regards the first issue, it has been argued that criminalization of environmental violation presents the danger of over-criminalisation or over- deterrence; [58] criminal law may have been dragged beyond its proper role. But considering the seriousness of the harm caused by environmental offenders and where environmental protection has become a pressing national and international concern, the issue of over-criminalization in environmental violation should not come into the picture. India is one country that takes environmental offences seriously by departing from the strict liability model to develop the absolute liability model that suits its context [59]. However, a clear framework is needed to categorise various environmental offences and to prescribe penalties according to the degree of their seriousness. Further, ―the sanctioning mechanisms have to aim at preventing the harm from the sources causing the occurrence of such tragedies rather than emphasizing on mitigation of injuries after the occurrence of the harm [60].

For Richard J. Lazarus, relaxing *mens rea* can dramatically improve the prosecutor's chance of success. This is true for crime in general. Indeed, it is especially so for environmental crime, at least where those violating environmental regulations are large corporations where individuals making decisions may seek to remain willfully ignorant [61].

10. Environmental Crimes and the Major Indian Codes

The Indian Penal Code (IPC) gives provisions relating to public nuisance. In addition to the provisions of the IPC, violation of the provisions of specific environmental statutes attracts criminal liability. Civil liability in India is based on the English law. The Code of Civil Procedure, 1098 [62] governs the classical suit for damages in tort. The Specific Relief Act, 1963 provides for claims for injunction.

Public Nuisance

Under the common law, the law of public nuisance was invoked for penalizing the environment offender and protecting the environment. In the U. S., public nuisance actions played an important role in the development of environmental law [63].

―The law regarding public nuisance can be appreciated with the help of two maxims: [64]

1. *Sic tari tuo alienum non lecdus*: enjoy your own property in such a manner as not to injure the right of another; and
2. *Sic utari tuo utrem publican non laedas*: enjoy your property in such a manner as not to injure the right of the public.

Under the common law, nuisances are of two types: public nuisance and private nuisance. Private nuisance is a civil wrong while a public nuisance is generally considered a crime. This position is different in Japanese law where environmental pollution is considered a public nuisance no matter if it is caused by a private enterprise [65]. Most instances of environmental harms fall within the purview of public nuisance, and it appears that it is inadequate [66].

Public Nuisance under the Indian Penal Code, 1860.

The law of public nuisance forms the doctrinal basis of environmental offences recognised by the Indian Penal Code. The Code gives elaborate provisions defining and penalizing the crime of public nuisance. Chapter XIV (sections 268 – 294A) of the Code deals with offences affecting the public health, safety, convenience, decency and morals. Section 268 defines public nuisance, while Section 290 prescribes punishment for public nuisance in cases not provided for in the Code.

However, the effective application of these penal provisions is doubtful even in obvious cases of air and water pollution, ―because the technicalities of Indian criminal law require a complete satisfaction of the ingredients of the offence as stipulated in the penal provisions [69]. Likewise, in the United States, ―while the exact scope of public nuisance doctrine remains ill-defined and controversial, many U.S. courts have turned to the Restatement of Torts (Second) for one broadly accepted formulation: a public nuisance is 'an unreasonable interference with a right general to the common public [70]. Secondly, public nuisance litigation requires that while asserting their claims in the courts, the plaintiffs should prove standing by showing that they had suffered injury, which is a daunting challenge faced by them [71]. In any case, for the benefit of the poor and vulnerable segments of the society, this particular requirement is relaxed in the innovative Public Interest Litigation (PIL) in India.

In a nuisance case, *Bibhuti Bhusan Biswas* v. *Bhuban Ram*, [72] three proprietors and the manager of a mill were convicted by District trial Magistrate under Section 290 of the Indian Penal Code. The proprietors did not live in the premises. The Sessions Judge was of opinion that the conviction of the proprietors was 'bad in law', and he recommended that their conviction should be set aside. However, he held that there was nothing wrong in the conviction of the manager. The Calcutta High Court, while upholding the conviction of the manager, set aside the conviction of the proprietors as they were not living on the premises and held that the general rule is that a principal is not criminally answerable for the acts of his agent. Speaking generally, the person liable, where the user of premises gives rise to a nuisance, is the occupier for the time being whoever he may be. The occupier in the present case is the servant of the proprietors.

Public Nuisance in the Code of Criminal Procedure (1973)

Chapter X of the Code of Criminal Procedure (1973) gives elaborate provisions for maintenance of public order and tranquility. Part B (sections 133 – 143) of the chapter specifically deals with the provisions relating to removal of public nuisance. Section 133 [73] is the most relevant section concerning removal of public nuisance that harms the environment. It empowers the District Magistrate to pass conditional orders for removal of nuisance [74].

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54. *Supra* note 37 at 322-323. Michael Faure, ‘‘Environmental crimes, in Nuno Garoupa (ed.) *Criminal Law and Economics* 320 (Edward Elgar Pub., Cheltenham, 2009); also *available at*: http://ssrn.com/abstract=1498471(Visited on March 02, 2012).
55. Michael G. Faure and Hao Zhang, ―Environmental Criminal Law in China: A Critical Analysis, 41
56. *ELR* 10025 (2011); see also Michael Faure, ‘‘Environmental crimes, in Nuno Garoupa (ed.) *Criminal Law and Economics* 324 (Edward Elgar Pub., Cheltenham, 2009); also *available at*: http://ssrn.com/abstract=1498471(Visited on March 02, 2012). Overcriminalization, *available at*: http://www.nacdl.org/overcrim/ (Visited o March 18, 2012).
57. *Supra* note 2 at 1228.
58. *Supra* note 18 at 1103.
59. The Indian Supreme Court departed from the strict liability doctrine in *Rylands* v. *Fletcher* and applied the new doctrine of absolute liability developed in *M.C. Mehta* v. *Union of India*, AIR 1987 SC 965.
60. Furqan Ahamad, *Legal Regulation of Hazardous Substances* 194 (Daya Publishing House, Delhi,
61. 2009).
62. *Supra* note 23 at 873.
63. Section 91of the Code reads: 91. Public nuisances and other wrongful acts affecting the public. [(1) in the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-

by the Advocate General, or
with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.]
Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.
Tracy D. Hester, ―Private Claims for a Global Climate: An Essay on U.S. and Indian Litigation Approaches to Climate Change and Environmental Harm, in a seminar volume entitled: *International Seminar on Global Environment & Disaster Management: Law & Society*, orgnised by The Indian Law Institute, The Supreme Court of India, The Delhi High Court, Ministry of Environment and Forest, Govt. of India and Ministry of Law and Justice, Govt. of India (New Delhi, 22-24, July, 2011).

64. K.D. Gaur, *The Indian Penal Code* 344 (Universal Law Publishing Co. Ltd., New Delhi, 3rd edn., 2004, reprinted and updated in 2008).
65. C.M. Abraham, *Environmental Jurisprudence in India* 40 (Kluwer Law International, London, 1999).
66. *Id*. at 38.
67. Section 277 and section 278 have direct relevance to protection of the environment as these sections deal with water pollution and air pollution respectively.[68]
Section 268 defines public nuisance as under:
―268. Public nuisance. – A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.
Section 290 reads:
-290. Punishment for public nuisance in cases not otherwise provided for. – Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.
68. Section 277 reads:
277. Fouling water of public spring or reservoir. – Whoever voluntarily corrupts or 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 of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
Section 278 reads:
278. Making atmosphere noxious to health. – Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons is general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.
69. *Supra* note 65 at 38.
70. Tracy D. Hester, ―Private Claims for a Global Climate: An Essay on U.S. and Indian Litigation Approaches to Climate Change and Environmental Harm, in a seminar volume entitled: *International Seminar on Global Environment & Disaster Management: Law & Society*, orgnised by The Indian Law Institute, The Supreme Court of India, The Delhi High Court, Ministry of Environment and Forest, Govt. of India and Ministry of Law and Justice, Govt. of India 96 (New Delhi, 22-24, July, 2011).
71. *Id*. at 97.
72. (1919) ILR 46 Cal 515.
73. Section 133 reads: 133. Conditional order for removal of nuisance.- (1) Whenever a District
Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers - that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or
that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing orcontrolling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order- to remove such obstruction or nuisance; or to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or to prevent or stop the construction of such building, or to alter the disposal of such substance; or to remove, repair or support such building, tent or structure, or to remove or support such trees; or to fence such tank, well or excavation; or to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause,

in the manner hereinafter provided, why the order should not be made absolute. (2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court. Explanation.- A "public place" includes also property belonging to the State, camping grounds and left unoccupied for sanitary or recreative purposes.

74. Ratanlal & Dhirajlal, *The Code of Criminal Procedure* 190 (Wadhwa & Company, Nagpur, 17th edn., 2005).