



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 4 | Issue 2

Art. 45

2025

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Recommended Citation

Sejal and Ashmika Agrawal, *Criminal vs. Civil Penalties for Environmental Violations in Mining: A Comparative Analysis of India and Canada*, 4 IJHRLR 663-681 (2025).

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Criminal vs. Civil Penalties for Environmental Violations in Mining: A Comparative Analysis of India and Canada

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Manuscript Received
17 Apr. 2025

Manuscript Accepted
18 Apr. 2025

Manuscript Published
20 Apr. 2025

ABSTRACT

This research paper presents a comparative legal analysis of criminal and civil penalties for environmental violations in mining operations across India and Canada. It explores the distinct approaches adopted by each jurisdiction in deterring environmental harm, enforcing accountability, and promoting sustainable mining practices. Drawing from statutory frameworks, judicial precedents, and regulatory enforcement mechanisms, the study evaluates the effectiveness of punitive and restorative sanctions in achieving environmental justice. Some of the notable landmark case laws are examined to illustrate the jurisprudential developments in both countries. The paper also investigates the operational challenges faced by regulatory bodies like India's CPCB and Canada's ECCC in enforcing compliance. The findings underscore the need for a balanced, integrated approach to environmental regulation, combining deterrence with remediation, foster responsible resource extraction and ecological protection.

KEYWORDS

Environmental Law, Mining, Criminal Penalties, Civil Penalties, India, Canada, Environmental Violations, Comparative Analysis

INTRODUCTION

Mining is an essential driver of economic growth in both developing and developed nations, yet its environmental ramifications are profound and often irreversible. From deforestation and soil erosion to contamination of air and water resources, mining operations pose significant ecological threats. In response, legal systems across jurisdictions have evolved to impose penalties both criminal and civil to deter environmental violations and hold offenders accountable. This research paper undertakes a comparative analysis of the criminal and civil penalties levied for environmental infractions in mining operations, with a specific focus on India and Canada.

The central objective of this study is to critically examine how the two jurisdictions structure and enforce legal consequences for environmental misconduct within the mining sector. By exploring the distinctions and overlaps in their legal frameworks, enforcement mechanisms, and judicial interpretations, the paper assesses the relative effectiveness of criminal and civil sanctions in achieving environmental justice and regulatory compliance. Special emphasis is placed on the normative and practical roles these penalties play in preventing environmental degradation, compensating affected communities, and promoting sustainable mining practices.

The study draws upon a range of statutory instruments, constitutional mandates, and landmark judicial decisions to illustrate the contours of environmental liability. In India, decisions such as *M.C. Mehta v. Union of India*¹ (1987) and *Indian Council for Enviro-Legal Action v. Union of India*² (1996) have shaped the jurisprudence on environmental harm through “*the principles of strict liability and polluter pays*”. In contrast, Canadian precedents like *R v. Syncrude Canada Ltd*³. (2010) and *R v. Shell Canada Ltd*⁴. (2010) underscore the increasing criminalization of corporate environmental negligence and the emphasis on remediation.

Further, the paper explores the administrative and institutional roles played by key regulatory agencies such as India’s Central Pollution Control Board (CPCB) and Canada’s Environment and Climate Change Canada (ECCC) highlighting the systemic challenges they encounter in enforcing compliance within the

¹ *M.C. Mehta v. Union of India*, (1987) 2 SCC 257.

² *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

³ *R v. Syncrude Canada Ltd.*, 2010 ABCA 72, 459 A.R. 324 (Can.).

⁴ *R v. Shell Canada Ltd.*, 2010 ABCA 134, 474 A.R. 241 (Can.).

mining sector. These include issues related to capacity, political interference, evidentiary thresholds, and procedural bottlenecks.

LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION IN INDIA AND CANADA

A. Environmental Laws in India

The Constitution of India plays a crucial role in shaping the country's approach to environmental protection. Two key provisions are particularly significant in the context of environmental law. Article 48A of the Directive Principles of State Policy directs the State to "*protect and improve the environment and to safeguard the forests and wildlife of the country.*" This provision establishes an affirmative duty for the State to act in the interest of the environment. Additionally, Article 51A(g)⁵ of the Fundamental Duties mandates that it is "*duty of every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.*" These provisions enshrine environmental protection within the constitutional framework, making it both a governmental and a citizen responsibility.

Key Environmental Laws

The primary statutes that govern India's legislative framework for environmental protection include those that control pollution, manage natural resources, and encourage sustainable development. Several of these laws are particularly relevant for mining operations, which have the potential to cause significant environmental harm.

- **The Environment Protection Act, 1986:** This historic law offers India a thorough foundation for environmental protection. Section 5⁶ of the Act grants the central government the power to take measures for the protection and improvement of the environment, including the issuance of directions to individuals, industries, and governmental authorities. Section 15⁷ of the Act specifically addresses penalties for environmental violations, prescribing fines and imprisonment for individuals or entities responsible for causing environmental harm. Section 16 provides for preventive measures, empowering

⁵ INDIA CONST. art. 51A, cl. g.

⁶ The Environment Protection Act, 1986, § 5, No. 29, Acts of Parliament, 1986 (India).

⁷ The Environment Protection Act, 1986, § 15, No. 29, Acts of Parliament, 1986 (India).

the government to take action to prevent environmental harm even before it occurs.

- **The Mines and Minerals (Development and Regulation) Act, 1957:** By regulating the mining industry in India, this Act makes sure that activities don't have a negative impact on the environment. The Mineral Conservation and Development Rules, 2017, which regulate mining operations and establish sanctions for illicit mining activities, complement the Act. These regulations seek to guarantee that resources are mined ethically and lessen the negative effects of mining on the environment.
- **The Forest (Conservation) Act, 1980:** This law regulates how forest land is used in India, even when it is diverted for uses other than forests, such as mining. In order to safeguard the nation's forest resources, the Act imposes strict restrictions on the use of forest land for mining activities and mandates prior central government clearance for any such diversion.
- **The National Green Tribunal Act, 2010:** Under this Act, the National Green Tribunal (NGT) was created to offer a specialized platform for discussing environmental matters. In addition to awarding compensation for environmental infringement, the NGT has the power to consider disputes pertaining to environmental protection. It is essential for upholding environmental regulations and guaranteeing responsibility for damage to the environment, especially that brought on by mining activities.

B. Landmark Case Laws

Various landmark cases in India have shaped the development of environmental law, particularly in relation to mining activities:

- ***M.C. Mehta v. Union of India*⁸ (1987):** This case is a foundational case in Indian environmental law, where the apex court established “the principle of strict liability” for environmental damage, particularly in the context of hazardous industries. The case highlighted the need for mining and industrial activities to adopt preventive measures to avoid environmental harm.
- ***Vellore Citizens Welfare Forum v. Union of India*⁹ (1996):** This case brought “the principles of the

⁸ M.C. Mehta, (1987) 2 SCC 257, at 1.

⁹ Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

precautionary principle and the polluter pays principle” into Indian environmental law. The Court held that industries, including mining operations, must take necessary steps to prevent environmental degradation and compensate for damage caused by their activities.

B. Environmental Laws in Canada

Key Environmental Laws

With federal and provincial laws governing mining operations and guaranteeing adherence to environmental standards, Canada has a strong legal framework for environmental protection. The following are the main environmental laws:

- **Canadian Environmental Protection Act¹⁰, 1999 (CEPA):** The CEPA is the cornerstone of environmental protection law in Canada. It establishes both criminal and civil penalties for violations of environmental standards, including those related to mining operations. The Act grants the federal government broad powers to regulate the use of toxic substances and to prevent pollution. Under CEPA, violations can result in significant penalties, including fines and imprisonment. The Act provides the basis for the regulation of hazardous substances that may arise from mining operations, with a focus on preventing harm to the environment and human health.
- **Fisheries Act¹¹:** This Act is particularly relevant to mining operations that affect water bodies. The Fisheries Act criminalizes pollution of waters that could harm fish habitat, which is especially important for mining operations that may discharge pollutants into rivers and streams. Violations of the Fisheries Act can result in significant fines and criminal charges, emphasizing the importance of water conservation in mining activities.
- **Canadian Environmental Assessment Act¹², 2012 (CEAA 2012):** This Act mandates environmental assessments for major mining projects. The CEAA ensures that the environmental impacts of mining projects are fully considered before approvals are granted. With consequences for non-compliance, it necessitates a thorough assessment of the possible impacts of mining operations on ecosystems, water bodies, and communities.

¹⁰ Canadian Environmental Protection Act, R.S.C. 1999, c. 33 (Can.).

¹¹ Fisheries Act, R.S.C. 1985, c. F-14 (Can.).

¹² Canadian Environmental Assessment Act, S.C. 2012, c. 19 (Can.).

In order to guarantee that impacted communities have a say in the decision-making process, the Act also contains procedures for public engagement.

- **Provincial Regulations:** In addition to federal laws, each province in Canada has its own set of regulations governing mining operations. For example, Ontario, British Columbia, and Alberta have specific mining laws that address environmental violations related to mining activities. These regulations include provisions for environmental assessments, permits for mining operations, and penalties for non-compliance. Each province has regulatory bodies tasked with enforcing these laws and ensuring that mining companies adhere to environmental standards.

Canadian case law has also played an important role in shaping the enforcement of environmental regulations in the mining sector. Some significant cases include:

- ***Syncrude Canada Ltd. case*¹³ (2010):** Syncrude Canada was charged with failing to comply with environmental regulations, particularly related to the release of toxic substances. The case set an important precedent in Canadian environmental law by affirming that large corporations could be held criminally liable for environmental violations, even if the violations were not intentional.
- ***R v. Imperial Oil Ltd*¹⁴. (2017):** Imperial Oil was convicted under the Fisheries Act for violations related to pollution in a mining project. This case underscored the application of criminal liability for pollution of water bodies and the importance of adhering to environmental protection laws in the mining industry.

CRIMINAL PENALTIES FOR ENVIRONMENTAL VIOLATIONS IN MINING

A. Criminal Penalties in India

The purpose of criminal sanctions for mining environmental infractions in India is to discourage destructive activities that have a negative impact on the environment. Statutes that hold people or businesses accountable for environmental damage criminally liable impact the legal system.

¹³ R v. Syncrude Canada Ltd., 2010 ABCA 72, at 3.

¹⁴ R v. Imperial Oil Ltd., 2017 ABCA 212, 477 A.R. 283 (Can.).

One of the landmark cases in establishing criminal liability for environmental harm in India is Sri Oleum Gas Leak case of 1987¹⁵, where the Supreme Court introduced the principle of strict liability for hazardous industries. Environmental activist M.C. Mehta submitted a petition in the case, claiming that a facility operated by Shriram Foods and Fertilizers was leaking oleum gas. The Court held that industries engaged in hazardous activities could be held strictly liable for any harm caused, regardless of negligence or fault. This ruling expanded the scope of liability in environmental law and was instrumental in holding mining operations criminally liable for environmental degradation, particularly in cases where hazardous materials were involved.

Another significant case, *Vellore Citizens Welfare Forum case of 1996*¹⁶, reinforced “the principles of the precautionary approach and polluter pays.” The Supreme Court ruled that it was necessary to apply “the precautionary principle” in all cases where human activities had the potential to harm the environment. This case has profound implications for mining operations, emphasizing that any harm caused to the environment by mining should be remedied by the polluter, including through financial penalties and compensation for restoration efforts.

The case of *Vivek Jha v. State of Himachal Pradesh*¹⁷ (2008) further illustrates the criminal penalties associated with environmental harm in mining. The petitioner, Vivek Jha, sought action against illegal mining operations that were harming the ecology in the Himachal Pradesh region. The Himachal Pradesh High Court imposed criminal liability on the mining operators for illegal extraction, citing the environmental destruction caused by unregulated mining activities. This case serves as a critical example of how mining activities in India can face criminal penalties when they disregard environmental protection measures. Additionally, it reiterates the need for strong enforcement mechanisms to curb illegal mining, an issue that continues to be a challenge in many regions of India.

Relevant Provisions

- The Environment Protection Act, 1986: Section 15¹⁸ of this Act specifically deals with penalties for environmental violations, including imprisonment for up to 5 years or fines up to ₹1 lakh, or both, for individuals found guilty of

¹⁵ M.C. Mehta, (1987) 2 SCC 257, at 1.

¹⁶ Vellore Citizens Welfare Forum, (1996) 5 SCC 647, at 9.

¹⁷ Vivek Jha v. State of Himachal Pradesh, (2008) 2 SCC 487.

¹⁸ Environment Protection Act, *supra* note 3.

environmental harm. In cases of continued violations, the fine can increase to ₹5,000 per day of non-compliance.

- The Mines and Minerals (Development and Regulation) Act, 1957: Section 21¹⁹ of this Act criminalizes illegal mining and stipulates penalties, including imprisonment for a term that may extend to 5 years, or a fine, or both, for violations. These penalties are applied to those engaged in mining without the proper permissions or in violation of environmental norms.

B. Criminal Penalties in Canada

Canada's environmental laws impose both criminal and civil penalties for violations in the mining sector, with a clear focus on deterring environmental harm and ensuring compliance with regulations²⁰. Criminal penalties are particularly relevant in cases of deliberate pollution or failure to follow required procedures in mining operations.

A landmark case in Canada is *R v. Syncrude Canada Ltd.* (2010)²¹, where Syncrude, a company operating in the oil sands industry, was charged with criminal violations under the Fisheries Act for the pollution of a pond that caused the death of hundreds of migratory birds. The case highlighted the strict environmental standards applicable to the oil sands industry, a sector closely related to mining operations due to its extraction process. Syncrude was found guilty of failing to take adequate precautions to prevent the pollution of the pond, and the company was penalized under the Fisheries Act for its role in harming fish and wildlife habitats. The Syncrude case established that companies involved in resource extraction, including mining, could face severe criminal liability for environmental violations, especially when these violations result in harm to ecosystems or wildlife.

In *R v. Imperial Oil Ltd.* (2017)²², Imperial Oil was convicted under the Fisheries Act for violating pollution control regulations in relation to a mining project. The company had failed to adequately control the discharge of pollutants into a water body, which resulted in environmental degradation. The case served as a reminder of the significance of following regulations in the mining industry and the possible criminal consequences of breaking them. The federal government's determination to hold mining firms responsible for environmental harm and to ensure that they

¹⁹ The Mines and Minerals (Development and Regulation) Act, 1957, No. 67 of 1957, § 21 (India).

²⁰ Criminal Code, R.S.C. 1985, c. C-46 (Can.).

²¹ Syncrude Canada Ltd., 2010 ABCA 72, at 3.

²² Imperial Oil Ltd., 2017 ABCA 212, at 14.

face criminal consequences when their actions cause pollution or harm to natural resources was evidenced by the conviction.

Relevant Provisions

- Canadian Environmental Protection Act, 1999 (CEPA): Under Section 272²³, CEPA establishes the grounds for criminal prosecution of environmental violations, including fines up to \$1 million for individuals and \$6 million for corporations per violation, along with possible imprisonment for individuals found guilty of serious offenses. This Act allows for criminal prosecution in cases where companies or individuals discharge pollutants or fail to comply with regulatory standards in mining and related activities.
- Fisheries Act: Under Sections 35 and 36²⁴, the Fisheries Act criminalizes pollution of waters that affect fish habitats, which are particularly relevant for mining operations that may discharge pollutants into rivers, lakes, or streams. The Act imposes criminal penalties, including fines and imprisonment, for violations that result in environmental harm, with a focus on preserving aquatic ecosystems.
- Canadian Environmental Assessment Act, 2012 (CEAA 2012): Section 49²⁵ of CEAA 2012 provides for criminal prosecution in cases where a mining project proceeds without the required environmental assessment or where there is a failure to comply with the conditions set out in the environmental assessment approval.

CIVIL PENALTIES FOR ENVIRONMENTAL VIOLATIONS IN MINING

A. Civil Penalties in India

In India, civil penalties for environmental violations in mining are primarily focused on ensuring compensation for environmental damage and remediation efforts. These penalties are essential for addressing the harm caused by mining activities and are usually imposed in addition to criminal penalties. Indian courts have consistently applied civil penalties to hold mining operators accountable for the environmental harm they cause.

²³ Canadian Environmental Protection Act, R.S.C. 1999, c. 33, § 272 (Can.).

²⁴ Fisheries Act, R.S.C. 1985, c. F-14, §§ 35, 36 (Can.).

²⁵ Canadian Environmental Assessment Act, S.C. 2012, c. 19, § 49 (Can.).

One of the most significant cases in the area of civil penalties is *Indian Council for Enviro-Legal Action v. Union of India* (1996)²⁶, where the Supreme Court dealt with the issue of toxic waste discharge from industries, including mining operations. The Court directed that compensation be paid for the damage caused by the discharge of toxic substances into the surrounding environment, recognizing that industries must bear the cost of environmental restoration. The decision in this case set a precedent for applying civil penalties in the form of compensation for environmental harm caused by mining operations, particularly when they result in long-term damage to local ecosystems.

Another, *M.C. Mehta*²⁷ case of 2004, involved the issue of compensation for environmental damage caused by industries, with a focus on mining operations. The Court held that industrial activities causing significant environmental damage could be subject to civil penalties, including the imposition of fines and the requirement for companies to pay for the restoration of the affected environment. The Court applied the "polluter pays" principle, reinforcing the notion that those who harm the environment must compensate for the damage caused, even if the harm was unintentional. This case further solidified the civil penalty framework in India, particularly in the context of industries like mining that can have far-reaching environmental consequences.

In *Vellore Citizens Welfare Forum* 1996²⁸ case, the apex court emphasized the importance of imposing civil penalties for industrial pollution and environmental degradation caused by mining activities. The case involved the contamination of water sources due to industrial activities, including mining, and the Court ordered that compensation be paid for the damage caused to the local population and environment. This case highlighted the need for an effective civil penalty framework that not only penalizes environmental offenders but also ensures the restoration of the affected environment.

Relevant Provisions

- The Environment Protection Act, 1986: Section 15²⁹ of the Act provides for penalties in cases of environmental violations. This section allows the imposition of both criminal and civil penalties, with civil penalties often taking the form of compensation for the restoration of environmental damage. The Act empowers the central

²⁶ *Indian Council for Enviro-Legal Action*, (1996) 3 SCC 212, at 2.

²⁷ *M.C. Mehta v. Union of India*, (2004) 12 S.C.C. 118 (India).

²⁸ *Vellore Citizens Welfare Forum*, (1996) 5 SCC 647, at 9.

²⁹ Environment Protection Act, *supra* note 3.

government to impose fines and sanctions on companies or individuals responsible for violating environmental laws, including those related to mining operations.

- The National Green Tribunal Act, 2010: according to Section 15³⁰ of the act, the Tribunal has the authority to impose civil penalties in the form of compensation for environmental violations. The Tribunal's powers include the authority to award compensation for the damage caused to the environment, a mechanism that is particularly relevant for mining operations that may cause extensive environmental harm.

B. Civil Penalties in Canada

In Canada, civil penalties for environmental violations in mining are enforced under both federal and provincial laws, ensuring that violators are held accountable for environmental harm³¹. These penalties are intended to address the damage caused by mining activities and support the restoration of affected ecosystems. Civil penalties in Canada can include financial compensation, remedial actions, and other forms of restitution to restore the environment.

In *R v. Stepan Company*³² (2008), the company was charged with violating environmental laws, specifically for pollution related to its mining operations. The case focused on the imposition of civil penalties in the form of fines and compensation for the environmental harm caused. The Court ordered that Stepan Company pay a substantial amount in civil penalties, which were intended to address the cost of environmental remediation and discourage future violations. This case underscored the Canadian approach of holding companies financially accountable for the environmental damage they cause, particularly when the violations are the result of mining activities that impact ecosystems.

In Shell case 2010, Shell was penalized for violating environmental regulations related to its mining activities. The company was held accountable for the environmental harm caused by its operations, including pollution and habitat destruction. The Court imposed civil penalties on Shell, including fines and the requirement to undertake remedial actions to restore the affected areas. This case exemplified the Canadian legal framework for imposing civil penalties in mining operations,

³⁰ National Green Tribunal Act, 2010, No. 19 of 2010, § 15 (India).

³¹ Gunningham, Neil & Grabosky, Peter, *Smart Regulation: Designing Environmental Policy* (Oxford Univ. Press 1998).

³² *R. v. Stepan Co.*, 2008 ONCJ 129 (Can. Ont. Ct. J.).

reinforcing the idea that companies involved in resource extraction must bear the costs of environmental harm caused by their activities.

Relevant Provisions:

- Canadian Environmental Protection Act, 1999 (CEPA): Under Section 272, CEPA provides for civil penalties for environmental violations, including those related to mining operations. These penalties can include fines, compensation for environmental restoration, and other remedial actions aimed at mitigating the damage caused. The Act also empowers the government to impose civil sanctions in cases where violations result in environmental degradation.
- Fisheries Act: The Fisheries Act provides a mechanism for imposing civil penalties for environmental violations related to mining operations that affect water bodies and aquatic life. Under Sections 35 and 36³³, the Act allows for civil penalties in the form of fines and compensation for damages caused to fish habitats due to mining-related pollution.
- Canadian Environmental Assessment Act, 2012 (CEAA 2012): Section 49³⁴ of the CEAA 2012 allows for the imposition of civil penalties on companies that fail to comply with environmental assessment procedures, including those required for mining projects. The Act ensures that mining projects undergo a thorough environmental review and that companies are held responsible for any environmental harm caused by their failure to comply with environmental assessments.

ENFORCEMENT MECHANISMS AND CHALLENGES

A. Enforcement Agencies in India

In India, the primary enforcement agencies responsible for environmental compliance include the Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCBs), and the National Green Tribunal (NGT). The CPCB, constituted under the Water (Prevention and Control of Pollution) Act³⁵, 1974, and also entrusted with powers under the Air (Prevention and Control of Pollution) Act,³⁶ 1981, serves as the apex body for pollution control at the national level. It issues directions under Section 5

³³ Fisheries Act, *supra* note 9.

³⁴ Canadian Environmental Assessment Act, *supra* note 9.

³⁵ Water (Prevention and Control of Pollution) Act, No. 6 of 1974, INDIA CODE

³⁶ Air (Prevention and Control of Pollution) Act, No. 14 of 1981, INDIA CODE.

of the Environment (Protection) Act³⁷ 1986, and coordinates with SPCBs for state-level implementation.

The National Green Tribunal Act of 2010 created the NGT, a specialized court with the authority to decide issues pertaining to forest conservation and environmental protection in a timely and efficient manner. It exercises original jurisdiction under Section 14³⁸ and appellate jurisdiction under Section 16³⁹ of the Act. The Tribunal is also authorized under Section 15 to award compensation and restitution for environmental damage, thus functioning as both a judicial and quasi-civil enforcement mechanism.

The landmark case of *Goa Foundation v. Union of India*⁴⁰, highlighted the judiciary's role in enforcing environmental compliance in the mining sector. The Supreme Court suspended mining leases in Goa due to illegal operations that caused severe environmental degradation, and emphasized the need for robust enforcement mechanisms.

B. Enforcement Agencies in Canada

Federal and provincial agencies in Canada are responsible for enforcing environmental laws. The Canadian Environmental Protection Act, 1999 (CEPA) and other important laws are administered and enforced at the federal level by Environment and Climate Change Canada (ECCC). A thorough regulatory framework for pollution prevention and control is provided by CEPA, which also has the authority to pursue criminal infractions under Part 10 and issue environmental protection compliance orders under Section 235.

Provincial regulatory agencies, such as Ontario's Ministry of the Environment, Conservation and Parks⁴¹ (MECP), and British Columbia's Ministry of Energy, Mines and Low Carbon Innovation, play a crucial role in enforcing environmental standards in mining operations. These bodies issue mining permits, conduct environmental assessments, and impose penalties for non-compliance. In British Columbia, for example, violations of environmental laws are prosecuted under the

³⁷ Environment (Protection) Act, No. 29 of 1986, § 5, INDIA CODE.

³⁸ National Green Tribunal Act, 2010, § 14, No. 19, Acts of Parliament, 2010 (India).

³⁹ National Green Tribunal Act, 2010, § 16, No. 19, Acts of Parliament, 2010 (India).

⁴⁰ *Goa Found. V. Union of India*, (2014) 6 S.C.C. 590 (India).

⁴¹ Mines Act, R.S.B.C. 1996, c. 293 (Can.).

Environmental Management Act, SBC 2003, c 53⁴², and the Mines Act, RSBC 1996, c 293.

In *R v. Teck Metals Ltd.*⁴³, 2010 BCSC 1479, the company was fined under the Fisheries Act for discharging pollutants into a river, illustrating Canada's firm enforcement stance in mining-related environmental offenses.

C. Challenges

India faces several challenges in enforcing environmental penalties in mining operations. These include limited technical and financial capacity of SPCBs, overlapping jurisdiction among enforcement agencies, and systemic corruption and political interference. In addition, illegal mining persists due to weak monitoring and delayed prosecutions, as seen in the Karnataka mining scandal addressed in *Samaj Parivartana Samudaya v. State of Karnataka*⁴⁴.

In contrast, Canada's enforcement faces difficulties in balancing environmental protection with economic imperatives, particularly in resource-rich provinces where mining significantly contributes to GDP. Moreover, logistical constraints in monitoring mining operations in remote areas hinder effective enforcement. The fragmented nature of federal-provincial jurisdiction can also cause inconsistencies in regulatory standards and enforcement actions.

Nonetheless, Canada's use of administrative monetary penalties (AMPs), public enforcement databases, and proactive inspection regimes has strengthened its compliance culture. India's enforcement architecture, while evolving, requires structural reforms and enhanced capacity to realize similar outcomes.

LEGAL AND ENVIRONMENTAL IMPACT OF CRIMINAL VS. CIVIL PENALTIES IN MINING

Effectiveness of Criminal Penalties

The effectiveness of criminal penalties in mining-related environmental violations can be measured by their deterrence effect, public awareness, and the extent to which they ensure compliance with environmental laws. Criminal penalties serve as a deterrent by imposing severe consequences for those who engage in illegal mining activities or cause environmental harm.

⁴² Environmental Management Act, S.B.C. 2003, c. 53 (Can.).

⁴³ *R. V. Teck Metals Ltd.*, 2010 BCSC 1479 (Can. B.C.).

⁴⁴ *Samaj Parivartana Samudaya v. State of Karnataka*, (2013) 8 S.C.C. 154 (India).

This serves as a preventive measure by discouraging potential violators. In India, criminal penalties under the Environment Protection Act, 1986 (EPA) and The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) play an essential role in controlling illegal mining. Section 15⁴⁵ of the EPA prescribes penalties for any violation of its provisions, while Section 24⁴⁶ of the MMDR Act provides for imprisonment in cases of illegal mining. Landmark cases such as *M.C. Mehta case* 1987 have solidified the importance of criminal responsibility in curbing major environmental violations, particularly for hazardous industries (e.g., chemical industries, mining).

Public awareness is another crucial aspect of criminal penalties. High-profile criminal cases, such as *Syncrude Canada case* 2010, have drawn significant media attention, educating the public on the environmental impact of mining and the legal consequences of violations. Criminal penalties thus also have a role in building societal support for more stringent regulations. Additionally, criminal penalties contribute to compliance by creating a fear of legal consequences that outweighs the short-term economic benefits of violating environmental regulations.

Effectiveness of Civil Penalties

Civil penalties, on the other hand, primarily aim at compensating victims of environmental harm and restoring the environment, rather than punishing offenders. They are grounded in the principle of restorative justice, which focuses on rectifying the damage caused by violations and ensuring that the violator contributes to the restoration of the affected environment. In India, civil penalties are governed by cases like *Indian Council for Enviro-Legal Action v. Union of India* (1996)⁴⁷, where the apex court imposed civil penalties on industries for discharging toxic wastes. Such penalties act as a form of restitution, compensating for harm caused to the environment and public health. The growing body of environmental case law, including *Vellore Citizens Welfare Forum v. Union of India* (1996)⁴⁸, underscores the importance of civil compensation in addressing violations that may not necessarily lead to criminal charges.

In Canada, civil penalties are integrated into frameworks like the Canadian Environmental Protection Act, 1999 (CEPA), and the Fisheries Act, which provide mechanisms for compensating

⁴⁵ Environment Protection Act, *supra* note 3.

⁴⁶ Mines and Minerals (Development and Regulation) Act, 1957, § 24, No. 67, Acts of Parliament, 1957 (India).

⁴⁷ Indian Council for Enviro-Legal Action, (1996) 3 SCC 212, at 2.

⁴⁸ Vellore Citizens Welfare Forum, (1996) 5 SCC 647, at 9.

damage to natural resources. Civil fines, along with the restoration of the environment, aim at long-term sustainability. For instance, in *R v. Shell Canada Limited* (2010)⁴⁹, the company was required to pay civil fines for violations, coupled with the obligation to restore the impacted environment. This framework reflects Canada's approach of using civil penalties as part of a broader strategy for promoting long-term environmental protection and sustainability⁵⁰.

Comparative Analysis of Criminal vs. Civil Penalties

India's legal approach has traditionally favored civil penalties, with criminal enforcement mechanisms slowly gaining traction in recent years. The case of *M.C. Mehta* 2004⁵¹ case indicates a move toward more stringent criminal enforcement, but civil penalties continue to dominate as a tool for controlling industrial pollution and mining-related violations. This focus on civil penalties in India reflects a broader trend where punitive measures are balanced with compensatory and restorative measures aimed at repairing environmental damage.

Canada, in contrast, employs a more balanced approach, incorporating both criminal and civil penalties depending on the severity of the violation. For example, in *Imperial Oil case* 2017⁵², the court imposed criminal penalties for a significant violation, while in cases involving less severe environmental harm, civil penalties were imposed. This balanced system allows for flexibility in addressing the different types of environmental violations that occur in the mining sector.

Recommendations for Both Countries

There are a number of suggestions for enhancing the efficacy and implementation of environmental sanctions in both nations. First, in order to guarantee that infractions are found and dealt with effectively, enforcement measures must be strengthened. In India, political meddling and a lack of funding frequently cause problems for the State Pollution Control Boards (SPCBs) and the Central Pollution Control Board (CPCB)⁵³.

Canada, on the other hand, must focus on enhancing enforcement in remote mining areas where violations are harder

⁴⁹ R, 2010 ABCA 134, at 2.

⁵⁰ Canadian Environmental Law Association (CELA), Enforcement of Environmental Laws in Canada, available at <https://cela.ca>.

⁵¹ *M.C. Mehta*, (2004) 12 S.C.C. 118, at 10.

⁵² *Imperial Oil Ltd.*, 2017 ABCA 212, at 14.

⁵³ Divan, Shyam & Rosencranz, Armin, *Environmental Law and Policy in India: Cases, Materials and Statutes* (2d ed. 2001).

to monitor. Regulatory bodies like Environment and Climate Change Canada (ECCC) must also ensure that penalties are enforced proportionally to the severity of the violation.

Secondly, increasing public awareness and education about environmental laws and penalties is crucial. Public support for stringent environmental regulations is often essential for ensuring compliance, especially in developing countries like India. Public awareness campaigns about the legal consequences of environmental violations could significantly reduce the occurrence of mining-related environmental damage.

Finally, mining sector should promote & encourage self-regulation and corporate social responsibility.⁵⁴ Both India and Canada could benefit from incentivizing companies to voluntarily adopt environmentally friendly practices through tax breaks, awards, and recognition. This would not only complement legal penalties but also contribute to a sustainable mining industry.

CONCLUSION

This paper has conducted a comparative analysis of criminal and civil penalties for environmental violations in mining operations in India and Canada. Both countries have established comprehensive legal frameworks aimed at addressing the environmental impact of mining, though the approaches to penalties differ significantly. In India, environmental penalties have traditionally been civil, with the judiciary increasingly incorporating criminal penalties for severe violations. Landmark cases discussed in this paper demonstrate the legal evolution in India toward stricter environmental accountability, particularly in industrial and mining sectors. While civil penalties remain predominant, there has been a growing recognition of the need for criminal sanctions to deter major environmental violations, especially concerning illegal mining and the degradation of public resources.

In contrast, Canada employs a more balanced approach, integrating both criminal and civil penalties. The CEPA 1999, alongside the Fisheries Act and the CEEA 2012, provides for a dual system where the severity of the environmental violation dictates the penalty type. The criminal prosecution of the various cases discussed above highlights Canada's proactive stance on criminal penalties for severe environmental violations in the mining sector. Civil penalties in Canada, particularly under CEPA,

⁵⁴ Pring, George W., *The Emerging International Law of Mining: A Comparative Study of National and International Legal Frameworks*, 10 *Colo. J. Int'l Envtl. L. & Pol'y* 163 (1999).

serve as a means of restoring environmental damage and compensating affected communities, promoting long-term environmental sustainability.

In both countries, enforcement agencies like the CPCB and ECCC face challenges in effective monitoring and implementation of environmental regulations, especially in remote or unregulated mining areas.

The broader implications of this study for environmental law are far-reaching. The mining industry, as a significant contributor to environmental degradation, must be held accountable for its actions, not only through legal penalties but also through enhanced corporate social responsibility and industry self-regulation. The research underscores the importance of evolving legal frameworks that blend both criminal and civil penalties to ensure a more effective deterrent against environmental violations. In countries like India, where the regulatory system is still developing, there is a need for more robust enforcement mechanisms and greater public awareness of environmental law.

Instead of becoming the exception, sustainable mining methods need to become the rule. International collaboration and the implementation of more stringent, internationally accepted environmental protection standards will be essential in reducing the negative impacts of mining as environmental problems throughout the world worsen. With their sizable mining sectors, nations like Canada and India have a responsibility to set the standard for developing policies that promote both economic growth and environmental sustainability. Addressing the worldwide issues raised by resource extraction businesses would need stepping up the enforcement of fines, improving transparency, and encouraging sustainable mining technology.

However, the effectiveness of legal instruments will ultimately depend on improved enforcement, stricter regulations, and greater industry commitment to sustainable practices. The findings of this study contribute to the ongoing discourse on the need for effective environmental governance in mining, with the goal of achieving long-term environmental protection and fostering responsible development in both India and Canada.