

CRIMINALITY OF ECOCIDE AND ENVIRONMENTAL LAWS: A CASE OF LEGISLATIVE INTERVENTIONS

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Abstract

More than the previous century, the destruction caused on environment potentially has been the highest in last decade or so. A report by United Nations Environment Programme (UNEP) places it as the fourth-largest criminal operation in the world, just after counterfeiting, human trafficking, and drug smuggling. It is very recent that environmental damage is treated at par with a criminal activity, and with the looming crisis of climate change, it is now, more than ever that criminality of ecocide should be looked into. But it is not an easy process since the contrast between crime and damage highlights a persistent dilemma for criminology, whether to limit its focus just on legally recognized offences or delve into activities that are legal but its effects are negative and needs to be forbidden. For the longest time, violations of law are dealt with but lawful degradation is brushed off with moral derangement but it derails the future whose basis is in environment. With the support of an internationally enforceable legal framework, these crimes and harms need to be addressed through both informal and official modes of settlement and restitution. This paper explores ecocide as a new challenge for the existing regulatory framework and recommends new legislative interventions.

Keywords: Sustainable development, Ecocide, Criminology, Legislative Interventions.

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INTRODUCTION

The concept having origins in the Europe during the 17th and 18th centuries stemming mainly for conversation of timber which was gradually depleting. From there on, during the late 1960s, worldwide people who were directly working over environmental aspect took notice of the deep relation between the economic growth and degrading environment. In this light, Kenneth Boulding, wrote an influential essay, The Economics of Coming Spaceship Earth, in 1966 which recognized the need of economic development to limit itself to the yardstick of limited ecological resources [1]. Sustainable development has been defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs [2].

This is undertaken due to rising concern of the populous around the degrading environment. Three main elements are there, economic growth, social inclusion and environmental protection, which are of great importance. The inter-dependence amongst them is needed for harmony in society and on

individual basis. One of the foremost objectives sought through this is eradicating poverty especially in developing nations and further impetus should be given to those who might be facing scarcity of resources or the economic or political environment may not be conducive of any development.

United Nations felt the need to take up the issue of Environment in the year 1972 by holding the United Nations Conference on the Human Environment, in Stockholm, Sweden on the proposal which it made in the year 1968 to study human interaction with the environment. This conference made way for the establishment of the United Nations Environment Programme [3]. 26 Principles were agreed upon and declared. Representing India, Indira Gandhi gave the theory of how developing nation were going through the crisis of poverty. In response to this poverty alleviation was recognized as one of the fundamental aspects for environmental protection. Another theory also argues that many environmental policies were born out of this that are followed to date in European union (pre-Brexit). This was the first in line of the many conferences cum meet which were to happen in the coming decades.

Next in line was World Commission on Environment and Development, this was an ode of recognition of Gro Harlem Brundtland who also essayed the role of Chair of the same. It was published in the year 1987 through Oxford University Press. This is also popularly known as Our Common Future, and unofficially Brundtland Report. The very same was tabled at General Assembly and official development of the theme, sustainable development came through [4].

A very strategic and important conference or even representational gathering happened in Rio de Janeiro, which played host to United Nations Conference on Environment and Development, 1992. It was known as 'Earth Summit', then later by the name of Rio Conference but fulfilled the objective by setting up a commission on Sustainable Development. Apart from these three major agreements were adopted which were; 1. Rio Declaration, where the rights and duties of the states were categorically segregated. 2. Agenda 21, referring to plan of action in the 21st century towards attaining sustainable development. 3. Statement of Forest Principle came up, wherein a certain set of Principles manned the development over forests. A move in the voluntary interest of states was brought about by two treaties, namely United Nations Framework Convention on Climate Change and Convention on Biological Diversity [5].

UN General Assembly convened for a special session in 1997 to review the implementation of Agenda-21 and along with that formulated additional programmes for the same [6]. Followed by World Summit on Sustainable Development, 2002, popularly Rio +10, hosted by Johannesburg, 2002. Another one after 10 years, known as Rio +20 was held in Rio itself, where the 'Future we want', concept was discussed.

Environmental crime and harm may be divided into categories, such as primary and secondary forms, which are either characterized as directly coming from the destruction and deterioration of the earth's resources (primary), as being associated with or dependent upon such destruction, and actions taken to control or avoid it (secondary). The further distinction between the crimes is not very easy, but a few instances are discussed here to illustrate the concept.

Over the course of a century, the world's population quadrupled, water consumption increased by six times, and "half of the world's rivers and lakes have become poisoned by pollution," according to sewage water 34 percent of all fish and 58 percent of all reefs worldwide could owe to overfishing, poaching, and unsustainable fishing practises, as well as also pollution.

1. CURRENT SCENARIO ON ECOCIDE

'The World Health Organisation estimates that air pollution causes the annual premature death of two million people worldwide through respiratory infections, heart disease and lung cancer— all accelerated by, or the direct result of, poor air quality [7] Although it cannot be argued that air pollution is a global issue, it affects everyone who lives and works in cities or areas with a lot of industrial activity. Insofar as individuals who are wealthier than others may live in poverty, it has an egalitarian effect.

The greatest excesses experienced by people living in high density regions can be avoided in polluted environments. But climate change will have an impact on all people and air pollution is primarily responsible for climate change and ozone depletion. Air pollution not only endanger humans but also destroy animals, water, agriculture, buildings, and natural heritage at considerable cost, cost to culture and the environment.

Illegal logging is having a negative influence on forestry resources throughout the world, which is concerning for global warming. However, the actions, players, and motivations involved are complicated, so it's crucial to understand that illegal logging is undertaken for both necessity and greed. However, the effects of massive industrial logging operations on regions like the Amazon basin are disastrous not just for the surrounding rainforest but also for the prospects of survival of the last few nomadic hunter-gatherer tribes, like the Awá. The Awá are being slaughtered by pistoleros, hired gun men that tribe members claim is responsible for wiping out their families, while their territory is being taken over by illegal settlements and new cattle ranches. This situation is so terrible that a Brazilian court has declared it "a true genocide." Meanwhile, dangerous garbage disposal and toxic waste dumping are still practiced by both legal and illegal firms, usually with negative effects on communities of the weak and the poor. Today's criminal wildlife trade is a major worldwide industry that competes with the drug and weaponry markets, but whether legal or illegal, both trading of live animals or animal parts is badly and insufficiently regulated.

2. LEGAL POSITION

Legal and criminological techniques have been devised and put to use in response to these diverse problems and difficulties, and instances of environmental crime have been reported, prosecutions, and issues of accountability and restitution have all been discussed and examined. However, the existing system is ineffective and reliant on deregulation models, voluntary compliance (based on the notion that the market would offer effective and efficient solutions), and legislative-balancing-acts (where agencies who are tasked with encouragement of compliance in the course of doing business are also charged with prosecuting and penalizing in cases of offending). The solution to this, *Restorative Justice*, per HIGGINS, who describes it as, "*understanding of our relationship with nature and the duty to remedy the harm caused*". The reasoning is that the current system are

"designed to perpetuate human domination of nature instead of fostering mutually beneficial relationships between humans and other members of the earth community" [8].

Ecocide as a concept was brought to light for the first time at "Conference on War and National Responsibility" in Washington by Professor Arthur W. Galston, but its best propounded by Polly Higgins, who in his submission to the UNLC proposed amendment to Rome Statute, which read, "*Ecocide is the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished*". In his effort, two kinds of ecocide can be identified, one caused by humans, and the other occurring naturally. It helps in creating legal principle which can be furthered to pre-empt and prevent these incidents. The case for amendment is a strong one as signatories will be bound to act and failure to do will be accountable.

The need for this amendment traces back to the laws being drafted for genocide, wherein ecocide was also in consideration but could never draw the same sense of deliberation. Over the years it has picked pace, but ended up being included in the space of war crimes, as a consolation for its revered subject.

Currently International Laws do not recognize it as a conventional crime, and for that matter it doesn't even constitute one, and varied modus operandi lies in committing it. A law of ecocide should recognize environmental degradation and harm caused by humans (whether performed during or outside of times of conflict) as a stringent criminal offence. Even countries which have criminalized it have failed to curate a test of intent. To prosecute for the crime of ecocide, intent is of high importance. It is so because a lot of activities that constitute ecocide are generally a consequence or collateral damage of a primary activity that has been undertaken. To defy the defence of lack of

knowledge, the law should be drafted in such a manner as to counter for this fallacy, and cast a duty to duly check on all consequences of the activity being done.

INDIAN APPLICABILITY

India currently doesn't have a specific law to deal with the issue of ecocide, but it relies upon constitutional mechanisms to deter environmental damage. The implementation of these principles is debatable, but in the light of recent incidents in north-eastern part of India, I have dealt with it.

MINING MENACE IN MEGHALAYA

The unbridled greed of human being at an unprecedented rate is destroying environment. Excessive sand mining activities in the state of Meghalaya have altered the course of many waterbodies with the habitual low-lying areas now under eminent threat of the same [9]. Frequent erosion is a matter of grave concern as it not only endangers the forest area but surrounding areas also get affected but due to absence of proper mechanism to tackle it, however remains a concern. The state government was of the opinion that instead of banning, regulating the same would reap greater benefits. The arguments presented in this regard were on the line of engagement with stakeholders so that livelihood of the many involved in this does not get affected [10]. Concerned departments will further assess the restrictions pertaining to that area. This line of action comes after several groups have raised eloquent concern of degradation and even compared to devastation which happened in Uttarakhand due to unchecked quarrying illegally of minor minerals.

Another form of mining practiced in the state is that of 'rat-hole mining' which is labor intensive work, digging a small sized narrow hole barely three to four feet in height where workers work. It has been banned legally citing the reasons of it being unscientific. NGT also held the ban served the purpose of guarding the interest of workers [11]. But the Supreme Court has allowed to mine, only requisite being prior approval from State Pollution Control Board. This has not solved the purpose which was envisaged since many reports speak up about the trafficked children being employed in these mines, here rich coal barons are utilizing strong political lobbying to go unseen with their acts. But the impact goes beyond this, the air, water and forests have all undergone changes directly from this. pH which is measure of how acidic or basic a water body is, found

many water bodies having a pH of as low as 2.4, meaning water was highly acidic. Paradoxically, water resources are depleting rapidly in a place which receives arguably the highest rainfall, owing to eroding forest land, losing land fertility [12].

Another kind of mining is that for uranium, to fulfil the requirement made by Nuclear Power Corp's atomic reactors. Importing is not an option due to rules of the 44-member Nuclear Suppliers Group that has the monopoly over decision making [13]. There have been several blockades since the inception of this idea, earlier Jaduguda area in Singhbhum, Jharkhand was epicenter for uranium mining but it could not withstand growing demands, another site became a necessity. In the early 90s uranium deposits were found to occur in southern tips of Shillong plateau in the areas of Domiasiat, Wahkyn and Tynrai. Basic issue arising here is the residue after the extraction of uranium from the ore, discarding that waste would lead to insemination of poisonous elements in the groundwater table. Studies have proven that it increases risk of several life-threatening diseases in humans and animals alike. In India only, Jharkhand experienced birth with congenital deformities, risk of leukemia mortality was seen in Spain, miners suffer even more due to direct exposure, lung cancer is a sure shot thing if a person has worked for more than 5 years [14].

The mining activities in the ever so peaceful state of Meghalaya has hit a new high when it comes to illegal activities being carried out. The matter is grave as it involves the lives of indigenous people. Administratively state is carved in seven districts but forest and land are managed by respective district councils of Garo, Khasi and Jaintia Hills as provisioned by constitution of India, giving more rights to tribal people. Traditional practices dominate the lives of indigenous people and in a way, forest is worshipped. The mining activities undergoing currently, and the uranium project envisaged all cut through around about 72 villages where around 68% of the population of the state resides. This will

directly impact the livelihood system as the indigenous people are self-sufficient and rely mainly on forest produce. Their whole lifestyle is around forests, so any activity intruding that place will be a question of their identity itself. The economic aspect will further distort the demography by influx of non-indigenous people into the habitats. This might lead to areas being tightly guarded off, rendering inaccessibility to locals. Heavy evidence in favor of opposition to these projects, democratically go in the way of being scrapped, but government though chosen by the people is not paying heed to their well-being because here, uranium is a strategic mineral, whose proprietor is state.

LORAN EISELY, famously said, if there is magic on this planet, it is contained in water. This has stood the test of time and even laws have come to appreciate this. In India, Environmental Protection Act, 1986 strictly included air and water in the ambit of basic requirements of human life. The judiciary also has interpreted articles 21, 51A(g), 48A dynamically to include environmental protection as a part of it.

Article 21 has a very wide range and other than fundamental right of life and liberty. In *Subhash Kumar v. State of Bihar*, the Supreme Court recognized that the right to life 'includes the right of enjoyment of pollution free water and air for full enjoyment of life'. In the *Sardar Sarovar* case, the Supreme Court went further and directly derived the right to water from Article 21. It stated that "water is the basic need for the survival of the human beings and is part of right to life and human rights as enshrined in art 21 of the constitution". Water is the most important of the elements of the nature. In *State of Himachal Pradesh v. Umed Ram Sharma* the Supreme Court has held that every person is entitled to life as enjoined in Article 21 of the Constitution, that he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but also the quality of life. In *P.R. Subhash Chandran v. Government of A.P.*, the A.P. High court held that "under the constitution, the role of the State to provide every citizen with adequate clean drinking water and to protect water from getting polluted is not only a fundamental directive principle in the governance of the state but is also a penumbral right under Article 21 of the constitution of India". This effectively meant other than laws, rules and regulations made at the municipal levels play an articulate role to provide for the rights.

One point which we fail or overlook is the effect these mines have done on wetlands. Meghalaya has been blessed with abundance of water and during monsoon around 90% of the total land gets spread with water. But in recent years the trend has differed and water levels have receded owing to loss of adjoining hills around water bodies. Under Ramsar Convention, three sites have been recognized as wetlands, Birbal lake, Uuiam lake and Tasek lake. In the four major districts out of seven, around 40 sq. km is designated as wetlands under Indian law.

3. CONCLUSION

The onus of saving the ecology of the planet is on humans, as their existence is entirely dependent on the interaction with the nature. But it has come down to a point where question of who owes a duty to whom is being asked. Crimes like ecocide are a collective effort as destroying the ecology and in complete disregard to changing climate. Hence, it is necessary to formulate a law for ecocide which will deter the catastrophic incidents. The preference of economic activities over preservation of natural habitats should be reconsidered right back at a policy level.

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