Ecocide - A Crime

Why in news?

Recently, the Tribunal for the Rights of Nature said Mexico's Maya train project has caused "crimes of ecocide and ethnocide".

What is ecocide?

> *Ecocide, derived from Greek and Latin, translates to 'killing one's home' or 'environment'.*

- Ecocide is defined as "extensive loss, damage or destruction of ecosystems such that the peaceful enjoyment by the inhabitants has been or will be severely diminished."
- "Inhabitants" here applies to all living creatures, not limiting crime to an anthropogenic legal view.
- **Destruction**- It destroys environment which include
  - Port expansion projects that destroy fragile marine life and local livelihoods
  - Deforestation
  - Illegal sand mining
  - Polluting rivers with untreated sewage etc.,
- **Crime-** In 1970, Biologist *Arthur Galston* is credited be the first to link environmental destruction with genocide, which is recognised as an international crime.
- It referred to the use of U.S. military's use of *Agent Orange* (a herbicide) during the Vietnam War.
- **1972-** Swedish Prime Minister Olof Palme, used the term in a speech at the United Nations, warning that unchecked industrialisation could cause irreversible damage to the environment.
- **2010-** British lawyer Polly Higgins urged the United Nations' International Criminal Court (ICC) to recognise ecocide as an international crime.
- **ICC-** At present *Rome Statute of the ICC* deals with *4 atrocities.*

- **War crime provision**- It is the *only statute* that can hold a perpetrator responsible for environmental damage.
- **Stop Ecocide Foundation**- It proposed ecocide as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environmental being caused by those acts.

Why should ecocide be a crime?

- **International regulatory landscape**- Ecocide is a crime in 11 countries, with 27 other nations considering laws around criminalising environmental damage.
- **European Parliament**- It voted unanimously this year to enshrine ecocide in law.
- **Ukraine-** It penalises mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster.
- **Georgia-** It penalises and defines ecocide as contamination of the atmosphere, soil, water resources, mass destruction of fauna or flora, or any other act that could have led to an ecological disaster. It also penalises ecocide during armed conflict.
- **Role of ICC**- The ICC and Ukraine's public prosecutor are investigating Russia's role in the collapse of the ***Nova Kakhovka dam*****,** which unleashed a catastrophic flood drowning 40 regions, and caused oil spillage and toxic leakage into the Black Sea.

How is ecocide associated with Climate Change?

- **Species loss**- Over one-third of the Earth's animal and plant species could be extinct by 2050.
- **Increase in temperatur**e- Unprecedented heat waves have broken records globally.
- **Flood-** Changing monsoon patterns and anthropogenic causes have made floods the norm in States like Assam.
- **IPCC-** The Intergovernmental Panel on Climate Change reiterated that global climate action is "insufficient".
    - Indiscriminate burning of fossil fuels,
    - Polluting land and waterways with plastics and fertilisers, and
    - Species loss have pushed us to a new geological epoch, the Anthropocene.
- Hence, criminalising ecocide can lead to a shift in social norms.
- **Catalyst-** The amendment in the Rome Statute could have a 'catalysing' impact across nations to formulate their own laws.
- **Past events-** As per Stop Ecocide International, deforestation of the Amazon, deep-sea trawling or even the catastrophic 1984 Bhopal Gas tragedy could have been avoided with ecocide laws in place.
- **Accountability-** Laws will hold individuals and corporations accountable, it provides boundaries and sanctions for investment.
- **Analysis-** 2019 report found that the 20 fossil fuel companies were responsible for a third of carbon emissions despite being aware of the industry's hazardous impact.
- **Climate justice-** Small nation-states like Vanuatu and Barbuda are lobbying for the ICC to declare crimes against the environment as violations of international law.
- **India-** Some Indian judgments have affirmed the legal personhood of nature by recognising rivers as legal entities with the right to maintain their spirit, identity and integrity.

What are the limitations in defining ecocide?

- **Varied arguments**- Regarding the need for a separate law and the definition of 'ecocide'.
- **Ambiguous definition**- Words like "long-term" or "widespread damage" are abstract and leave room for misinterpretation.

- **Complexity-** This constructs a development-versus-environment narrative, with the implication that it is okay to destroy the environment as long as it benefits humans.
    - Great Nicobar Project is criticised for endangering indigenous communities and biodiversity. But the government claims the Project is in service of holistic development.
- **Threshold-** In 1940 genocide requires proof on two accounts
    - Mens rea (an intention to kill) and
    - Actus reus (a guilty act) — to prove a crime was committed.
- It creates confusion as some argue that environmental disasters are not caused intentionally or deliberately.
- **Limited power to ICC**- ICC has a low track record when it comes to converting prosecutions into convictions.
- The court's power is limited to "natural persons," and without any changes, ICC would be unable to hold corporate entities criminally liable.
- **Jurisdiction-** Crimes are transnational in nature, corporations have private or state owned corporations in other countries, making the definition of ecocide difficult.
    - For example, Coca-Cola was accused of poisoning the land in India with waste sludge and pushing thousands of farmers out of work by draining the water that feeds their wells.

What is India's position with respect to ecocide?

- **T.N. Godavarman Thirumulpad vs Union of India & Ors Case**- The Supreme Court argued that "environmental justice could be achieved only if we drift away from the principle of *anthropocentric to ecocentric*."
- **Single code**- India's environmental regime includes the Environmental (Protection) Act of 1986, Wildlife (Protection) Act of 1972, and Compensatory Afforestation Fund Act, 2016 (CAMPA) as well as separate rules to prevent air and water pollution.
- These separate laws have to be consolidated into a code, and institutions need to be streamlined, for debates like ecocide and rights of nature to find "their proper way through legal channels".
- **Widen the ambit of NGT-** National Green Tribunal, India's apex environmental regulatory body, does not hold jurisdiction to hear matters relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and other State-enacted laws.
- **Loss of forest areas**- Recently passed Forest Conservation (Amendment) Bill, 2023 and Biodiversity (Amendment) Bill, 2023, can dilute current legal protections and will lead to the loss of 20%-25% of forest area in the country.
- **Liability**- Critical challenge is to tackle problems of liability and compensation.
    - The survivors of Bhopal gas tragedy are still fighting for compensation.

What lies ahead?

- India needs to first bring its environmental laws in tune with ecocide idea before the ecocide laws come up internationally.
- An ecocide law should be a part of the broader process of changing public consciousness, recognising that we are in a relationship with our environment, we are dependent for our well-being on the wellbeing of the environment.

- There is a need to use various instruments, political, diplomatic but also legal to achieve the protection of the environment

References

1. The Hindu- The global push to make ecocide a crime
2. World Economic Forum- Ecocide an international crime

