



Himachal Pradesh National Law University, Shimla (India)

HPNLU LAW JOURNAL

---

Journal Articles

ISSN: XXXX-XXXX

*HPNLU Law Journal*

---

Volume I (2020)

**THE CONTOURS OF CORPORATE CRIMINAL LIABILITY FOR ENVIRONMENTAL WRONGS**

*Gaurav Puri*

This article can be downloaded from: <https://hpnlu.ac.in/journal-level-3.aspx?ref-id=9>

---

Recommended Citation:

Gaurav Puri, The Contours of Corporate Criminal Liability for Environmental Wrongs, IHPNLU L. J. 112 (2020).

This Article is published and brought to you for free and open access by Himachal Pradesh National Law University, Shimla. For more information, please contact [lawjournal.editor@hpnlu.ac.in](mailto:lawjournal.editor@hpnlu.ac.in)

# Contents

Volume I 2020 HPNLU Law Journal

<i>Articles</i>	<i>Page</i>
1. Competing Concerns of Public Security and Individual Liberty: A Critique of the Supreme Court Judgement in <i>Anuradha Bhasin v. Union of India</i> <i>Priyanka Thakur &amp; Shivani Choudhary</i>	1
2. Interim Compensation for Dishonour of Cheques: Constitutionality and Justifications <i>Gunjan Gupta</i>	19
3. Arguments for Animals Rights: Prohibiting Animal Sacrifice as a form of Cruelty <i>Vanshika Thakur</i>	35
4. <i>Namami Gange</i> Project: A Legal Analysis <i>Aayush Raj</i>	48
5. 'Non-conviction Based Asset Forfeiture Laws: An Appraisal of the Magic Bullet <i>Sezal Rathore &amp; Saurabh Tiwari</i>	66
 <i>Notes and Comments</i>	
6. Applying Ashworth's 'Principled Core': An Analysis of the Criminal Law (Amendment) Acts of 2013 and 2018 <i>Ankit Kaushik</i>	85
7. Road to Justice: Analysing the Contours of Prosecution, Peace, Amnesty, and Immunity in International Criminal Law <i>Pranava Tiwari &amp; Shruti Shreya</i>	96
8. The Contours of Corporate Criminal Liability for Environmental Wrongs <i>Gaurav Puri</i>	112
9. E-commerce Taxation in India: <i>Tax Havens vis-à-vis Indo-Mauritius DTAC</i> <i>Hitendra Hiremath &amp; Netra Koppad</i>	125
10. Ethical and Legal Reflections on Strike: Strikes by Nursing, Medical and Para-Medical Professionals in India <i>Liji Samuel</i>	144
11. Atomic Energy in India: Legal Framework <i>Naveen &amp; Prakash Sharma</i>	165
12. Fingerprint and Footprint Identification: A Legal Analysis <i>Sundaram Bharti</i>	182
13. Regulating Rare Diseases in India: A Comment on National Policy for Treatment of Rare Diseases 2020 <i>Ujwala &amp; Siddharth Sen</i>	193
14. Access to Justice Amidst Corona Pandemic: A Study in India <i>Arvind Malhotra</i>	206

# THE CONTOURS OF CORPORATE CRIMINAL LIABILITY FOR ENVIRONMENTAL WRONGS

Gaurav Puri\*

*[Abstract: This paper discusses the following issues – (1) What is the genesis, nature and extent of Corporate Criminal Liability of Directors? and (2) What is the nature and extent of the Doctrine of Corporate Criminal Liability of Directors vis-à-vis Environmental Crimes with special reference to Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974? The paper focuses on tracing the genesis of corporate criminal liability of directors and studies its nature and extent and further evaluates the criminal liability of the directors in cases of environmental crimes based on the analysis in the former section. The research evaluates the hindrances in holding the directors of a company criminally liable for committing environmental wrongs despite the legislation for protection of environment in India. In this regard the literature referred to contains peer-reviewed articles and journals along with relevant legislations and case laws.]*

## I

### Introduction

The historical analysis of company law jurisprudence and offences committed in the name of corporation indicates that often the protection conferred by the concept of separate legal entity is used to protect the natural persons behind commission of the offence.<sup>1</sup> The piercing of corporate veil is an essential tool to not only decipher the person(s) responsible behind such offence but also to tackle the crimes committed in the guise of incorporation.<sup>2</sup> Corporations have emerged as social entities capable of actions readily attributable to human agency and this, calls for fixing criminal liability of the corporations.<sup>3</sup>

The purpose of criminal law is to ‘forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual and public interests’.<sup>4</sup> Criminal liability is attached to acts that are in violation of criminal law

---

\* Student of Third Year, Symbiosis Law School (3-Year Course), Pune. Email: 17010122036@symlaw.ac.in.

<sup>1</sup> T.K. Bhaskar and V. Umakanth, *Corporate Criminal Liability and Law*, 38 (2) JILI 218 (1996).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Proposed Official Draft, American Law Institute’s Model Penal Code, Art. 1, 1.02(1)

i.e. there cannot be a crime without a law declaring such an act or omission as a crime.<sup>5</sup> Corporate crime refers to criminal practices by individuals that have the legal authority to speak for the corporation or company.<sup>6</sup> These include personnel such as the directors and any other person(s) that has the authority to act on behalf of the company.<sup>7</sup> Corporate accountability means accountability to the stakeholders of an organisation including but not limited to the local community and the country that the firm operates in<sup>8</sup>. A company can be held liable for a wide variety of crimes. The paper intends to focus on the corporate criminal liability for environmental crimes. Most of these crimes are economically motivated where the offence enhances organisational profits.<sup>9</sup>

This paper discusses the following issues – (1) What is the genesis, nature and extent of Corporate Criminal Liability of Directors? and (2) What is the nature and extent of the Doctrine of Corporate Criminal Liability of Directors vis-à-vis Environmental Crimes with special reference to Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974?

The paper focuses on tracing the genesis of corporate criminal liability of directors and studies its nature and extent and further evaluates the criminal liability of the directors in cases of environmental crimes based on the analysis in the former section.

The research evaluates the hindrances in holding the directors of a company criminally liable for committing environmental wrongs despite the legislation for protection of environment in India. In this regard the literature referred to contains peer-reviewed articles and journals along with relevant legislations and case laws.

## II

### Evolution of Corporate Criminal Liability

---

<sup>5</sup> Tanu Shree Gavel & Swagat Sekhar Baidyanath, *Dilemma Of Corporate Criminal Liability: Is There An End?*, 95 SEBI AND CORPORATE LAWS 10 (MAG) 1 (2009).

<sup>6</sup> *Id.*

<sup>7</sup> William S. Laufer, CORPORATE BODIES AND GUILTY MINDS: THE FAILURE OF CORPORATE CRIMINAL LIABILITY 3 (2006).

<sup>8</sup> *Id.*, at 11.

<sup>9</sup> Allen Meso, *Environmental crimes are on the rise, so are efforts to prevent them*, UNEP (2018) Available at: <https://www.unenvironment.org/news-and-stories/story/environmental-crimes-are-rise-so-are-efforts-prevent-them> (last visited May 27, 2020).

In the landmark case of *Salomon v. Salomon*,<sup>10</sup> the Courts had settled the principle of a company being a separate legal entity independent of its members. The great belief till the sixteenth and seventeenth centuries was that corporations could not be held criminally liable.<sup>11</sup> This is also attributable to the fact that until seventeenth century corporations were small and it was easy to fix responsibility upon the proprietor(s).<sup>12</sup> The problem of accountability gained centre-stage in the aftermath of the Industrial Revolution whereby corporations took a more complex form.<sup>13</sup> During this period the Court refused to hold corporations criminally liable for the following reasons:

- 1) Attribution of acts to juristic fiction.<sup>14</sup>
- 2) The judges did not believe that Corporations possessed the moral blameworthiness (*mens rea*) necessary to commit crimes.<sup>15</sup>
- 3) The ultra vires doctrine, due to which the court could not hold corporations accountable for actions not mentioned in their charter.<sup>16</sup>
- 4) The literal understanding of criminal procedure.<sup>17</sup>

However, with the advent of the nineteenth century, courts began to recognise corporate criminal liability. For instance, in *DPP v. Kent & Sussex Contractors*,<sup>18</sup> the Lord C.J., held two charges against the company i.e. doing something to deceive and making a statement it knew to be false.

In *R v. ICR Haulage*,<sup>19</sup> upholding a company's conviction for conspiracy and default the court held:

'Whether in any particular case there is evidence to go to jury that the criminal act of an agent, including the state of his mind, intention, knowledge or belief is the act of the company.... must depend on the nature of charge, the relevant position of the officer or agent, and other relevant facts and circumstances of the case.'

During this period, liability of corporation for an act of its agent was treated at par with that of his master for an act of his servant. Therefore, the principle of vicarious liability was applied.<sup>20</sup> Such liability could only be imposed for acts

---

<sup>10</sup> [1896] UKHL 1.

<sup>11</sup> *Supra* note 5, at 2.

<sup>12</sup> *Supra* note 1, at 218.

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

<sup>14</sup> *Supra* note 10.

<sup>15</sup> *Edwards v. Midland Railway* [1887] 6 Q.B.D. 287.; see also *Cornford v. Carlton Bank Ltd* [1899] 1 Q.B. 392

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *Id.*

<sup>18</sup> [1944] K.B. 146.

<sup>19</sup> [1944] K.B. 551, at pg. 559.; see also *State of Maharashtra v. Messers Syndicate Transport* (1964) A.I.R. 195 (Bom.), para 13.

<sup>20</sup> *Supra* note 1, at 219.

against public welfare as the principle of offence with *mens rea* was not yet applied to corporations.<sup>21</sup>

In the landmark judgement of *Lennard's Carrying Company v. Asiatic Petroleum Company*,<sup>22</sup> the court rejected the principle of vicarious liability and introduced a new principle for corporate criminal liability i.e. 'doctrine of identification' which is adopted in the Indian jurisprudence now to hold the human agency liable for the wrongful acts of the corporation. Lord Viscount Haldane explained the same in the following words:

'My Lord, a corporation is an abstraction. It has no mind of its own any more than it has abody of its own; then its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. The person may be under the direction of the shareholders in general meeting; that person may be the board of directors itself, or it may be, and in some companies it is so, that person has authority to co-ordinate with the board of directors given to him under the Articles of Association and is appointed by the general meeting of the Company, and can only be removed by the general meeting of the Company.'<sup>23</sup>

In *Tesco Supermarkets v. Nattrass*,<sup>24</sup> the judges applied the identification principle. It was explained that as the directors are people that are not answerable to anyone within the company, they must be considered the company as they are the agency/mind behind the company's actions.

The new principle that emerged directed that the state of mind of agent would be imputed to the corporation. This doctrine is now a settled law followed by the court subsequently in *Moussell Bros v. London and North Western Railway*<sup>25</sup> where it was held that a company can be criminally liable even if the offences need to prove *mens rea* i.e. intent of crime.<sup>26</sup> It holds good even today. The development in Indian law with respect to criminal liability of companies follows the trajectory of the English Law.<sup>27</sup>

---

<sup>21</sup> *PearksGuston and Tea v. Ward*, (1902) 2 K.B. 1.

<sup>22</sup> (1915) A.C. 7.

<sup>23</sup> *Id.*, at 713.

<sup>24</sup> 1971 1 ALL ER 127.

<sup>25</sup> (1917) 2 K.B. 836.

<sup>26</sup> See, *Moore v. Bressler*, (1944) 2 AU E.R. 575; *D.P.P. v. Kent and Sussex Contractors*, (1944) 1 ALL E.R. 119.

<sup>27</sup> *Supra* note 1, at 220.

### III

#### Development in India

The intent of criminal law was to evolve principles to tackle liability of individuals in crimes they committed and this principle is therefore based on individualism.<sup>28</sup> With respect to the corporate criminal liability, the attempt has been to fit corporate liability into the existing structure i.e. regulate behaviour collectively and consciously.

Section 11 of Indian Penal Code, 1860 defines the word 'person' as 'including a company, association or body of persons whether incorporated or not'.<sup>29</sup>

In the case of *The State of Maharashtra v. Syndicate Transport*,<sup>30</sup> the court identified two limitations to corporate criminal liability:

1. There are several offences under the code that can only be applied to individuals.
2. There are certain offences which necessarily entail the consequences of corporeal punishment.

In *Kusum Products v. S.K. Sinha*,<sup>31</sup> the court observed that:

'a company being a juristic person cannot possibly be sent to prison and it is not open to court to impose a sentence of fine or allow awarding any punishment if the courts find the company guilty, and if the court does it, it would be altering the very scheme of the Act and usurping the legislative function.'

A company therefore cannot serve in jail, but this observation has to be seen in lieu of the changing trends in the Indian corporate criminality jurisprudence and change in the Court's stance over the years. The courts have pronounced judgements in the past that show a mixed approach of vicarious liability and the doctrine of identification. Corporations though not guilty for individual offences such as rape and bigamy for instance but they have been indicted for 'crimes of intent' as the corporations perform their functions through directors and other stakeholders who can be attributed to the actions of the company.<sup>32</sup> The courts have now adopted a more liberal approach recognising the 'directing minds' of the company by virtue of the Memorandum of Association and Articles of Association of the company who are attributable to offences by the company.<sup>33</sup> Therefore, the

---

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

<sup>29</sup> Section 11, Indian Penal Code, 1860 (No. 12 of 1891).

<sup>30</sup> A.I.R. 1964 Bom. 195, at para 17. *See also, ESSO v. Udharam Bhagvandas*, (1975) 45 Comp. Cas. 16 (Bom.)

<sup>31</sup> (1980) 126 ITR 804 Cal., at para 9.

<sup>32</sup> *State of Maharashtra v. Messers Syndicate Transport* (1964) A.I.R. 195 (Bom.).

<sup>33</sup> *Meridian Global Funds Management Asia v. Securities Commission* (1995) 2 A.C. 500.

company's directors are called upon to answer for the criminal acts for which criminal intent is a necessary element.<sup>34</sup>

### ***Evolution in India: Approach of the Courts***

***Iridium India Telecom v. Motorola:***<sup>35</sup> In this case Motorola sold a tech. product to Iridium and made certain promises that turned out to be false. Iridium filed a case against the company Motorola for cheating.

Under the Indian Penal Code cheating requires *mens rea*. Motorola argued in the court that the company being a separate legal entity and an artificial entity created by legal fiction has no mind of its own hence cannot be held criminally liable.<sup>36</sup>

The Supreme Court rejecting the arguments of Motorola relied on the *Tesco Super markets* case<sup>37</sup> and applied the doctrine of attribution. It held that in the absence of 'any statutory or common law exception' the liability was based on attribution rather than vicarious liability.<sup>38</sup> The Court clarified that the company thinks and acts through its employees, therefore the same must be attributable to the company. The court held that:

'The actions and mind of those who have such enormous control over the company such that their mind, knowledge and actions can be considered as that of the company itself..... it would be necessary to ascertain the degree and control of the person or body of persons is intense that a corporation may be said to think and act through the person or body of persons.'<sup>39</sup>

***Standard Chartered Bank. v. Directorate of Enforcement:***<sup>40</sup> In this case the court held that the Indian law recognises that corporations could be prosecuted for an offence which sets out a mandatory provision for sentence of imprisonment and a fine.<sup>41</sup> It was observed that by analysing the intent of the legislature it cannot be concluded the corporations cannot be punished for anything except minor offences. The case is essential as it marks the divergence of the judiciary from only fine for corporations to imprisonment. The intent of the legislature must be

---

<sup>34</sup> Team NovoJuris, *Jurisprudence of Corporate Criminal Liability of Directors*, (2018), Available at: <https://novojuris.com/2018/09/11/jurisprudence-of-corporate-criminal-liability-of-directors/> (last visited Jan. 26, 2019).

<sup>35</sup> (2010) 14 (Addl) S.C.R. 591.

<sup>36</sup> *Id.*, at para 35.

<sup>37</sup> *Id.*, at para 37.

<sup>38</sup> *Id.*, at para 36.

<sup>39</sup> *Supra* note 34.

<sup>40</sup> A.I.R. 2000 S.C. 2622.

<sup>41</sup> *Id.*, at para 3.



construed strictly in penal statutes and provide complete justice rather than mischief.<sup>42</sup>

***Asst. Commissioner v. Velliappa Textiles***:<sup>43</sup> In this case, B. N. Srikrishna, J. said that 'corporate criminal liability cannot be imposed without making corresponding legislative changes.' The Court was of the view that the company could be prosecuted for an offence involving INR 1,00,000/- or less and be punished at the option of the Court. Whereas in the case of an offence involving an amount or value exceeding INR 1,00,000/-, the Court is not given a discretion to impose fine or imprisonment and, therefore, the company cannot be prosecuted as a custodial sentence cannot be imposed on it.

It was made clear that a company can be held liable and prosecuted for offence even if it involves imprisonment coupled with a fine based upon judicial discretion. There is a deviation from the courts earlier stance that corporates cannot possess *mens rea*. In the present case it was held that corporates could be held liable for criminal wrongs.<sup>44</sup>

***Sunil Bharti Mittal v. Central Bureau of Investigation***:<sup>45</sup> The government had issued telecom licences to several companies. Due to certain irregularities the telecom licences were under scrutiny for which Bharti Cellular Ltd. was investigated. The offence was attributed to the Chairman Sunil Mittal who became the main accused.

The bench laid down the following law: It held that the director can only be prosecuted if there is sufficient evidence about his role coupled with the proof of *mens rea*.<sup>46</sup> It relied on *Iridium* case and said that the criminal liability can be imputed on the company on account of its 'alter ego' i.e. who holds the control and not vice-versa.<sup>47</sup> It categorically held, 'When the company is the offender, vicarious liability of the directors cannot be imputed automatically, in the absence of any statutory provision to that effect.'<sup>48</sup>

### ***Environmental Justice vis-à-vis Corporate Criminal Liability***

---

<sup>42</sup> *Id.*, para 16.

<sup>43</sup> [2003] 263 I.T.R. 550/132 Taxman 165 S.C.

<sup>44</sup> *Supra* note 5, at page 3.

<sup>45</sup> A.I.R. 2015 S.C. 923.

<sup>46</sup> *Id.*, at para 37.

<sup>47</sup> *Id.*, at para 34.

<sup>48</sup> *Id.*, at para 39.

The respect for environment throughout the centuries has been reflected in the lifestyle of people in India through their mythology, folklore and religion.<sup>49</sup> India has a rich environmental heritage but it has been depleted due to industrialisation and increasing population.<sup>50</sup> According to the International Union for Conservation of Nature (IUCN), India is home to '7-8% of all recorded species, including over 45,000 species of plants and 91,000 species of animals.'<sup>51</sup> India has also been gifted with a variety of ecosystems including forests, wetlands, grassland, desert, coastal and marine ecosystems and four of the thirty globally identified biodiversity hotspots can be found in India.<sup>52</sup> The environment is being destroyed at an alarming rate due to over exploitation of resources in order to meet the basic needs.<sup>53</sup> A considerable degree of deforestation has resulted in depletion of wildlife because of loss of habitat, degradation of land, soil erosion and pollution of the air and water. Factories are playing a major role in this by discharging 'untreated sewage into rivers' and 'pollutants in the air'.<sup>54</sup> Agricultural aids are causing irreparable damage to rivers and further add to the already existing water shortage.<sup>55</sup>

Data suggests that for the first time in human history 51 out of the 100 largest economies are global corporations and only 49 are countries.<sup>56</sup> A study conducted by the 'Friends of the Earth International' observed that these large corporations are serious threat to the environment.<sup>57</sup>

Globalization has led to the growth of companies – National, multinational, and transnational. This poses a further problem of regulation exacerbated by the fact that some of these giant corporations have budget running to the amounts at par

---

<sup>49</sup> Peggy Rodgers Kalas, *Environmental Justice in India*, 1 ASIAPAC. J. HUM. RTS. & L. 97 (2000),

<sup>50</sup> Sarbapriya Ray & Ishita Aditya Ray, *Impact of Population Growth on Environmental Degradation: Case of India*, 2 JOUR. OF ECO. & SOC. DEV. 73 (2011).

<sup>51</sup> International Union for Conservation of Nature, *India*, IUCN (2013), Available at: <https://www.iucn.org/asia/countries/india> (last visited May 20, 2020).

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

<sup>53</sup> *Supra* note 49.

<sup>54</sup> Anthony Spaeth, et. al., *Population Growth, Development, Bureaucracy - Bad Problems for Mother Earth*, 147 (13) TIME INTERNATIONAL 49 (1996).

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

<sup>56</sup> Sarah Anderson & John Cavanagh, *Top 200: The Rise of Global Corporate Power*, INSTITUTE FOR POLICY STUDIES (2000), Available at: [https://www.iatp.org/sites/default/files/Top\\_200\\_The\\_Rise\\_of\\_Global\\_Power.pdf](https://www.iatp.org/sites/default/files/Top_200_The_Rise_of_Global_Power.pdf) (last visited May 27, 2020)

<sup>57</sup> Vijay Kumar Singh, ENVIRONMENTAL CRIMES: CORPORATE LIABILITY 63 (Dr Radha Kalyani, 2010).

with the budget of smaller nations.<sup>58</sup> As clarified above to hold these corporations accountable the elements of crime must be established.<sup>59</sup>

## IV

### **Liability of corporations under Indian environmental laws**

The working of environmental law may seem to be administrative act but it is rather a criminal law.<sup>60</sup> The working of environmental issues includes certain measures to be taken by companies as mentioned under various legislations, for instance permitting specific amount of pollution emissions or waste management.<sup>61</sup> The failure to meet the standards would lead to environmental crimes and punishments thereof.<sup>62</sup> The Environmental Protection Act, 1986 identifies many industries that are prone to causing pollution due to the inherent nature of the industry.<sup>63</sup> Environmental Legislations in India incorporate the principles enunciated in various international conferences<sup>64</sup>. These conferences resulted in quick legislative measures but ineffective implementation. As Shyam Divan has observed:

‘The Legislature is quick to enact laws regulating most aspects of industrial and development activity, but chary to sanction enforcement budgets or require effective implementation. Across the country, government agencies wield vast power to regulate industry, mines and other polluters but are reluctant to use their power to discipline violators.’<sup>65</sup>

India has a plethora of environmental law legislations ranging from air, water, forest, coasts to wildlife, biodiversity etc. but the scope of this paper is limited only to the legislations related to air and water.

### ***Laws Relating to Water and its Protection***

---

<sup>58</sup> Eric Kolodner, *Transnational corporations: impediments or catalysts of social development?*, UNITED NATIONS RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT, UNRISD/OP/94/5, pg. 2(1994).

<sup>59</sup> *Supra* note 57, at page 70.

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

<sup>61</sup> Michael G. Faure & Marjolein Visser, *LAW AND ECONOMICS OF ENVIRONMENTAL CRIME: A SURVEY* 3(2003).

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

<sup>63</sup> Section 3, The Environmental (Protection) Rules, 1986.

<sup>64</sup> Refer to: U.N. Conference on The Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1972).

<sup>65</sup> *Supra* Note 57, at page 70-71. [Shyam Divan is a senior Supreme Court advocate & the co-author of ENVIRONMENTAL LAW AND POLICY IN INDIA (2001)].

- The Water (Prevention and Control of Pollution) Act, 1974, as 1988.
- The Water (Prevention and Pollution Control) Rules, 1975
- The Water (Prevention and Control of Pollution) (Procedure for Transaction of Business) Rules, 1975.
- The Water (Prevention and Control of Pollution) Cess Act, 1977
- The Water (Prevention and Control of Pollution) Cess Rules, 1978.

### *Laws Relating to Air and its Pollution*

- The Air (Prevention and Control of Pollution) Act, 1981 Amendment Act, 1987.
- The Air (Prevention and Control of Pollution) Rules, 1982. Rules, 1983.

The abovementioned legislations have penal provisions for companies causing pollution either by complaint or discovery. For instance, section 47 of The Water (Prevention and Control) of Pollution Act,<sup>66</sup> section 40 of The Air (Prevention and Control) of Pollution Act<sup>67</sup> and section 16 of The Environment Protection Act<sup>68</sup> have instituted imprisonment and fine for corporations that violate its provisions.

Most liability clauses on corporations are drafted verbatim for instance in the Air Pollution Act under section 21 (Restriction on use of certain industrial plants)<sup>69</sup>, section 22 (Person carrying on industry, etc., not to allow emission of air pollutants in excess of the standards laid down by State Board)<sup>70</sup> or section 31-A (non-compliance of directions that the Central Government may give) of the Air (Prevention and Control) of Pollution Act<sup>71</sup> deems the company guilty for any actions violating the provisions. It recognises the principle of attribution and sets liability on any individual against whom knowledge and intent can be proved. It recognises the human agency in the company behind the actions.

### *Legislative Measures for Environmental Protection*

The Parliament of India has enacted three major legislations pertaining to 'anti-pollution' to protect and address the issue of environmental degradation. '(1) the Water Prevention and Control of Pollution Act of 1974;<sup>72</sup> (ii) the Air Prevention and Control of Pollution Act 1981<sup>73</sup> and most significantly, (iii) the Environment Act of 1986.'

---

<sup>66</sup> Section 47, The Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974).

<sup>67</sup> Section 40, The Air (Prevention and Control) of Pollution Act, 1981 (14 of 1981).

<sup>68</sup> Section 16, The Environment Protection Act, 1986 (29 of 1986).

<sup>69</sup> *Supra* note 67, at Section 21.

<sup>70</sup> *Id.*, at Section 22.

<sup>71</sup> *Id.*, at Section 31-A.

<sup>72</sup> K.I. Vibhute, *Environment, Development and Law: Indian Perspective*, 37 JILI 186 (1995).

<sup>73</sup> *Id.* at 187.

The Provisions require 'environmental clearance' prior to any developmental project coupled with an 'environmental impact assessment'<sup>74</sup> as had been declared in the Rio Declaration.<sup>75</sup> Industries are then required to submit environmental audits annually for clearance.<sup>76</sup> Under the Environment Act, the central government is vested with the sole power to take necessary action for protection and improvement of the environment.<sup>77</sup> The Water and Air Acts create 'Central Pollution Control Board, the State Pollution Control Board, and the Joint Pollution Control Board.' The statutes creating these Boards also set forth the 'composition of the boards, the powers and function, and sanctions for violations of provisions of the Acts.'<sup>78</sup>

### *Penalties for Environmental Violations*

All three major anti-pollution statutes have penalties for violations of their provisions. The Water and Air Acts provide for '(i) fines of up to 10,000 rupees; (ii) imprisonment of a term ranging from 3 months to 6 years, and imprisonment for up to seven years for violations after conviction; and (iii) additional fines of up to 5,000 rupees per day for continuing violations.'<sup>79</sup> Penalties for violations of the Environment Act are more severe, and include imprisonment up to five years, or a fine of up to one lakh of rupees or both for each violation.<sup>80</sup> The Environment Act also calls for a mandatory prison term of seven years if violations continue beyond one year after the conviction.<sup>81</sup> Liability also extends to corporate officials directly in charge of a company's business, unless they can establish that the offense was committed without their knowledge or that they exercised due diligence to prevent the commission of the offense.<sup>82</sup> In addition, under the Act, any person may file a complaint with a court alleging a violation.<sup>83</sup>

In *Uttar Pradesh Pollution Control Board v. Mohan Meakins*<sup>84</sup> the court adjudicating upon discharge of trade effluents in Gomathi river by an industry under S. 43

---

<sup>74</sup> Environment Protection Act, 1986, Refer to: Rule 5(3) (a) Environment Protection Rules, 1986 Draft Notification No. S.O. 85(E) CCL III 59. (Amended in 1994).

<sup>75</sup> U.N. Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992).

<sup>76</sup> *Id.*

<sup>77</sup> Section 3, Environment Protection Act, 1986, (29 of 1986).

<sup>78</sup> *See generally*, Chapter II, Water (Prevention and Control of Pollution) Act, 1974 (Act No. 6 of 1974); Chapter II, The Air (Prevention and Control) of Pollution Act, 1981 (Act No. 14 of 1981).

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

<sup>80</sup> *Id.*

<sup>81</sup> Section 15, Environment Protection Act, 1986 (29 of 1986).

<sup>82</sup> *Id.*, section 16.

<sup>83</sup> *Id.*, section 19.

<sup>84</sup> 2000 3 S.C.C. 745.

Water (Prevention and Control of Pollution) Act, 1974 held, 'lapse of such long period cannot be a reason to absolve the respondents from the trial.'

In *Haryana State Board v. Jai Bharat Woollen Finishing Works*<sup>85</sup> the court held:

'where an offence under the Act is committed by any company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.'

### ***Problems with Criminal Liability in Environmental Cases***

The lack of cases against corporations is the testimony to the fact that the current legislative structure is dealing with some issues which may be identified as following:

1. Lifting the Corporate Veil to identify the 'alter ego' is difficult.
2. The punishments are across legislations i.e. their scattered nature in view of various parallel legislation.
3. Due to the above-mentioned reason, the people are unaware of their rights under Parliamentary acts.
4. The principle of *mens rea* vis-à-vis individuals in corporate entities is difficult to determine.
5. The current punishments imposed in terms of cost-profit analysis are menial in nature. Fines imposed are inadequate.
6. Conviction of the alter-ego is a rare instance therefore there is lack of deterrence.

### ***Suggestions for better implementation***

1. There should be a creation of another regulatory body that keeps a tab on corporate activities and works in consonance with the National Green Tribunal.
2. The cost of hurting the environment should be evaluated to at a higher cost than it currently is.
3. There should be a liberal interpretation of *mens rea* to bring the culprit of environmental crimes to justice.
4. The Doctrine of vicarious liability should be strictly applied to create accountability of the minds behind the actions of the company.
5. There should be a single unified legislation that spells out corporate liability vis-à-vis environmental crimes.
6. Companies should receive benefits and incentives for complying with the environmental laws.

---

<sup>85</sup> 1993 CriLJ 384, at para 14.

## V

### Conclusion

The Government of India in the last quarter century has initiated comprehensive environmental laws. The legislation is in place but there is a lot of confusion yet with the implementation which leads to evasion of accountability and responsibility by corporations.

In the twenty first century the role of the Judiciary has expanded and become strict with regard to environmental crimes by corporates and the awareness towards environmental wrongs has increased manifold.<sup>86</sup>

Yet, there is a rising tendency in the Governmental authorities to amend notifications and laws to regularise illegal activities of corporations.<sup>87</sup> In the name of development there is a rapid dilution of environmental laws.<sup>88</sup>

According to Brundtland Report,<sup>89</sup> profit and environmental need to balance and in India it seems that profit is overpowering environment. There should be attempts to strike a balance and give equal importance to nature by bringing its culprits to justice. The way forward is not dilution of existing standards and rules but rather effective and strict implementation of the existing laws.

---

<sup>86</sup> Fernandez, *State Constitutions, Environmental Rights Provisions, and the Doctrine of Self-Execution: A Political Question?*, 17 HARV. L. REV. 380 (1993).

<sup>87</sup> See, Ministry of Environment, Forests and Climate Change, Notification declaring Eco-sensitive Zone (ESZ) around Okhla Bird Sanctuary in the State of Uttar Pradesh and National Capital Territory of Delhi, 2015, Notification S.O. 2262(E) (India).

<sup>88</sup> See, Ministry Of Environment, *Draft Coastal Regulation Zone Notification*, (2018), Indian Environmental Portal, (18<sup>th</sup> April, 2018), available at: <http://www.indiaenvironmentportal.org.in/content/454140/draft-coastal-regulation-zone-notification-2018/> (last visited May 29, 2019).

<sup>89</sup> G. Brundtland, *Report of the World Commission on Environment and Development: Our Common Future* (1987). UNGA Doc. A/42/427.