

# ENVIRONMENTAL CRIMINAL LAW JURISPRUDENCE & ENFORCEMENT OF WILDLIFE PROTECTION LAW

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*[Abstract: Environmental criminal act, in India, is considered as any other criminal act despite of the fact it being unique in its own. It is not committed in facts & circumstances that are similar to commission of any other offence. Its purpose, object & motive too are different from those of any other offence. In civil law jurisprudence, we have developed principles that are unique to environmental law, like, public trust doctrine, precautionary principle. It needs to be replicated in criminal law jurisprudence as well so criminal justice system established for environmental crimes could deliver better results.*

*In light of above, this paper explores the statistical data on pendency rate at investigation agency as well as at trial court, charge-sheeting, conviction & acquittal rate, and trend with respect to sentencing. Special focus is laid on trends with respect to wildlife offences. Analysis of this data is made to support the suggestion of developing environmental criminal law jurisprudence with its own unique features.]*

## INTRODUCTION

Environmental criminal law in India, though four-five decades old<sup>1</sup>, is yet to gain its foot-hold in the legal profession as well as in the academia. If we take notice, trial court judgements seldom reach to the High Court or to the Supreme Court due to which these courts seldom get opportunity to speak on any point of law which otherwise would have developed environmental criminal law jurisprudence.<sup>2</sup> Environmental law jurisprudence has been developed by the Supreme Court while exercising its civil jurisdiction only. If we take notice of the law school curriculum, course content in the subject on environment law gives major emphasis on civil law jurisprudence as developed by the Supreme Court from time to time. Though course content includes environmental criminal law but it is allotted less no. of modules when compared to course content on civil law jurisprudence within the environmental law. Environmental criminal law jurisprudence is at its nascent stage in India.

Environmental criminal law deals with an actus which is declared to be an offence under any environmental law statute; it includes penal law as well as procedural law. United Nations Inter-Regional Crime & Justice Research Institute, a premier organization working in the area of environmental crime, has defined environmental crime as ‘crimes that encompass a broad list of illicit activities, including illegal trade in wildlife, smuggling of ozone-depleting substances, illicit trade of hazardous waste, illegal unregulated and unreported fishing, and illegal logging

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<sup>1</sup> The Wildlife Protection Act, 1972; Water (Prevention & Control of Pollution) Act, 1974; Forest Conservation Act, 1980; Air (Prevention & Control of Pollution) Act, 1981; The Environment Protection Act, 1986; The Indian Forest Act, 1927 being the exception in given context.

<sup>2</sup> *Moti Lal v. Central Bureau of Investigation*, AIR 2002 SC 1691; *Sansar Chand v. State of Rajasthan*, (2010) 10 SCC 604; *Manoj Kumar Upadhyaya v. State of Andhra Pradesh*, Cr. Appeal No. 1316/2008.

and trade in timber'<sup>3</sup>. These offences not only affect the quality of life and disturbs the ecological balance, it questions the application of 'rule of law' also in any given state.

Any act that affects quality of life, if not regulated by the state machinery, would further obstruct a person exercising & enjoying his 'right to life'.

There is another dimension of the stated fact, i.e., what shall be criminal liability of the person affecting 'right to life' of victim who is either speech-less, like, an animal, or unknown victim, i.e., secondary victim, or a face-less victim though not having 'right to life, like, water bodies, or, glaciers? With respect to environmental crime, it becomes difficult to trace a victim in real time, especially in light of the fact that sometime it may take years before consequence of an actus gets noticed, a kind of inter-generational victimization. One of the examples of such crimes is commission of an offence under air pollution laws. It took years before we could realize the health hazards of polluted air emitted by the industries. Despite the fact that air pollution kills thousands of people every year<sup>4</sup> still environmental crime is often considered as victimless crime. It is perceived as 'victimless' and low on the priority list, such crimes often fail to prompt the required response from governments and the enforcement community.<sup>5</sup>

In light of this, this paper explores the extent of attention given to environmental crimes by law enforcement agencies in India. It further lays down the foundation on which environmental criminal law jurisprudence may be developed in India; the same is discussed with focus on wildlife offences only.

Wildlife offence is committed with a victim who is speechless; someone who shall remain unrepresented unless an animal lover takes forward its cause. Offences falling under this category, like, illegal trade of birds & animals, often involve cross-border organized groups. A brief study of such cases shared at website of the Wild Life Crime Control Bureau, hereinafter referred as WCCB, show that people from Myanmar and Bangladesh were largely involved in cross-border smuggling of animals & their body parts. Low risk of being detected & arrested, and huge financial gain largely attracts the potential offender to commit such crimes. As per report published by Environmental Investigation Agency<sup>6</sup>, herein after mentioned as EIA, business in wildlife is worth of billions of dollars.<sup>7</sup>

Various government as well as non-government agencies, like WCCB, EIA, & UNEP (United Nations Environment Programme) have been working in the area of environmental criminal law.; and the agencies, like, WTI (Wildlife Trust of India), PETA (People for Ethical Treatment

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<sup>3</sup> UNICRI, *Environmental Crimes*, available at – <http://www.unicri.it/topics/environmental> (last visited on Mar. 11, 2021).

<sup>4</sup> Bindu Shajan Perappadan, *1.7 million deaths were attributable to air pollution in India in 2019*, THE HINDU (Dec. 22, 2020) available at <https://www.thehindu.com/news/national/17-million-deaths-in-india-were-attributable-to-air-pollution-in-2019>

<sup>5</sup> Environmental Impact Agency, *ENVIRONMENTAL CRIME: A THREAT TO FUTURE* (2008) available at – [https://www.unodc.org/documents/NGO/EIA\\_Ecocrime\\_report\\_0908\\_final\\_draft\\_low.pdf](https://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf) (last visited on Mar. 11, 2021).

<sup>6</sup> An international NGO working in the area of environmental crimes

<sup>7</sup> *Supra* note 5; *Environmental crime is currently one of the most profitable forms of criminal activity and it is no surprise that organized 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.*

of Animals), & WWF (World Wide Fund) have been working for protection & conservation of wildlife, work which is more civil in 'nature'. These two groups of agencies might be working with different approach, still mission of all their efforts is common, i.e., to ensure delivery of environmental justice for all.

Environmental justice is understood as 'the pursuit of equal justice and equal protection under the law for all environmental statutes and regulations without discrimination based on race, ethnicity, and/or socio-economic status'.<sup>8</sup> It is considered as 'fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies'.<sup>9</sup> This paper deals only with the aspect of implementation & enforcement of environmental criminal law, with special emphasis on wildlife protection law.

### **ENVIRONMENTAL CRIMINAL LAW JURISPRUDENCE**

There are two ways to deal with the environmental issues, i.e., (i) socio-legal approach that mainly focuses on exercising civil jurisdiction of the courts; and (ii) environmental criminal law that focuses on imposing criminal sanctions, in case of any violation of pre-defined environmental offence. Though both the procedures, civil as well as criminal, aim for the same, i.e., limiting the environmental damage to the maximum, but they work with different approach. Civil environmental law focuses on various principles, like, polluter pay principle, precautionary principle, and public trust doctrine. On the other hand, environmental criminal law focuses on criminalizing an act, and then imposing sanction against the violator.

Environmental criminal law adheres to all the fundamental tenets of criminal law. Right to fair trial, presumption of innocence lies in favour of the accused, and burden to prove guilt lies on the prosecution are three fundamental principles of criminal law jurisprudence that have been reiterated by the Supreme Court time & again in no. of judgements.<sup>10</sup> Statutes on environmental criminal law have also been made subject to the principle of rule of law. A person accused of committing an environmental crime can be punished only as per due procedure established by law; all constitutional guarantees have been ensured to him; and the punishment prescribed under statutes is more proportionate to gravity of offence with respect to it is prescribed. This paper focuses on procedural & punitive mechanism prescribed & practiced under environmental criminal law.

Penal law works on either of three theories of punishment, (i) retributive, (ii) deterrence, & (iii) compensatory. While compensatory mechanism in environmental law is primarily taken care of by civil jurisdiction of the courts, criminal courts should primarily focus on retributive or deterrence theories of punishment. The nature of retributive punishment is such that suffering imposed on the offender is similar to that of the victim; suffering to be imposed on the offender

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<sup>8</sup> Richard Hofrichter, *Introduction* in TOXIC STRUGGLES: THE THEORY AND PRACTICE OF ENVIRONMENTAL JUSTICE, 9 (1993).

<sup>9</sup> First National People of Color Environmental Leadership Summit, *Principles of Environmental Justice* (1991), available at – <http://www.ejnet.org/ej/principles.pdf>.

<sup>10</sup> *Rabindra Kumar Dey v. State of Orissa*, AIR 1977 SC 170; *R.S. Nayak v. A.R. Antulay*, AIR 1984 SC 684; *Sidharam Satlingappa Mhetre v. State of Maharashtra & Ors.*, (2011) 1 SCC 694; *State of Rajasthan v. Abdul Mannan*, (2011) 8 SCC 65

should be in proportion to suffering of the victim. In the domain of environmental offences, it is very difficult to identify the nature of suffering. Also, it is difficult to measure the damage caused to the environment or to the humanity. Hence, environmental criminal law would not prescribe itself to retributive theory of punishment. It can't be said conclusively if the punitive mechanism under environmental criminal law works on deterrence theory of punishment, but it seems to be the only theory of punishment that could be explored in the field of environmental criminal law.

Deterrence aims at prevention; if any offender is punished with the purpose of creating a deterrent among any potential offender, it aims at preventing commission of offence in future. In the words of H.L.A. Hart, 'consequentialist considerations such as crime prevention represent the central of punishment, but that particular impositions of punishment should be constrained by the familiar principles that only the criminally guilty should be punished, and only in proportion with the serious of their crimes'.<sup>11</sup> In light of this, it is important that procedure prescribed under environmental criminal law follows the principle of 'due process of law'. This is what the Indian environmental criminal justice system has done. It is as just & fair as is any other criminal law.

### **ENVIRONMENTAL CRIMINAL LAW IN INDIA; EXPLORING THE EXTENT OF ITS APPLICABILITY**

Specialized environmental criminal laws, like, Wildlife Protection Act, 1972, Air (Prevention & Control of Pollution) Act, 1974, Water (Prevention & Control of Pollution) Act, 1981, and Environment Protection Act, 1986, were enacted by the Parliament of India with the object, though not exclusive, of criminalizing such acts that harm or may harm the environment which includes human environment. In our contemporary times, when the environmental related issues dominate every aspect of our life, it becomes more important that such laws are enforced more vigorously and more strictly; otherwise, we would fail in achieving object of such laws.

In light of above discussion, this paper explores following dimensions of environmental criminal law jurisprudence: speedy trial, rule of law, and environmental justice; and, deterrent theory of punishment & environmental criminal law. In pursuit of this, it answers the following questions: (i) to what extent element of speedy trial within rule of law is ensured by law enforcement agencies with respect to environmental crimes, especially with respect to wildlife offences?; (ii) what is average duration of trial in environmental crimes?; (iii) does speedy trial ensure delivery of environmental justice?; and (iv) do punishment or speedy trial ensure deterrence, the most important object of environmental criminal justice system?

Keeping these questions within the framework of this paper, it deals with the statistical data on environment criminal law with special emphasis on wildlife offences. The object of dealing with the subject matter with emphasis on statistical information is to (i) to check the status of enforcement of specialized environmental criminal laws, (ii) collect the data on filing of criminal cases, (iii) collect the data on 'pendency' and 'disposal' of such cases, and (iv) collect the data on 'conviction rate' and 'acquittal rate' of such cases;

### **Trend with respect to Reporting of Offences committed under Environment Protection Laws**

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<sup>11</sup> H.L.A. Hart, PRELEGOMENON TO THE PRINCIPLES OF PUNISHMENT, IN PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 1, 8-13 (2008).

Criminal justice system gets activated as soon an incident is reported. It is a clear mandate for law enforcement agencies to consider knowledge & understanding of the informant about the matter of offence as true & correct. At the stage of reporting of an incident, whatever is shared by the informant is considered to be true, and his understanding of the subject matter is considered to be correct. The following table lays down the facts & figures on reporting of environmental offences.

Year	Offences Related to Environment (Including Wildlife Offences)		Offences Related to Wildlife		Total Arrest	
	Total No.	Crime Rate	Total No.	% of Offences related to Environment Law	Offences Related to Environment	Offences Related to Wildlife
2019	34671 <sup>12</sup>	2.6 <sup>13</sup>	618 <sup>14</sup>	1.8	36237 <sup>15</sup>	1087 <sup>16</sup>
2018	35196 <sup>17</sup>	2.7 <sup>18</sup>	782 <sup>19</sup>	2.2	37408 <sup>20</sup>	1295 <sup>21</sup>
2017	42143 <sup>22</sup>	3.3 <sup>23</sup>	826 <sup>24</sup>	2.0	40720 <sup>25</sup>	1497 <sup>26</sup>
2016	4732 <sup>27</sup>	0.4 <sup>28</sup>	859 <sup>29</sup>	18.2	8387 <sup>30</sup>	1722 <sup>31</sup>
2015	5156 <sup>32</sup>	0.4 <sup>33</sup>	829 <sup>34</sup>	16.1	N/A	1263 <sup>35</sup>
2014	5835 <sup>36</sup>	0.5 <sup>37</sup>	770 <sup>38</sup>	13.2	N/A	1349 <sup>39</sup>

<sup>12</sup> National Crime Records Bureau, CRIME IN INDIA – 2019, Table 11.1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, Table 11.2.

<sup>15</sup> *Id.*, Table 11.7.

<sup>16</sup> *Id.*

<sup>17</sup> National Crime Records Bureau, CRIME IN INDIA – 2018, Table 11.1.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, Table 11.2.

<sup>20</sup> *Id.*, Table 11.7.

<sup>21</sup> *Id.*

<sup>22</sup> National Crime Records Bureau, CRIME IN INDIA – 2018, Table 11.1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, Table 11.2.

<sup>25</sup> *Id.*, Table 11.7.

<sup>26</sup> *Id.*

<sup>27</sup> National Crime Records Bureau, CRIME IN INDIA – 2016, Table 1.3.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> National Crime Records Bureau, CRIME IN INDIA – 2016, Table 19A.3.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, Table 1.3.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> National Crime Records Bureau, CRIME IN INDIA – 2015, Table 12.5.

<sup>36</sup> National Crime Records Bureau, CRIME IN INDIA – 2016, Table 1.3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

As per records shared by the NCRB, in its annual reports, total 34671<sup>40</sup> incidences of environmental crime were reported in 2019. There has been a gradual decrease in this reporting in last 03 yrs.; same figures were 42143 and 35196 in 2017 & 2018 respectively. The crime rate for respective three yrs. has also decreased; it was 3.3, 2.7, & 2.6 in 2017, 2018, & 2019. It further shows that there was nine-fold increase in reporting of said incidences from 2016 to 2017; figures for respective two yrs. were 4732 & 42143. Prior to 2017, total reporting of said incidences used to be around 5000 in numbers.

It is important to mention here that, till 2016, environmental offences were not reported in the NCRB reports under separate chapter. Also, from 2017, NCRB has started including offences reported under the Cigarette & Other Tobacco Products Act as environmental offence which was not being recorded till 2016. Hence, there is a nine-fold increase in the data for 2017.

It is important to take notice that reporting of wildlife offences during last four yrs. (2016 to 2019) has started decreasing. In 2016, 859 incidences of wildlife offences were reported; it was 826, 782, & 618 in 2017, 2018, & 2019 respectively. Still, percentage of wildlife offences to total environmental crimes has remained around 02% during the same period. It means rate of decrease in reporting of wildlife offences is slower than rate of decrease in reporting of other environmental offences. In view of this, it may be inferred that the factors responsible for decrease in reporting of environmental offences are less effective in case of reporting of wildlife offences.

The data further shows that average arrest per-case in wildlife offences was 1.8 (1497 arrests in 826 reported cases) in 2017. It decreased to 1.65 (1295 arrests in 782 reported cases) and 1.75 (1087 arrests in 618 reported cases) in 2018 & 2019 respectively. In comparison to this, average arrests per case in all the environmental offences was 0.96 (40720 arrests in 42143 reported cases), 1.06 (37408 arrests in 35196 reported cases), and 1.04 (36237 arrests in 34671 reported cases) in 2017, 2018 & 2019 respectively. Since wildlife offences are more organized than any other environmental crime, it would necessarily include more than one person in commission of the offence. Hence, arrest per case would necessarily be more than one person. Also, in case of trans-national commission of offence, it is difficult for the investigation agency to arrest a person beyond boundaries of India. Here, important question to explore would be: does more arrest lead to better rate of conviction?

Any criminal proceeding gets initiated only when it is reported; hence it is important that true & correct record of reporting of incidences is maintained. Any analysis of statistical data, like, what is charge-sheeting rate, or, what is conviction/acquittal rate, will necessarily include reporting of incidences. From the yr. 2017 onwards, the NCRB has started reporting environmental crimes under separate chapter. Also, data reported in the NCRB reports indicate that records with respect to reporting of environmental offences were not maintained properly till the recent past.

### **Trend with respect to Disposal of Matter by Investigating Agency**

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<sup>39</sup> National Crime Records Bureau, CRIME IN INDIA – 2014, Table 12.2.

<sup>40</sup> It includes offences reported under The Indian Forest Act, The Forest Conservation Act, Wildlife Protection Act, Environmental Protection Act, Air (Prevention & Control of Pollution) Act, Water (Prevention & Control of Pollution) Act, The Cigarette & Other Tobacco Products Act, Noise Pollution Acts, and National Green Tribunal Act.

When a reported matter is recorded by the investigation agency, it exercises its discretion to investigate the matter or not to investigate. If it decides to not to investigate the matter, it needs to record reason for that. It is important that investigation is completed within reasonable time; any delay may lead to destruction of evidences, including dissociation of witnesses from the investigation process. The following table explores the role of investigation agency in ensuring that justice is delivered speedily without compromising with fundamental principles of criminal law.

Year	Disposal of Matter by Investigation Agency					
	Case found true but insufficient evidences to report charge		Charge-sheet Rate		Pendency Rate	
	Total	Wildlife	Total	Wildlife	Total	Wildlife
2019	310 <sup>41</sup>	68 <sup>42</sup>	98.6 <sup>43</sup>	84.2 <sup>44</sup>	17.9 <sup>45</sup>	30.8 <sup>46</sup>
2018	493 <sup>47</sup>	91 <sup>48</sup>	98.1 <sup>49</sup>	82.8 <sup>50</sup>	15.2 <sup>51</sup>	28.1 <sup>52</sup>
2017	389 <sup>53</sup>	96 <sup>54</sup>	98.4 <sup>55</sup>	83.6 <sup>56</sup>	13.9 <sup>57</sup>	27.3 <sup>58</sup>
2016	604 <sup>59</sup>	115 <sup>60</sup>	82.5 <sup>61</sup>	79.6 <sup>62</sup>	22.1 <sup>63</sup>	34.8 <sup>64</sup>
2015	N/A	N/A	98.1 <sup>65</sup>	90.4 <sup>66</sup>	N/A	28.9 <sup>67</sup>
2014	N/A	N/A	N/A	88.5 <sup>68</sup>	N/A	27.2 <sup>69</sup>

<sup>41</sup> National Crime Records Bureau, CRIME IN INDIA – 2019, Table 11.3.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> National Crime Records Bureau, CRIME IN INDIA – 2018, Table 11.3.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> National Crime Records Bureau, CRIME IN INDIA – 2016, Table 17-A.3.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> National Crime Records Bureau, CRIME IN INDIA – 2015, Table 17-A.3.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> National Crime Records Bureau, CRIME IN INDIA – 2014, Table 17-A.3.

<sup>69</sup> *Id.*

When commission of an offence is reported, investigation agency investigates the matter and submits its report. It may either conclude that offence was not committed, or, it may conclude that offence was committed & sufficient evidences have been collected to prove guilt of the accused, or, it may report that offence was committed but sufficient evidences could not be collected despite best efforts. The NCRB data shows that, in wildlife offences, there is high probability that sufficient evidences would not be collected. It shows that, out of total 604 such reports on insufficiency of evidences in 2016, 19% (115) were with respect to wildlife offences. The figure for 2017, 2018, & 2019 was 24.6% (96 out of 389), 18.4% (91 out of 493) 21.9% (68 out of 310) respectively.

It is important to take notice that % reporting of wildlife offences to total environmental offences stand around mere 02% during the same years. But, % of investigation matters in which sufficient evidences were not found is around 20% of total such matters. One of the reasons for failure in collecting sufficient evidence could be wildlife offence being committed trans-boundary. In case of illegal trade in wildlife, if the product of trade was already transferred across the border, investigating agencies in India can't cross the border for the purpose of collecting the evidence; neither witnesses across the border could be examined.

This table further lays out the facts & figures on charge-sheet submitted by the investigation agency. Charge-sheet rate is calculated on the basis of total no. of cases pending for investigation and total no. of charge-sheets submitted in one year. Lower rate of charge-sheet would indicate long duration in completion of investigation. The NCRB data shows that charge-sheet rate in wildlife offences is low when compared to total environmental offences. It was 90.4 viz-a-viz 98.1 in 2015, 79.6 viz-a-viz 82.5 in 2016, 83.6 viz-a-viz 98.4 in 2017, 82.8 viz-a-viz 98.1 in 2018, and 84.2 viz-a-viz 98.6 in 2019. It means investigation agency takes more time in investigating the matter on wildlife offence when compared to other environmental offences. One of the reason for taking more time in completing the investigation could be wildlife offence being a trans-national offence; other reason could be intrigued nature of the offence itself. In case of victim being voiceless, and offence being committed beyond human habitats, it is difficult to have witnesses on board. It is important to take notice that despite of high rate of pendency @ police, charge-sheet rate with respect to wildlife offences has increased from 79.6 in 2016 to 84.2 in 2019.

This observation is substantiated when we take notice of the pendency rate of matters available with the investigation agency. Pendency rate is calculated on the basis of total cases up for investigation in a year and total cases being closed by the investigation agency; here closure of a case includes final report submitted by the investigation agency. When investigation agency finds that reported offence was not committed, or, offence was committed but evidences could not be collected, it submits final report proposing that matter be closed by the Magistrate. The NCRB data further shows that pendency rate of investigation in wildlife offences is at higher side when compared to same factor in all environmental offences. It was 34.8 viz-a-viz 22.1 in 2016, 27.3 viz-a-viz 13.9 in 2017, 28.1 viz-a-viz 15.2 in 2018, and 30.8 viz-a-viz 17.9 in 2019.



This observation gets re-iterated in following table.

<b>Time Taken to Submit Charge-sheet<sup>70</sup></b>				
<b>Year</b>	<b>Up-to 03 Months</b>	<b>03 – 06 Months</b>	<b>Above 06 Months</b>	<b>Total</b>
2019	332	87	123	542
2018	426	109	130	665
2017	473	119	153	745

The NCRB data shows that out of total 542 charge-sheets in wildlife offences filed by the investigation agency in 2019, only 61.2% (332 out of 542) were filed within maximum statutory limit of 90 days which means said limit was violated in 38.2% of cases with respect to which investigation was completed in 2019. The said figure was 64%. (426 out of 665) and 63.4% (473 out of 745) in 2018 & 2017 respectively.

### **Trend with respect to Disposal of Environmental Offences in Trial Court**

Once the investigation is complete, and report is submitted by the investigation agency, onus shifts on the magistracy to ensure that justice is delivered timely without compromising with the fundamental principles of criminal law. This section of the paper lays down the facts & figures on disposal of cases at trial courts.

<b>Year</b>	<b>Disposal of Environmental Offence @ Trial Court</b>							
	<b>Pendency<sup>71</sup></b>		<b>Conviction<sup>72</sup></b>		<b>Compounded<sup>73</sup></b>		<b>Plea-bargaining<sup>74</sup></b>	
	<b>Total</b>	<b>Wildlife</b>	<b>Total</b>	<b>Wildlife</b>	<b>Total</b>	<b>Wildlife</b>	<b>Total</b>	<b>Wildlife</b>
2019	61.4	92.9	95.8	54.9	180	00	01	00
2018	60.7	93	95.9	60.8	109	02	00	00
2017	58.5	88.1	96.3	65.5	51	00	02	03
2016	85.9	91	80.1	71.5	02	00	00	00
2015	N/A	87.8	N/A	59.7	N/A	03	N/A	00
2014	N/A	91.6	N/A	62.1	N/A	01	N/A	00

The NCRB data shows that pendency rate of wildlife offences at trial court is at higher side when compared to same factor in all environmental offences. It was 91 viz-a-viz 85.9 in 2016, 88.1 viz-a-viz 58.5 in 2017, 93 viz-a-viz 60.7 in 2018, and 92.9 viz-a-viz 61.4 in 2019. Pendency rate of wildlife offences remains static around 90 during 2016-2019. Once the matter is reported to trial court, then the factors responsible for causing delay in investigation could no longer cause delay in conducting trial. Delay in trial may lead to lower rate of conviction for various reasons, like, witnesses keeping themselves absent during trial if their examination is postponed for another date, or, witnesses fading memory may turn them to be un-reliable witnesses. This observation is substantiated when we take notice that there is inverse relation between ‘pendency

<sup>70</sup> National Crime Records Bureau, CRIME IN INDIA – 2019, 2018, & 2017, Tables 17A.9.

<sup>71</sup> National Crime Records Bureau, CRIME IN INDIA – 2019, 2018, & 2017 Table 11.5; National Crime Records Bureau, CRIME IN INDIA – 2016, Table 18-A.3.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

rate’ and ‘conviction rate’. Lower pendency rate (61.4 in 2019, 60.7 in 2018, 58.5 in 2017) has resulted into high conviction rate (95.8 in 2019, 95.9 in 2018, 96.3 in 2017).

The NCRB data further shows that conviction rate in wildlife offences is at lower side when compared to conviction rate in all environmental crimes. It was mere 71.5%, 65.5%, 60.8%, and 54.9% during 2016, 2017, 2018, & 2019 respectively. On the other hand, it was 80.1%, 96.3%, 95.9%, & 95.8% during 2016 to 2019 respectively in all environmental offences.

The above observation gets re-iterated in following table.

<b>Duration of Pending Trial in Wildlife Offences<sup>75</sup></b>				
<b>Year</b>	<b>Up-to 01 Yr.</b>	<b>01 – 03 Yrs.</b>	<b>Above 03 Yrs.</b>	<b>Total</b>
2019	947	1461	781	3189
2018	905	1315	783	3003
2017	804	988	771	2563

The NCRB data shows that out of total 3189 pending trialson wildlife offence in 2019, 24.4% (781) were pending for more than 03 yrs.; the same figure for 2018 & 2017 was 26% (783 out of 3003) & 30% (771 out of 2563) respectively. It shows that there is decline in duration of pendency of trial cases as it has decreased from 30% in 2017 to 24.4% in 2019. Though data for 03 yrs. is not sufficient to draw any conclusion, but trend could be read and analyzed from the said data.

The NCRB data further shows that very few cases on wildlife offences were either compounded or plea-bargained. Though it shows that trend of getting environmental offence compounded has begun with recording of 51, 109, & 180 cases being compounded in 2017, 2018, & 2019 respectively. Prior to that, either these offences were not compounded, or data with respect to same was not being recorded.

As per Proviso clause of Sec. 54 of the Wild Protection Act, an offence with respect to which punishment is prescribed u/s 51 of the Act shall not be compounded. It further says that an offence could be compounded by an officer empowered by the Central Government or by the State Government, but it is subject to Proviso clause of the said Section. Considering recent trend of increased rate of environmental offence being compounded, as per the said table, it is suggested that wildlife offences too are made compoundable. It will lead to higher rate of conviction. Though conviction can never be object of criminal justice system, but it will bring more positive results in ensuring delivery of environmental justice.

Plea-bargaining is a court-monitored process in which accused pleads guilty against certain concession assured by the prosecution. It not only saves time but it also ensures delivery of justice which otherwise is remote in a given case for any reason. As per Sec. 265-A<sup>76</sup> of the Code of Criminal Procedure, if an offence is punishable up-to seven years of imprisonment, process of plea-bargaining could be initiated. In light of said provision, an offence which is punishable up-to seven years under Wild Life Protection Act can be brought under the ambit of plea-bargaining. It is suggested here that the prosecution should identify the cases in which

<sup>75</sup> National Crime Records Bureau, CRIME IN INDIA – 2019, 2018, & 2017, Table 18-A.8.

<sup>76</sup> Code of Criminal Procedure, 1974, S.265-A.

evidence against the accused seem weak; and then plea-bargaining may be promoted in such cases. It will be ensured by the trial court judge, as per the mandate laid down under section 265-C of the Code, that it is pleaded voluntarily by both the parties. It will ensure speedy delivery of environmental justice.

Year	Disposal of Persons @ Court					
	Discharged <sup>77</sup>		Acquittal <sup>78</sup>		Conviction <sup>79</sup>	
	Total	Wildlife	Total	Wildlife	Total	Wildlife
2019	251	48	1695	139	31496	205
2018	220	08	1474	119	31290	268
2017	227	05	1664	231	32888	329
2016	18 <sup>80</sup>	00 <sup>81</sup>	1138 <sup>82</sup>	110 <sup>83</sup>	3477 <sup>84</sup>	214 <sup>85</sup>
2015	N/A	11 <sup>86</sup>	N/A	147 <sup>87</sup>	N/A	203 <sup>88</sup>
2014	N/A	N/A	N/A	N/A	N/A	N/A

The NCRB data shows that out of total 1695 acquittals (person-wise) in 2019, 8.2 % (139 of 1695) acquittals were in wildlife offence trial. The same figure was 8.07% (119 of 1474), 13.8% (231 of 1664) and 9.6% (110 of 1138) in 2018, 2017, & 2016 respectively. On the other hand, conviction (person-wise) for the same period was 0.6% (205 of 31496 in 2019), 0.8% (268 of 31290 in 2018), 01% (329 of 32888 in 2017) & 6.15% (214 of 3477 in 2016).

When the above trend is compared to comparative arrests, arrest in wildlife offences in comparison to arrests in all environmental offences, it can be said that arrest will not necessarily lead to conviction of the accused. While total arrest, and then acquittal, both, in wildlife offences when compared to all environmental offences is at higher side, but conviction of accused person in wildlife offence is at lower side when it is compared to conviction in all environmental offences. It may also be inferred that speedy investigation will result into better case for the prosecution which may further lead to better rate of conviction.

### **Trend with respect to Extent of Sentence Awarded by the Trial Courts**

Delivery of justice is ensured not only by not convicting the innocent, but also by convicting the guilty and awarding him punishment which is appropriate in given facts & circumstances. The legislature has taken care of the nature & gravity of the offence while prescribing punishment with respect to an offence; discretion is given to the trial court judge to consider facts & circumstances of given case while awarding sentence to a convict. The legislative policy of giving such discretion to the trial court judge aims at awarding punishment which is just & fair in

<sup>77</sup> National Crime Records Bureau, CRIME IN INDIA – 2019, 2018, & 2017, Table 11.5.

<sup>78</sup> National Crime Records Bureau, CRIME IN INDIA – 2019, 2018, & 2017, Table 11.7.

<sup>79</sup> *Id.*

<sup>80</sup> National Crime Records Bureau, CRIME IN INDIA – 2016, Table 19A.7

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> National Crime Records Bureau, CRIME IN INDIA – 2015, Table 12.6.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

given facts & circumstances. As discussed herein above, punitive mechanism under environmental criminal law primarily aims at creating deterrence among potential offenders, it is important to explore the extent of punishment awarded by the trial courts in environmental offences. Considering sub-theme of this paper, scope of this section of the paper is delimited to trial court orders on wildlife offence trial cases only.

<b>Trend with respect to Extent of Sentence Awarded</b>			
<b>Total Cases</b>	<b>57</b>		
<b>No. of Convicts</b>	<b>154</b>		
<b>Extent of Sentence</b>	<b>Sentence Awarded</b> (Total Convicts - 191)		<b>Fine Imposed</b> (Total Convicts - 191)
	<b>Offences Punishable with Max. 03 Yrs.</b>	<b>Offences Punishable with Max. 07 Yrs.</b>	<b>Offences Punishable with Max. Fine of Rs. 25,000/-</b>
<b>Max. Sentence</b> (No. of Convicts)	<b>46 (46%)</b>	<b>13 (14%)</b>	<b>00</b>
<b>Less than Max. Sentence</b> (No. of Convicts)	<b>53 (53%)</b>	<b>79 (86%)</b>	<b>191 (100%)</b>
<b>Total</b>	<b>79 (100%)</b>	<b>82 (100%)</b>	<b>191 (100%)</b>

The above table is a brief description of analysis of 57 trial court judgements on wildlife offences. In these 57 judgements, trial courts have convicted 154 persons issuing 191 orders imposing fine upon the convicted. Total 191 sentences were also passed with respect to 154 convicted. Since convicts were involved & further convicted in multiple offences, hence order on sentence & fine is more than total number of convicts. Details of these trial court judgements have been retrieved from website of Wildlife Crime Control Bureau.<sup>89</sup>

It shows that majority of convicts were awarded imprisonment less than maximum punishable imprisonment as only 46% of total imprisonment order were for 03 yrs. in which offence was punishable with maximum 03 yrs. This figure decreases to mere 14% in cases wherein maximum imprisonment could have been for 07 yrs. Trial courts are more careful while awarding imprisonment in trial on offences punishable with maximum 07 yrs. imprisonment that's why only 14% of total sentencing order in said kind of cases were with maximum imprisonment of 07 yrs.

It is surprising to find that in no case maximum fine was imposed by the trial court despite of the fact that huge profit margin is earned in illegal wildlife trade. While awarding sentence, trial court considers factors beyond commission of offence. Mitigating factors, like, poor socio-economic condition of the convict, age of the convict, conduct of the convict during trial, and similar other factors, play role in award of sentence, especially imposing the fine. In *Swarn Singh v. State of Punjab*<sup>90</sup>, the Supreme Court has said that 'it is duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation,

<sup>89</sup> Wildlife Crime Control Bureau, *List of Convicts in Wildlife Cases*, available at – <http://wccb.gov.in/Content/Convicts.aspx> (last visited on Mar. 5, 2021).

<sup>90</sup> *Swarn Singh v. State of Punjab*, (1978) 10 SCC 111.

the capacity of the accused to pay and order relevant circumstances in fixing the amount of fine or compensation'. The same opinion on considering socio-economic condition of the convict while awarding sentence has been re-iterated by Supreme Court in no. of other judgements.<sup>91</sup>

Modus operandi in illegal trade in wildlife primarily works through intermediaries between person committing the actus of killing and the ultimate seller who earns the maximum profit. It is a big business for those only who have connect in the international market of illegal wildlife trade. Irony is that the actus, i.e., killing a scheduled animal or a bird, is not done by the person involved in international trade. He would hire an intermediary for supply of wildlife product who would further hire a poor local tribal person for killing the animal or the bird. These intermediaries would supply the product of trade to the person having connects in the international market.

It may be inferred that, in most of the cases, it is poor local tribal who gets caught and the main player in the illegal trade seldom gets caught. This inference is drawn on the basis of following facts: (i) socio-economic condition of the convict being considered at the time of awarding sentence, (ii) awarding fine at the lower side; no case of imposing maximum fine on the convicts. This inference may be got testified by having detailed analysis of facts & circumstances with respect to convicts. This could be done only by exploring the case-files.

## CONCLUSION

The very 'nature' of environmental offence is different from any other offence. Human elements, like, emotions, or, family reasons, or, socio-economic factors have no role to play in commission of an environmental offence. Its sole motive could be 'earning money', similar to offence of theft. Unlike murder or rape which might have been committed in fit of anger or frustration or sexual urge, killing of an animal or a bird do never have such reasons behind commission of actus. Other environmental offences, like, running polluted industry or vehicle, contaminating water, etc. too are unique in 'nature' and should not be compared with any other criminal conduct. These are the offences that are not individual specific, but are offences committed against the society at large. For these reasons, it is important to deal with environmental issues as an independent discipline, be it is dealt in the world of academia or in the legal profession. This is what we have done in last few decades.

Environmental law in India has witnessed a remarkable development over past decades, but that is primarily in civil law jurisdiction. Supreme Court judgements have given a definite shape to civil law jurisprudence in the area of environmental issues. Due to absence of criminal law jurisprudence, courts & investigation agencies dealing with environmental offences fail in contributing what is expected out of them. E.g., in absence of sentencing policy or guideline that would cater to environmental offences, hardly any trial court judge would pass maximum imprisonment or fine order. It further frustrates attaining the deterrent effect of punitive mechanism in environmental offences. Statistical data laid down in this paper shows higher rate of charge-sheet rate, low rate of pendency at investigation stage as well as at trial stage, gives better conviction rate.

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<sup>91</sup> *Hari Singh v. Sukhbir Singh & Ors.*, AIR 1988 SC 2127; *Surendra Pal Shivbalakpal v. State of Gujarat*, (2005) 3 SCC 127; *Sushhil Kumar v. State of Punjab*, (2009) 10 SCC 434.

In our contemporary times, environmental law is no longer a mere administrative mechanism; there is a legislative mandate empowering the court to try & punish the offenders as it is empowered to try & punish any other offence. Environmental criminal law statutes that were enacted few decades ago are more relevant in our contemporary times; we need to contribute in development of environmental criminal law jurisprudence that will assist & guide the trial courts as well as investigating agencies to have better outcome of criminal justice system with respect to environmental issues.