

# ECOCIDE: RE-INITIATING THE DEBATE OF ECOCENTRIC VS ANTHROPOCENTRIC AND CIVIL VS CRIMINAL

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## ABSTRACT

*There are two major approaches to conceive the protection afforded to the environment; first there is the, anthropocentric approach which conceptualises protection given to the environment in terms of consequently protecting humans. Secondly we have the, ecocentric approach which seeks to protect the environment for the sake of environment itself and not humans. Major international legislations have envisaged environmental protection in anthropocentric approach previously. In 2021, the release of draft definition of “ecocide”, proposed to become the fifth international crime under the Rome Statute, has reignited the debate around criminalising environmental harm. While the panel claims that the definition is ecocentric, the authors argue that the definition is actually anthropocentric by breaking it down into three threshold requirements. Further, while the panel has given justifications for the ecocentric nature of the definition, the authors argue that it still lacks ‘practicality’, is unsubstantiated and redundant.*

*The authors argue that a major issue with the conceptualisation of environmental laws is that differentiation between ecocentric and anthropocentric approaches is not made from a legal lens. Keeping in mind, the major goal of environmental law i.e. to prevent environmental destruction by deterring the activities of exploitation, the paper conceptualises four approaches to environment law- ecocentric civil law, anthropocentric civil law; ecocentric criminal law, and anthropocentric criminal law. These approaches are placed in a continuum from the lowest deterrence regime to the highest deterrence regime based on severity of punishment and legal prerequisites that need to be established. It is observed that firstly, ecocentric civil law is not possible; secondly, anthropocentric civil law causes least deterrence; thirdly, ecocentric criminal law causes the maximum deterrence; and finally,*

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*anthropocentric criminal law causes medium deterrence. This analysis is put forward as useful for policy makers as well as judicial bodies to determine the nature of law vis-à-vis deterrence caused by the law.*

**Keywords:** Environment, Anthropocentric, Ecocentric, Civil, Criminal

## INTRODUCTION

Environment refers to natural resources, and includes, nature, land, water and disaster management. The environment has been used by the humans for tangible benefits since time immemorial to fulfil their needs, wants and greed. Consequently, they have expressed strong disregard towards the interests of the environment or non-human species. Activities including hunting and poaching, deforestation, polluting water bodies and scientific experimentations have directly or indirectly benefited the human species. Although destructive activities such as deforestation cause long-term loss to humans in terms of reduced oxygen supply, the short-term physical benefit in terms of wood and paper incentivises them to pursue such activities further.

When this consequent harm to humans due to degradation of the environment was realised, there were immediate efforts to put in place legal rules to protect the environment in order to protect the humans. This approach of protecting the environment for consequently protecting humans is termed as "*anthropocentric*" approach. This is clear from the International Developments in the form of the Stockholm Declaration,<sup>53</sup> Brundtland Commission<sup>54</sup> and Rio De Janeiro Convention.<sup>55</sup>

Over time, there developed an entirely different approach to protecting the environment. According to this approach, termed "*ecocentric*" approach, the environment must be protected for the protection of the environment itself, and *not* for protecting the humans. This is also clear from the International Developments, evolution of definition of "*ecocide*". However, until now, there is very little thought given to the *legal effects* of following these two approaches.

While both these approaches seem to have their own benefits to the general environment scholarship, the authors argue that the value in following both these approaches are different for general environment academician and an environment-legal academician. An academician

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<sup>53</sup> Stockholm Declaration 1972.

<sup>54</sup> Brundtland Commission 1987.

<sup>55</sup> Rio De Janeiro Convention 1992.

should be concerned about the effect of choosing an anthropocentric approach, which effectually, adds another prerequisite to protecting the environment proving harm to humans; whereas the ecocentric approach does not have that prerequisite of proving harm to human. Since it would be easier to prove ecocentric environmental harm due to less prerequisite, it would be easier to cause deterrence to the environmental harm. Vice-versa would be true for an anthropocentric law.

Apart from whether or not there is an ecocentric or anthropocentric approach, there are two type of protections that can be rendered to protect the environment, civil (injunctions, monetary penalties etc) and criminal (imprisonment and heavy monetary penalties). Criminal sanctions are generally considered a more severe form of protection than civil sanctions.. Therefore, the effect on the deterrence caused by the criminal law is of a much higher degree than a civil law. These two metrics, anthropocentric v. ecocentric and criminal v. civil have very recently been bought into the limelight by the release of a draft definition of the ecocide by a panel of 12 jurists from around the world. This definition of ecocide has in effect re-ignited the debate between anthropocentric v. ecocentric and criminal v. civil. Therefore, this research paper considers this as the starting point to consider two important sections.

[Section 1] situates the international development of the environmental law within the realm of its purpose, whether ecocentric or anthropocentric. It starts off by giving anthropocentric declarations and laws and later moves on to the definition of ecocide. The purpose of [Section 1] and [Section 2] is to show how the legal scholarship has considered ecocentric and anthropocentric laws not for looking at how these affect the application of law but the spiritual vs selfish reasons etc. Actual difference is made out by [Section 3], which discovers a normative framework to understand different possibilities of laws, ecocentric civil, ecocentric criminal, anthropocentric civil and anthropocentric criminal. By drawing these four possibilities on a continuum from where there is maximum deterrence to where there is minimum, it lays down a policy plan for the policy-makers to determine where, which of the four possibilities should be applicable.

## **INTERNATIONAL DEVELOPMENT**

The concerns for catastrophic environmental activities and the consequent apocalypse have received widespread attention from lawmakers for decades. These concerns have transcended political, economic and social boundaries of specific jurisdictions and have received attention on a global level. This section of the paper analyses the numerous legislations or declarations

enacted and implemented, in the international arena, for the protection and preservation of the environment. This section has been divided into two parts, *the first* part proves that the environmental protection was envisaged in an anthropocentric format; and *the second* part shows how the definition of ecocide, although acclaimed as an ecocentric introduction, is in effect an anthropocentric definition.

## **THE BEGINNING: A CONCEDED ANTHROPOCENTRIC TIME**

### **STOCKHOLM DECLARATION**

The United Nations Conference on the Environment in Stockholm in 1972 was the first conference that placed the environment at the forefront amongst several prevailing concerns.<sup>56</sup> This conference led to the adoption of the ‘Stockholm Declaration’ and ‘Action Plan for the Human Environment’ which aim at safeguarding the environment for the sake of the invested interest of humans.<sup>57</sup> The theme of the international conference focused on preserving and protecting natural resources like flora, fauna, air, land and water for two purposes. *Firstly*, because they are representative of the ecosystem since millions of species have already been annihilated by human exploitation.<sup>58</sup> *Secondly*, they are essential for the survival of present and future generations.<sup>59</sup> The declaration clearly reflects the anthropocentric approach which was at the heart of the conference.<sup>60</sup> The anthropocentric approach followed in this conference has also been adopted by the consequent international conferences.

### **SUSTAINABLE DEVELOPMENT: BRUNDTLAND COMMISSION AND RIO DE JANEIRO CONFERENCE**

The Brundtland Commission Report of 1987 defined ‘Sustainable Development’ as meeting the needs of the present generations vis-à-vis keeping the needs of future generations in consideration.<sup>61</sup> The principle of sustainable development is based on the principle of

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<sup>56</sup> United Nations, ‘United Nations Conference On The Human Environment, 5-16 June 1972, Stockholm’(2021) <<https://un.org/en/conferences/environment/stockholm1972>> accessed 7 August 2021.

<sup>57</sup> Günther Handl, ‘Declaration Of The United Nations Conference On The Human Environment Stockholm, 16 June 1972 and Rio Declaration On Environment And Development Rio de Janeiro, 1992’ (*Legal UN*, May 2012) <<https://legal.un.org/avl/ha/dunche/dunche.html>> accessed 1 August 2021.

<sup>58</sup> Stockholm Declaration 1972, principle 2.

<sup>59</sup> Stockholm Declaration 1972, principle 2.

<sup>60</sup> Stockholm Declaration 1972, principle 1.

<sup>61</sup> United Nations, Report of the World Commission on Environment and Development: Our Common Future (A/42/427, 1987).

intergenerational equity. Various scholars have argued that the idea of sustainable development clearly has an anthropocentric bias.<sup>62</sup>

In the Rio de Janeiro Conference of 1992, the 'Earth Summit' Declaration was adopted.<sup>63</sup> The Principle 1 of this declaration entailed that "*humans are at the centre of concern for sustainable development*" and entitled to a healthy life in harmony with nature.<sup>64</sup> Principle 6 of the Rio Declaration also recognised that since humans are centric to sustainable development, a fair, just, and inclusive social and economic model for development and environmental protection should be strived for.<sup>65</sup> All of these declarations lay emphasis on the survival of human beings and follow anthropocentric ethics.

#### **POLLUTER PAY PRINCIPLE: RIO DE JANEIRO**

Principle 16 of the Rio Declaration enshrines the principle of polluter pays, which expounds that the polluter is liable to bear the costs of compensation for the damage/harm caused to the environment.<sup>66</sup> This principle is based on the assumption that environmental goods are not "*free goods*" and the impact of every human activity must be evaluated and assessed for the damage caused consequently.<sup>67</sup> Again, this principle is also based on anthropocentric approach.

#### **SELF-STYLED ECOCENTRIC APPROACH: A MISGUIDED UNDERSTANDING**

Despite a history of destructive use of environment for human development, ecocide was first invoked in popular and institutional memory, and considered morally culpable, only when committed to derive a belligerent advantage. The call for criminalisation within this broad articulation rightly invoked international law of armed conflicts as it comprised identifiable *ecocidaire* belligerents to impute liability to armed forces of States and non-State actors providing the requisite space for a superior individual criminal responsibility, through the

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<sup>62</sup> C Speed, 'Anthropocentrism And Sustainable Development: Oxymoron Or Symbiosis?' (*Witpress*, 2006) <<https://witpress.com/elibrary/wit-transactions-on-ecology-and-the-environment/93/16862>> accessed 4 August 2021.

<sup>63</sup> United Nations, Report of The United Nations Conference On Environment and Development, A/CONF.151/26/ Rev 1 (Vol 1).

<sup>64</sup> *ibid* principle 1.

<sup>65</sup> *ibid* principle 6.

<sup>66</sup> *ibid* principle 16.

<sup>67</sup> Communication by Prof (Dr) M K Ramesh to class of 2023 NLSIU.

inherent structures of hierarchy therein.<sup>68</sup>In June 2021, a panel of 12 pre-eminent jurists (the “*Panel*”) released the draft definition of “*ecocide*” that is proposed to be the fifth international crime (the “*Definition*”) under the Rome Statute of the International Criminal Court (the “*Rome Statute*”).<sup>69</sup> The release of the Definition has sparked debate around the issue of criminalising actions that harm the environment. Within this debate, the controversy around its approach—whether anthropocentric or ecocentric—has received some scattered attention.<sup>70</sup> [Section 1.2.1] argues that even though it has been claimed that the definition is an ecocentric definition, in reality it is an anthropocentric one. [Section 1.2.2] proves how the reasons and justifications by the Panel have tenable counters to them. However, the purpose remains to show that in the international arena too, they haven’t considered the effect of ecocentric vs anthropocentric definition.

#### NATURE OF THE DEFINITION: ANTHROPOCENTRIC APPROACH

Rogers, Co-deputy chair of the Panel, claims that the Definition is a shift away from an anthropocentric approach.<sup>71</sup> However, the Commentary concedes that “*widespread*” brings in the anthropocentric element to the Definition.<sup>72</sup> This research paper proves that there are *three* threshold requirements of the Definition that make it anthropocentric. The Definition reads, “*ecocide*” means *unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts*”.

*First*, the first threshold requirement is that the act must be “*unlawful*” or “*wanton*”, both of which make the Definition anthropocentric. “*Unlawful*” is not defined under the Rome Statute

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<sup>68</sup> International Committee of the Red Cross, ‘How is the Term “Armed Conflict” Defined in International Humanitarian Law?’ (2008) <<https://icrc.org/en/doc/resources/documents/article/other/armed-conflict-article-170308.htm>> accessed 8 July 2021.

<sup>69</sup> ‘Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text’ (*Stop Ecocide Foundation*, June 2021) <<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>> accessed 7 July 2021.

<sup>70</sup> Katie Surma and Yuliya Talmazan, ‘In a Growing Campaign to Criminalize Widespread Environmental Destruction, Legal Experts Define a New Global Crime: ‘Ecocide’ (*Inside Climate*, 22 June 2021) <<https://insideclimatenews.org/news/22062021/ecocide-definition-panel-international-crime/>> accessed 8 July 2021.

<sup>71</sup> *ibid.*

<sup>72</sup> ‘Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text’ (*Stop Ecocide Foundation*, June 2021) <<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>> accessed 7 July 2021.

and International law, in general, is too inadequate in defining unlawful.<sup>73</sup> National standards of “*unlawful[ness]*” will have to be relied on,<sup>74</sup> which will be anthropocentric, in most cases, as Heller points out.<sup>75</sup> The alternative requirement—“*wanton*”—is necessarily anthropocentric. “*Wanton*” is defined as “*reckless disregard for damage which would be excessive in relation to the social and economic benefits anticipated*”.<sup>76</sup> The Commentary provides that this threshold aspect is based on “*environmental law principles, which balance social and economic benefits with environmental harms*”. However, these environmental law principles relied upon by the Panel are based on an anthropocentric approach. In fact, as Heller points out, the underlying idea behind the Definition is that “*it’s fine to cause “severe and widespread or long-term damage to the environment” as long as humans benefit enough from the destruction*”.<sup>77</sup>

Secondly, the threshold aspect of the Definition is “*severe [...] damage*”. “*Severe*”, defined as including “*grave impacts on human life or natural, cultural or economic resources*”. “*Grave impacts on human life*”, is anthropocentric. Likewise, the impact on “*natural resources*”, “*cultural resources*”, or “*economic resources*” is anthropocentric because “*resource*” is anything that satisfies *human* needs.<sup>78</sup> Therefore, the first threshold requirement makes the Definition necessarily anthropocentric.

Thirdly, along with the Definition, the Panel has released a preambular paragraph that provides that the deterioration of the environment “*gravely endanger[s] [...] human systems*”.<sup>79</sup> This preambular paragraph, helpful in providing context and interpretational aid,<sup>80</sup> would again necessarily add anthropocentric flavour to the interpretation of the Definition.

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<sup>73</sup> *ibid* 2b.

<sup>74</sup> *ibid*.

<sup>75</sup> Kevin Jon Heller, ‘Ecocide and Anthropocentric Cost-Benefit Analysis’ (*Opinio Juris*, 26 June 2021) <<http://opiniojuris.org/2021/06/26/ecocide-and-anthropocentric-cost-benefit-analysis/>> accessed 7 July 2021.

<sup>76</sup> ‘Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text’ (*Stop Ecocide Foundation*, June 2021) <<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>> accessed 7 July 2021.

<sup>77</sup> Kevin Jon Heller, ‘Skeptical Thoughts on the Proposed Crime of “Ecocide” (That Isn’t)’ (*Opinio Juris*, 23 June 2021) <<https://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/>> accessed 6 July 2021.

<sup>78</sup> Tyler Miller, *Living in the Environment: Principles, Connections, and Solutions* (Cengage Learning 2014).

<sup>79</sup> ‘Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text’ (*Stop Ecocide Foundation*, June 2021) <<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>> accessed 7 July 2021.

<sup>80</sup> Vienna Convention on the Law of Treaties, art 31; Otto Triffterer and Kai Ambos (eds), *The Rome Statute of the International Criminal Court* (3<sup>rd</sup> edn, Hart 2016) pp 4.

## REASONS AND JUSTIFICATIONS

It may be useful first to note the reasons and justifications offered by the Panel. In a direct but partial response to the *first* threshold requirement discussed above, Christina Voigt, one of the panelist, points out that there are practical concerns in allowing for cost-benefits based threshold.<sup>81</sup> In fact, the Commentary also proclaims that the Definition is “*a practical and effective definition*”. However, there is no further explanation provided in the Commentary about what “*practical*” means. Sands, Co-chair of the Panel, said the Definition is not “*so widespread in its effects that States run away and throw their arms up in horror*”.<sup>82</sup> There seem to be *two* justifications for the anthropocentric approach—*first*, to account for situations where it is actually necessary to harm the environment; *second*, to convince the nation-states into actually adopting the Definition. However, there are counters to both these justifications.

*First*, the Definition is proposed to be an amendment to the Rome Statute. The Rome Statute has jurisdiction over only individuals (natural persons) and not the nation-states or groups such as corporates.<sup>83</sup> However, the individuals are statistically,<sup>84</sup> and morally<sup>85</sup> the least blameworthy. In fact, the Panel's cost-benefit analysis is more relevant in cases of the nation-states, who exercise their power of eminent domain, and corporates, who use their abundant resources, to carry out projects causing *severe* and *widespread/long-term* harm to the environment. Since the cost-benefit analysis is hardly useful for the individuals, and corporates and nation-states, the Definition is barely “*practical*”.

*Second*, the Panel seems to believe that this “*practicality*” will help convince the nation-states to actually adopt the Definition. However, this belief is unsubstantiated. The member-nations that support “*ecocide*” do not expect it to be anthropocentric, and the member-nations that do not support “*ecocide*”, do not “*not support*” for anthropocentric or ecocentric concerns.<sup>86</sup> The

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<sup>81</sup> Christina Voigt, (Twitter, 24 June 2021) <<https://twitter.com/ChristinaVoigt2/status/1408060703966056450>> accessed 6 July 2021.

<sup>82</sup> Katie Surma and Yuliya Talmazan, ‘In a Growing Campaign to Criminalize Widespread Environmental Destruction, Legal Experts Define a New Global Crime: ‘Ecocide’ (Inside Climate, 22 June 2021) <<https://insideclimatenews.org/news/22062021/ecocide-definition-panel-international-crime/>> accessed 8 July 2021.

<sup>83</sup> *Understanding the International Criminal Court* (International Criminal Court 2020).

<sup>84</sup> Dr Paul Griffin, ‘CDP Carbon Majors Report 2017’ (Carbon Majors Database, July 2017) <<https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772>> accessed 8 July 2021.

<sup>85</sup> Walter Sinnott-Armstrong and Richard Howarth (eds), *Perspectives on Climate Change: Science, Economics, Politics, Ethics* (Emerald Group Publishing Limited 2005) 221–253.

<sup>86</sup> David Meyer, ‘The crime of ‘ecocide’ now has a definition—but what will it mean for polluters?’ (Fortune, 23 June 2021) <<https://fortune.com/2021/06/23/ecocide-definition-international-criminal-court-climate-environment/>> accessed 8 July 2021.



Panel has failed to show how this “*practicality*” is likely to convince member-nations to actually adopt the Definition.

Moreover, this anthropocentric approach makes it less likely for the country to adopt it due to its redundancy. There already exist anthropocentric crimes that can be used to prosecute harm caused to the environment.<sup>87</sup> Within the four core crimes within the Rome Statute (genocide, crimes against humanity, war crimes, and the crime of aggression) that are anthropocentric, there already exist features that may be used to prosecute harm to the environment.<sup>88</sup> For example:

Article 8(2)(b)(iv) explicitly refers to the environment and criminalises, “[...] *attack [that] will cause [...] widespread, long-term and severe damage to the non-human environment*”. “*Widespread*”, “*long-term*” and “*severe*” have not been defined in the Rome Statute. These terms are also not laid down in the form of discernable rules with pre-defined content but in the form of standards to be determined at the adjudication stage.<sup>89</sup> Therefore, it may be possible to push for a favourable interpretation of this provision to bring in more crimes within its folds. Article 6 provides for the definition of genocide, which means acts intended to destroy “*a national, racial or religious group*”, and includes, “[*d*] *deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*”. Thus, the harm to the environment that may effectually destroy a national, racial or religious group falls squarely within the purview of genocide. Moreover, academics argue that there exists a stronger nexus between genocide and ecocide.<sup>90</sup>

Therefore, there are some justifications afforded for using the anthropocentric approach, but there are fair counters to the adoption of this anthropocentric approach as provided above. In a more important analysis as laid down in the next part of this research paper, the question of whether it *should be* an anthropocentric law or an ecocentric law must not be considered for the aforementioned reasons for a legal policy-maker. Instead, for a legal policy-maker, the law is for a particular purpose, here—to prevent the destruction of the environment. To prevent the destruction of the environment, there needs to be deterrence. Legal-policy makers should thus

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<sup>87</sup> Rachel Killean ‘Prosecuting Environmental Crimes at the International Criminal Court – Is a Crime of Ecocide Necessary?’ (*IntLawGrrls*, 30 June 2021) <<https://ilg2.org/2021/06/30/prosecuting-environmental-crimes-at-the-international-criminal-court-is-a-crime-of-ecocide-necessary/>> accessed 8 July 2021.

<sup>88</sup> *ibid.*

<sup>89</sup> Louis Kaplow, ‘Rules versus Standards: An Economic Analysis’ (1992) 42 *Duke Law Journal* 557.

<sup>90</sup> Martin Crook and Damien Short, ‘Marx, Lemkin and The Genocide–Ecocide Nexus’ (2014) 18(3) *The International Journal of Human Rights* <<https://tandfonline.com/doi/full/10.1080/13642987.2014.914703>> accessed 8 July 2021.

concern themselves with the level of deference caused by ecocentric and anthropocentric laws. Thus, in the next section, this paper lays down a normative framework for policy-makers to consider the effect of laying down an ecocentric vs anthropocentric law.

## **CRITIQUING BOTH ECOCENTRIC AND ANTHROPOCENTRIC APPROACH**

In this section, the research paper —*firstly*, explores the legal regimes as four possibilities— anthropocentric civil law, ecocentric civil law, anthropocentric criminal law, and ecocentric criminal law and *secondly*, after drawing a fair critique of all four, it comes to the conclusion that an ecocentric civil law is not a possibility, anthropocentric civil law is too weak to provide deterrence, anthropocentric criminal law draws the right balance, and ecocentric criminal is way too harsh.

### **LEGAL REGIMES AS FOUR POSSIBILITIES**

The larger goal of the environmental law is to prevent the destruction of the environment to the maximum extent by appropriately *detering* humans from exploiting it. In general, deterrence is dependent on the severity of punishment and the probability of enforcement.<sup>91</sup> Traditionally, a criminal sanction is considered more severe than a civil sanction. A criminal sanction restricts freedom of liberty, which in most nations, is considered a fundamental right, whereas a civil sanction merely affects monetary power. Since monetary sanctions are less severe than the restriction of liberty, civil sanction is considered to be less deterring than criminal sanction. However, it is important to remember that within civil sanction and criminal sanction independently, it is possible to adjust the severity of the punishment. For example, within civil sanctions, a sanction of Five Crores is more severe than a sanction of Five Lakhs within the same currency. Similarly, within criminal sanctions, a sanction of Five Years of imprisonment is more severe than a sanction of Five Lakhs.

Apart from the severity of the punishment, deterrence is also dependent on the number of legal prerequisites. If there are fewer legal prerequisites, it is simpler to invoke the violation of the legal rule, whereas if the legal requisites are more, it is difficult to invoke the violation of the

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<sup>91</sup> Stephen Sverdlik, 'Bentham on Temptation and Deterrence' (2019) 31(3) Utilitas 246 <<https://cambridge.org/core/journals/utilitas/article/abs/bentham-on-temptation-and-deterrence/62E427620968D80048C25C842CCDC22C>> accessed 8 July 2021.

legal rule. These number of prerequisites differ for the two approaches of protecting the environment—*ecocentric* or *anthropocentric*. Although arguments in favor of both ecocentric and anthropocentric approaches are principally and theocratically meritorious, the approaches have different practical consequences for environmental law and policy. Practically, there are different number of prerequisites for invoking ecocentric legal rule and more for anthropocentric legal rule. For an anthropocentric law, there is one added prerequisite—harm or effect to the humans; whereas for ecocentric law, this prerequisite is entirely absent. Therefore, it will be difficult to prove a violation of an anthropocentric law due to an additional prerequisite of human harm/affect, whereas it will be easier to prove a violation of an ecocentric law because there is no pre-requisite in the form of proving harm to humans.

Considering on the aforementioned two different metrics, there arises four different protection for the environment. These are—*first*, anthropocentric civil law would protect any harm to the environment that affects humans by penalising it in the form of an injunction or monetary penalty; *second*, ecocentric civil law would protect any harm to the environment irrespective of whether it affects humans by penalising it in the form of an injunction or monetary penalty; *third*, anthropocentric criminal law would protect any harm to the environment that affects humans by penalising it in the form of imprisonment; *fourth*, ecocentric criminal law would protect any harm to the environment irrespective of whether it affects humans in the form of punishment. These four possibilities can be summarised in the form of the following table for clarity.

<b>Metrics</b>	<b>Anthropocentric</b>	<b>Ecocentric</b>
<b>Civil</b>	harm to the environment that affects humans by imposing a monetary fine	harm to the environment by penalising it in the form of monetary penalty
<b>Criminal</b>	harm to the environment that affects humans by penalising it in the form of imprisonment	harm to the environment by penalising it in the form of imprisonment

In the next sub-section, these four possibilities are further explored. The purpose and the ability of each of these four parts is critiqued and analysed on its ability to cause deterrence, and consequently, protect the environment.

### **DETERRENCE: WHICH LAW WHEN?**

In this sub-section, the four possibilities charted out in the previous subsection are explored, and it is argued that *first*, ecocentric civil law is not possible; *second*, anthropocentric civil law causes the least deterrence; *third*, ecocentric criminal law causes the maximum deterrence; and *finally*, anthropocentric criminal law causes medium deterrence. This analysis is useful for both the policy-makers—to determine the nature of law vis-à-vis deterrence caused by the law and consequently, the level of protection provided to the environment, and the judicial bodies—to understand the legal policy better, and consequently, adjust the decision-making process.

### **ECOCENTRIC CIVIL LAW: A FUTILE EXERCISE**

As discussed above, an ecocentric civil law would protect against any harm to the environment irrespective of whether it affects humans by penalising it in the form of an injunction or monetary penalty. This means that the law does not have a necessary pre-requisite of harm or effect to humans. However, this sub-section argues that ecocentric civil law is a misnomer, and it would be an implicit form of anthropocentric law. There are *two* reasons why it is an implicit anthropocentric law—*first*, putting costs on violation of environmental harm, the environment is being put on a lower pedestal than humans, and *second*, civil law inherently puts the environment on a different pedestal than humans.

*First*, the environment is reduced to the pedestal of other artificial objects that are solely meant for human use. In general, Calabresi and Melamed argue that any law that can be violated against a monetary penalty, in effect, is an entitlement that can be bought.<sup>92</sup> For example, if a law mandates that the environment can be destroyed against a monetary penalty, Calabresi and Melamed would argue that destruction of the environment can simply be bought by paying consideration which is differently put – the monetary penalty. In other words, this means that like any other artificial object which can simply be bought against a monetary consideration, the environment is also being reduced to artificial objects – which are for the pleasure of humans. Therefore, since the environment can be bought with monetary consideration at the pleasure of humans in a civil law regime, the civil law regime cannot encompass an ecocentric approach that requires the environment to be protected for the environment, and not humans.

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<sup>92</sup> Guido Calabresi and A Douglas Melamed, 'Property Rules, Liability Rules, and Inalienability: One View of the Cathedral' (1972) 85 Harvard Law Review 1089.

*Second*, civil law inherently puts the environment on a different pedestal than humans. Ecocentric law would protect the environment for the protection of the environment and *not* the protection of humans. As discussed in the beginning, for an ecocentric individual, the environment is considered as a part of the environment as much as any other fact of nature—meaning, that the environment is kept on the same pedestal as humans. If the environment is being put on the same pedestal as humans, then the destruction of the environment should have concurrent/parallel sanctions. Now, destruction of humans, considering done with an intent to cause such a harm, is punished with a criminal offence, usually imprisonment.<sup>93</sup> Therefore, the environment, which is being considered on the same pedestal as humans, must also be punished with a criminal offence. Now, by giving the destruction of the environment a civil sanction and the destruction of humans a criminal sanction; the environment is being kept on a lower pedestal than humans.

For these two reasons, it is not possible to have environmental legislation which has civil sanction but represents an ecocentric viewpoint. However, the previous two situations assume that the harm is being caused intentionally, i.e. with *mens rea*. This means that there exists a bleak possibility of law where the acts are not done intentionally, and where there is a technical possibility of achieving ecocentric civil law. In cases where the harm is not caused intentionally, the two *reasons* pointed out do not apply. *The first* reason does not apply because it is presumed on the ability of humans to “buy” – whereas, if the intention is entirely lacking, it is not possible for humans to buy. *Second* one being that in comparison with humans too, if the cause of death of humans is also unintentional, the penalty is not strictly criminal or one following criminalisation. Therefore, for the environment as well, when there is lacking intention, the destruction can simply follow a civil sanction. Now, if that civil law is not laid down and added with a prerequisite harm to the humans but only on the basis of harm to the environment, it can essentially be ecocentric civil protection of the environment.

For such non-intentional destruction, ecocentric civil law is possible. Now, the deterrence of such crime has been depicted in the table below. Although it being ecocentric reduces the number of prerequisites, i.e. harm to humans does not need to be proved, the civil liability with monetary fines or injunction as the remedy reduces the severity of the punishment. Therefore, in this bleak possibility of ecocentric civil law, the kind of deterrence is lower medium on the

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<sup>93</sup> Michael S Moore, *Mechanical Choices: The Responsibility of the Human Machine* (OUP 2020) ch 4.

verbatim between anthropocentric civil and ecocentric criminal, which will be discussed in the next part of this section.

<b>Table description:</b> This table represents a continuum from the lowest deterrence regime to the highest deterrence regime. The policy-makers may consider the following continuum to determine when which form of law must be employed.			
Lowest Deterrence	Low-medium Deterrence	Medium-high Deterrence	Highest Deterrence
	Ecocentric Civil		

### ANTHROPOCENTRIC CIVIL LAW

After discussing ecocentric civil law and proving how in most situations an ecocentric law naturally turns into an implicit anthropocentric law due to civil remedy, it will be interesting to explore anthropocentric civil law. As defined before, an anthropocentric law will have a prerequisite – proving human harm, so it contributes to reducing the deterrence by increasing one prerequisite. Moreover, civil law has lower severity of punishment. Therefore, the level of deterrence will be reduced by an increase in the pre-requisite. Therefore, compared with the aforementioned ecocentric civil law, this law will have a slightly lower deterrence threshold – due to the added pre-requisite.

Theoretically, a civil sanction appropriately sits with an anthropocentric law. This is again because of the two reasons studied above. *First*, a civil law reduces the environment to a status similar to artificial objects meant for humans, and an anthropocentric approach assumes that the environment should be protected for human use. *Second*, the environment is reduced to a lower pedestal than humans, which is necessarily true for an anthropocentric individual.

Practically, this law is going to have the least deterrence effect, but it will be appropriate for the policy-makers to consider this possibility as important for making laws.

<b>Table description:</b> This table represents a continuum from the lowest deterrence regime to the highest deterrence regime. The policy-makers may consider the following continuum to determine when which form of law must be employed.			
Lowest Deterrence	Low-medium Deterrence	Medium-high Deterrence	Highest Deterrence
Anthropocentric Civil	Ecocentric Civil		

## ECOCENTRIC CRIMINAL LAW

After having discussed two civil law possibilities, it is important to consider two criminal law possibilities as well. The first criminal law possibility—ecocentric criminal law, as discussed, would penalise harm to the environment by imprisonment *not* for the sake of humans but for the sake of the environment itself. Now, compared with the implausible ecocentric civil law, it is important to recall and prove how the two reasons do not apply to ecocentric criminal law. *First*, the harm to the environment cannot be bought like an artificial object because the offence is not monetary anymore, but it is criminal, in effect imprisonment. *Second*, the environment is put on the same pedestal as humans because, similar to humans, harm to the environment is also being subject to criminal penalties. Therefore, the ecocentric approach sits appropriately with the criminal law.

It is also important to determine the level of deterrence caused by such a law. Since it is an ecocentric law, it does not have the added pre-requisite of proving effect on or harm to humans. Moreover, it entails a criminal sanction which is more severe than a civil sanction. A ecocentric criminal law causes the maximum deterrence.

**Table description:** This table represents a continuum from the lowest deterrence regime to the highest deterrence regime. The policy-makers may consider the following continuum to determine when which form of law must be employed.

Lowest Deterrence	Low-medium Deterrence	Medium-high Deterrence	Highest Deterrence
Anthropocentric Civil	Ecocentric Civil		Ecocentric Criminal

Unlike other possibilities developed before and hence, there has been some attention in the literature given to ecocentric criminal law. Rob White discusses the evolution of ecocentric criminal law.<sup>94</sup> White refers to two examples – criminal prosecution and sentencing initiatives to prove how ecocentric criminal law is gaining some traction.<sup>95</sup> When White discusses the ecocentric criminal law, the definition of "*ecocide*" as introduced by the Panel in 2021 was not ripe. Therefore, he could not have commented on the definition and aspects of it. White's

<sup>94</sup> Rob White, 'Ecocentrism and Criminal Justice' (2018) 22(3) Theoretical Criminology 342 <<https://doi.org/10.1177/1362480618787178>> accessed 4 August 2021.

<sup>95</sup> *ibid.*

analysis would have shifted a mile if he had considered the development – an anthropocentric definition of "ecocide" as discussed in the earlier part of this paper. In any case, White does not consider the other three possibilities discussed in this paper and especially is ignorant of the "anthropocentric criminal law" which would have provided for an interesting comparison. This the next part, the paper considers that anthropocentric criminal law provides for medium to high deterrence – which has been rightly used in major environmental law legislations.

### ANTHROPOCENTRIC CRIMINAL LAW

Although, as observed in the sub-section that the ecocentric approach sits appropriately with the criminal law as it puts humans and the environment on the same pedestal but environment and artificial objects on different, it must be observed that the anthropocentric approach too sits appropriately with criminal law. This is because criminal law is not only reserved for the destruction of humans but may also extend to the non-human-related destruction of property. For an anthropocentric criminal law, the deterrence would be medium to high. This is because—the anthropocentric approach reduces deterrence by adding the pre-requisite of human harm, and on the other hand, the criminal law approach increases deterrence.

**Table description:** This table represents a continuum from the lowest deterrence regime to the highest deterrence regime. The policy-makers may consider the following continuum to determine when which form of law must be employed.

Lowest Deterrence	Low-medium Deterrence	Medium-high Deterrence	Highest Deterrence
Anthropocentric Civil	Ecocentric Civil	Anthropocentric Criminal	Ecocentric Criminal

### CONCLUSION

This paper started by looking at the development of the International Environmental Regime. Within the first section, the *first* part highlights that environmental protection was envisaged in an anthropocentric format; and *the second* part shows how the definition of ecocide, although acclaimed as an ecocentric introduction, is in effect an anthropocentric definition.

The major issue identified with the conceptualisation of environmental laws is that the differentiation between ecocentric and anthropocentric approaches is not made from a legal angle. This means that the theoretical reasons considered by general environment scholars have been considered instead of the impact on the law.



To cover this gap, the final part of this paper considers four approaches—*ecocentric civil law*, *anthropocentric civil law*; *ecocentric criminal law*, and *anthropocentric criminal law*. By placing four on them on the deterrence continuum and by gauging the impact of the four legal regimes on environmental law, this research paper has laid down a framework for policy-makers to consider.