



Green Justice: Reparation for Environmental Harm

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Abstract

Environmental Crimes - such as illegal deforestation, industrial pollution, wildlife trafficking, and unauthorized waste disposal—pose serious threats to ecosystems, public health, and sustainable development. These offenses not only degrade the environment but also result in irreversible damage to biodiversity and livelihoods, especially in vulnerable communities. The legal framework addressing environmental crimes includes both national legislation and international conventions, aiming to deter offenders and hold them accountable. Compensation mechanisms play a crucial role in remedying the harm caused, ensuring that polluters bear the cost of restoration and affected parties receive redress. This paper examines the nature of environmental crimes, the challenges in enforcement and prosecution, and the evolving principles governing environmental compensation, including the "polluter pays" principle and restorative justice. It highlights judicial interventions, landmark cases, and the need for stronger institutional mechanisms to ensure effective environmental governance and accountability.

Keywords: Environmental Crimes, unlawful harm, Law & Declarations.

Introduction

Environmental crimes refer to unlawful acts that directly harm the environment. These include a wide range of illegal activities such as the illegal dumping of hazardous waste, illegal logging, poaching and wildlife trafficking, pollution of air and water bodies, and violations of environmental regulations by industries. These crimes pose a serious threat not only to ecosystems but also to human health, economic stability, and global sustainability.

Unlike traditional crimes, environmental crimes often go undetected or unpunished due to their complex, cross-border nature and the difficulty in establishing direct harm. Rapid industrialization, urban expansion, and weak enforcement of environmental laws have further exacerbated the problem. In response, both national governments and international bodies have developed legal instruments and regulatory frameworks aimed at prevention, control, and penalization of such offenses.

The rise in environmental crime has necessitated a shift from mere regulation to stringent enforcement, including criminal prosecution and the imposition of penalties and compensation. The focus is increasingly on ensuring that polluters are held accountable and that the environment, as well as affected individuals and communities, receive adequate remediation and justice.

Objectives

- i). To Define and Classify Environmental Crimes
- ii). To Examine the Legal Framework
- iii). To Explore the Role of Compensation in Environmental

Justice

- iv). To Evaluate the "Polluter Pays Principle"
- v). To Identify Challenges in Implementation
- vi). To Examine Landmark Judgments and Case Studies

Hypothesis

Compensation awarded in environmental crime cases often fails to adequately restore environmental damage or support affected communities.

Research Methodology

1. Research Design

This study adopts a qualitative and doctrinal legal research approach, focusing on the analysis of legal texts, case laws, statutes, and judicial pronouncements related to environmental crimes and compensation.

2. Sources of Data

• Primary Sources:

- National environmental statutes (e.g., The Environment (Protection) Act, 1986 in India)
- International conventions (e.g., Basel Convention, Stockholm Declaration)
- Judicial decisions by national and international courts
- Government and regulatory body reports (e.g., CPCB, UNEP)

• Secondary Sources

- Books and scholarly articles on environmental law and policy

- Research papers, journals, and legal commentaries
- News reports and NGO publications of Environmental Crimes

Environmental Crimes are acts committed in violation of environmental laws and regulations, which result in harm or pose a threat to the environment, human health, or natural resources. These acts may be intentional or negligent and are punishable under criminal or civil law.

According to INTERPOL and the United Nations Environment Programme (UNEP):

“Environmental crime refers to illegal acts which directly harm the environment and are committed in violation of national and international law.”

1. Classification of Environmental Crimes

Environmental crimes can be classified in several ways, depending on the nature of the activity and the area of impact. Below is a common classification:

Table 1: Based on the Type of Environmental Harm

Type	Description
Air Pollution Crimes	Illegal emissions from factories, vehicles, or burning waste
Water Pollution Crimes	Discharging untreated sewage, chemicals, or waste into rivers or oceans
Soil Contamination	Dumping toxic or hazardous substances on land
Noise Pollution	Violating noise limits in residential or protected zones
Deforestation and Land Degradation	Unauthorized cutting of forests, illegal land conversions

Table 2: Based on the Sector or Activity

Category	Examples
Wildlife Crimes	Poaching, illegal hunting, trade of endangered species
Forestry Crimes	Illegal logging, encroachment into forest land
Waste Management Crimes	Illegal dumping, e-waste smuggling, hazardous waste mismanagement
Industrial Offenses	Operating without environmental clearance, emission violations
Mining Offenses	Illegal mining, sand mining, without permits or EIA
Marine Pollution	Oil spills, dumping plastic or chemicals into seas and oceans

Table 3: Based on Legal Nature

Type	Explanation
Criminal Environmental Offenses	Prosecuted under criminal law with imprisonment and fines
Civil Environmental Wrongs	Result in compensation, injunctions, or cleanup orders
Regulatory Violations	Breach of environmental permits, reporting obligations, or standards

Table 4: Based on Scope

Scope	Examples
Local Environmental Crimes	Illegal tree cutting in a city park, local air pollution
Transnational Environmental Crimes	Wildlife trafficking, illegal e-waste exports, cross-border pollution

The legal framework for environmental crime consists of international conventions, national laws, and regulatory mechanisms aimed at preventing, controlling, and punishing acts that harm the environment. Here's a structured overview:

Constitutional Provisions

The Indian Constitution lays the foundation for environmental protection:

Article 48A (Directive Principle): *"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."*

Article 51A(g) (Fundamental Duty): *"It shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife..."*

A) Environment (Protection) Act, 1986

- Enacted after the Bhopal Gas Tragedy.
- Empowers the central government to take measures to protect and improve the environment.
- Violations are punishable with imprisonment up to 5 years and/or fines.

B) Water (Prevention and Control of Pollution) Act, 1974

- Aims to prevent and control water pollution.
- Establishes Central and State Pollution Control Boards.
- Offences include polluting water bodies and violating discharge permits

C) Forest Conservation Act, 1980

- Regulates deforestation and use of forest land for non-forest purposes.
- Requires central approval for such conversions.

D) Wildlife (Protection) Act, 1972

- Provides for protection of wild animals and plants.
- Establishes protected areas like National Parks and Sanctuaries.
- Prohibits hunting, poaching, and illegal trade in wildlife.

E) Public Liability Insurance Act, 1991

- Provides for liability insurance for industries in case of accidents involving hazardous substances.
- Ensures compensation to affected persons.

F) National Green Tribunal Act, 2010

- Establishes the **National Green Tribunal (NGT)** for effective and expeditious disposal of environmental cases.
- NGT has powers to provide relief, compensation, and restore damaged environments.

Judicial Contributions

- Indian judiciary has played a vital role in environmental protection:
- M.C. Mehta v. Union of India series (e.g., Ganga pollution, Oleum gas leak).

Principles Evolved

- Polluter Pays Principle
- Precautionary Principle
- Public Trust Doctrine
- Right to a clean environment under Article 21 (Right to Life)

Penalties for Environmental Crimes

- Penalties depend on the specific law violated:
- Imprisonment (ranging from 3 months to 7 years or more)
- Fines (which can be substantial or continue per day of violation)
- Closure of industries or revocation of licenses

The international legal framework for environmental crime is built upon treaties, conventions, declarations, customary international law, and the work of international organizations. Although there is no single unified treaty specifically on "environmental crime", many international instruments indirectly or directly address crimes against the environment.

A) Basel Convention (1989)

- Controls trans boundary movements of hazardous wastes and their disposal.
- Aims to prevent dumping of toxic waste in developing countries.

B) Stockholm Convention (2001)

- Regulates Persistent Organic Pollutants (POPs).
- Aims to eliminate or restrict production and use of toxic chemicals.

C) Convention on International Trade in Endangered Species (CITES), 1973

- Controls international trade in endangered flora and fauna.
- Prevents poaching and illegal wildlife trade.

D) Montreal Protocol (1987)

- Controls substances that deplete the ozone layer.
- One of the most successful environmental agreements with global compliance.

E) Kyoto Protocol (1997) & Paris Agreement (2015)

- Frameworks under the UN Framework Convention on Climate Change (UNFCCC).
- Address climate change and greenhouse gas emissions.

1. International Criminal Law & Environmental Crimes

A) Rome Statute of the International Criminal Court (ICC), 1998

- Article 8(2)(b)(iv) criminalizes "*widespread, long-term and severe damage to the natural environment*" as a war crime.
- No recognition (yet) of peacetime environmental destruction as a standalone international crime.
- Ecocide (Proposed)

Growing global movement to recognize "ecocide" as the 5th international crime (alongside genocide, war crimes, crimes against humanity, and crimes of aggression).

Would criminalize severe environmental destruction in peacetime.

Supported by several small island nations and civil society

groups.

2. Soft Law & Declarations

A) Stockholm Declaration (1972)

- First major international conference on the human environment.
- Introduced the concept of sustainable development.

B) Rio Declaration (1992)

- 27 principles guiding sustainable development.
- Popularized the Precautionary Principle and Polluter Pays Principle.

C) Agenda 21

- A non-binding action plan for sustainable development.

3. International Organizations Involved

- **United Nations Environment Programme (UNEP):** Coordinates environmental activities.
- **Interpol Environmental Crime Programme:** Investigates wildlife crime, pollution, illegal logging, etc.
- **World Customs Organization (WCO):** Addresses illegal trade in hazardous waste and wildlife.
- **World Bank and UNODC** – focus on environmental crime as part of corruption and organized crime.

4. Regional Legal Frameworks

- European Union: Directive 2008/99/EC on environmental crime.
- ASEAN, African Union, Mercosur, etc., have regional agreements addressing environmental protection and enforcement.

5. Challenges

- Lack of universal definition of "environmental crime".
- Weak enforcement and cooperation.
- Conflicts between economic interests and environmental priorities.
- Jurisdictional issues in transboundary crimes (e.g., illegal wildlife trade, marine pollution).

Conclusion

The international legal framework for environmental crime is evolving. While existing treaties regulate specific environmental harms, there is a growing consensus on the need to treat serious environmental destruction as an international crime, with stronger laws, global cooperation, and potentially a new category of crime like "ecocide"

Here are 6 landmark judgments and case studies related to environmental crime and compensation in India and internationally. These cases have significantly shaped environmental jurisprudence and the principles of environmental justice.

Landmark Indian Judgments

i). M.C. Mehta v. Union of India (1986) – Oleum Gas Leak Case

- **Facts:** A gas leak from Shriram Food and Fertilizer factory in Delhi caused health hazards.
- **Issue:** Liability for environmental harm.

• Judgment:

- Introduced the "Absolute Liability" principle (stricter than strict liability).

- Industries engaged in hazardous activities are liable for damages without exceptions.
- **Compensation:** Victims were entitled to compensation irrespective of negligence.
- ii). **M.C. Mehta v. Union of India (1987) – Ganga Pollution Case**
 - **Facts:** Tanneries in Kanpur were discharging untreated effluents into the Ganga.
 - **Judgment:**
 - Recognized Right to Clean Water as part of Article 21 (Right to Life).
 - Ordered closure of polluting industries unless they installed treatment plants.
 - **Compensation:** Polluters were directed to bear the cost of cleaning.
- iii). **Indian Council for Enviro-Legal Action v. Union of India (1996)**
 - **Facts:** Chemical industries in Rajasthan polluted land and groundwater.
 - **Judgment:**
 - Applied Polluter Pays Principle.
 - Directed industries to pay Rs. 37.385 crores for environmental remediation.
 - **Impact:** Compensation directed not only to victims but for restoring the environment.
- iv). **Vellore Citizens' Welfare Forum v. Union of India (1996)**
 - **Facts:** Tanneries in Tamil Nadu discharged untreated effluents.
 - **Judgment:**
 - Recognized Precautionary Principle and Polluter Pays Principle as part of environmental law.
 - Directed industries to pay compensation and establish a fund.
 - **Compensation:** Creation of an Environmental Protection Fund from industry contributions.
- v). **Bhopal Gas Tragedy Case – Union Carbide Corporation v. Union of India (1989)**
 - **Facts:** Toxic gas leak from Union Carbide plant in Bhopal killed thousands.
 - **Judgment**
 - Supreme Court ordered \$470 million (approx. ₹750 crore at the time) compensation settlement.
 - Criticized for being inadequate and lacking victim participation.
 - **Significance:** Led to enactment of Environment (Protection) Act, 1986 and Public Liability Insurance Act, 1991.
 - International Case Study

vi). **Trail Smelter Arbitration (U.S. v. Canada, 1941)**

- **Facts:** A Canadian smelter caused air pollution that damaged crops in the U.S.
- **Judgment:**
 - Held Canada responsible.
 - Established international liability for transboundary pollution.
- **Compensation:** Canada paid for the damages caused.
- **Principle:** “No state has the right to use its territory to cause harm to another.”

Conclusion

Environmental crimes pose a serious threat to the health of ecosystems, human well-being, and sustainable development. These crimes—such as illegal mining, deforestation, pollution, and wildlife trafficking—not only violate environmental laws but also cause irreversible damage that often affects large populations and future generations.

The legal framework, both nationally and internationally, has evolved to impose accountability through penal sanctions and compensatory mechanisms. In India, landmark judgments like *M.C. Mehta* and *Vellore Citizens' Forum* have reinforced key environmental principles such as Polluter Pays, Precautionary Principle, and Absolute Liability. Compensation plays a critical role in ensuring justice—not only by offering financial redress to victims but also by funding environmental restoration.

However, enforcement remains a challenge due to administrative delays, lack of awareness, and industrial resistance. There is an urgent need for stricter implementation, public participation, and global cooperation to ensure that those responsible for environmental harm are held accountable and victims receive fair compensation.

In essence, compensation should not only aim to repair but also deter—making environmental crimes a high-risk, low-reward endeavor. Environmental protection must be seen not just as a legal duty but as a collective moral responsibility.

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