

Corporate Criminal Liability & Environmental Damage in India

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India is one of the most polluted countries in the world. According to recent data, Half of the world's 20 most polluted cities in India. Among these 10 cities most of the cities are industrial areas. Also, Indian Ranked 141 out of 180 Countries in survey called 2016 Environmental Performance Index (EPI). Basically Author in that paper tries to find out the nexus between the cities where, most of the Countries Industries are located and from these areas health issues or problems face by people are higher than those areas where industries are not present. This is because Industries are not following Environmental norms that decided by authorities and regularly harms the environment, industries by doing unethical practices like reverse boring, industry emissions over the prescribe limit, etc. This all happens because of the loop holes that are present in our Laws. Further, Author want to discuss if corporations did environmental harm that leads to death of thousands of people like in Bhopal Gas Tragedy Case. In that case Corporates Criminal Liability is just restrict to fine. In the reference of above scenario author want to discuss Unilever's Kodaikanal Case to show how effective our present laws are to penalize these corporations. Author Lastly, want to compare Corporate Criminal Liability in Indian Law with the reference of American Law, and tries to find out which is more effective and why? This paper aims to find out that our present Environmental laws is really effective on these Corporations, fine is the right way to punish them, or we need more rigid law in that area. The author would propose that corporate criminal liability may be more effective in Indian Perspective if it imposed on the American Model. The paper will rely on various reports and other instruments of legal and doctrinal research.

1. Introduction

The quick developing industrialisation is driving bunches of environmental issues by its uncontrolled pollution emanation.¹ Different reasons of pollutions in India are the destruction of forests, emissions of vehicles, land degradation due to use of poisonous insecticide for agriculture, deficiency of natural resources, uncontrollable use of wood fuel and some more.² Pollution is the fundamental reason to lead bunches of illness, medical problems and long-term livelihood impact.³ In a present scenario pollution is a common to all developed & industrial developing countries like India, Indian air pollution a quite serious issue for human life.⁴ Nonetheless, Indian per capita discharges of greenhouse gases is low, yet it is the third biggest greenhouse gases maker on the planet, simply after China and the United States of America. Which change the atmosphere of India and also guide impacts to the human health.⁵ Most of the Indian large scale industries produce high amount of polluted liquid emission which is regularly wash out through a waterway into river⁶, at present they find a new method to discharge the industrial waste is reverse boring which is also used by Individuals in household also.

A recent report portrays that around 29,000 million litres of fluid dirt are created everyday in India whenever there have a limit of 6,000 million litres per day. Specifically, or in a roundabout way river is the primary wellspring of water.⁷ There have lots of rivers in India which are tremendously contaminated day by day because of absence of administration by government. The most harmful components which chiefly contaminated the stream water are natural waste, silt, mineral, supplement, lethal compound and some more. In the air is industry emissions which increases the percentage of carbon monoxide & many harmful gases. Vehicles also contribute up to 35% air pollution in the big cities of India like Bangalore, Mumbai, Kolkata, Chennai, etc.⁸ Half of the world's 20 most polluted cities in India⁹, Gwalior is on 2nd position, Allahabad is on 3rd, Patna is on 6th, Raipur is on 7th, Delhi is on 11th, Ludhiana is on 12th, Kanpur is on 15th, Khanna is on 16th, Firozabad is on 17th, Lucknow is on 18th. Among these 10 cities most of the cities are mainly polluted by industries¹⁰. The WHO categorised air pollution as the 6th greatest cause of deaths in India, setting off a caution with studies indicating breathing infirmities were on the ascent in Indian cities¹¹. The Global Burden of Disease Study for 2010, published in 2013, had discovered that outdoor air pollution was the 5th largest cause of deaths in India and around 620,000 premature deaths from air pollution-related diseases in 2010¹². Last year in a report it was observed that 30% of premature deaths in India due to air pollution¹³, Outdoor air pollution was responsible for 6% and household pollution for 5% of the total disease burden in India in 2016. The contribution of air pollution to disease burden remained high in India between 1990 and 2016, with levels of exposure among the highest in the world. It causes burden through a mix of non-communicable and infectious diseases, mainly cardiovascular diseases, chronic respiratory diseases, and lower respiratory infections¹⁴.

2. Sanctions in corporate criminal liability and its environmental

2.1. Contemporary relevance of corporate criminal liability

The term 'corporate criminal liability' means the liability imposed upon a corporation for any criminal act done by any natural person. Liability is imposed so as to regulate the act of a corporation.

Any corporation can be made liable for the acts of its agent and servant if s/he:

- ✚ Commits a crime
- ✚ Within the scope of employment
- ✚ With the intent to benefit the corporation

So, according to the common law masters were held criminally liable for the acts of their agents, if the act is creating the public nuisance. The imposition of the criminal liability is only one means of regulating corporations. There can be civil law remedies are also being given such as the injunction and award for damage which have the penal element.¹⁵

The doctrine of respondent superior¹⁶ was developed in common law, and this aided the growth of corporate liability. In 1909, in *New York Central & Hudson River Railroad Co. V. United States*¹⁷, the Supreme Court clearly held that a Corporation Could be held liable for crime of intent. The court based this upon the principle of respondent superior.

Following this judgement, all courts were willing to hold corporations criminally liable for almost all wrong expect rape, murder, bigamy and other crimes of malicious intent.

2.2. Legal sanctions in India

Corporate criminal liability or corporate crime is very difficult to define because this phase in present day scenario covers wide range of offences however for understanding purpose it can be defined “as illegal act or omission or commission, punishable by criminal sanction committed by individual or group of individual in course of their occupation”. Actually this concept in such a vast country is very difficult ascertain. Basic problem with its declaration is that, company’s, who shall be liable, are very powerful one. So when they are presenting in the handcuff they easily release by using their huge resources.¹⁸ As earlier the concept of vicarious liability has been evolved in which the company held to be liable but this liability was surrounded with many exceptions – via, Act of God, Negligence, plaintiff consent, etc. So with the advantage of the ever exceptions the wrongdoers or criminals being releases. Therefore, for restraining such act our judiciary focused on the principle of *strict liability principle*. But this principle was an accompanied with the concept of “Due diligence” according to this principle, everyone should be held liable for that act which creates nuisance or crimes in or against the people or society.¹⁹ The above principles were for maintain generally the tortious liability, which is not enough for criminals. So let us come back to the Criminal view:

Criminal liability is attached only to those acts in which there is a violation of criminal law i.e. to say there cannot be liable without a criminal law which prohibits certain acts or omissions. The basic rule of criminal liability revolves around the basic Latin maxim ‘actus non facit reum, nisi mens sit rea’. It means that “to make one liable, it must be shown that act or omission has been done which was forbidden by law and has been done with guilty mind”²⁰.

2.2.1. Now question arises to what extent Corporation criminally made liable?

Earlier answer to this question was not pervasive. As our Parliament had not made the any particular law regarding this problem. But after the recent landmark of judgement of Apex court in *Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.*²¹ had made the scenario crystal clear. But before the final judgement of this ever state case various cases have come into the light.

In *Velliappa Textiles*²² case, majority view was that the corporation can’t be held to be responsible for the offence which mandatory in need of the imposition of imprisonment coupled with fine.

Further, In the case of *State of Maharashtra v. Syndicate Transport*²³ were it was clearly stated that:

“Company being a juristic person cannot be possibly sent to the prison and it is not open to impose a sentence of fine or allow awarding any punishment if the court finds the company guilty, and if the court does it, it would be altering the very scheme of the Act and usurping the legislative function.” So the as according to the above views of the courts it made the company may be held liable for its act but not exactly. These views were extremely prevailing in the society and it creates a lot of the distraction among the scenario. But this anxiety relaxes after the judgement of Supreme Court in 2005, in the case of *Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.*²⁴ of the law has taken a settled position and it is basically much more logical. It was expressly stated in this case that the company is liable to be prosecuted even if the offence is punishable both with a term of imprisonment and fine. In case the company is found guilty, the sentence of imprisonment can’t be imposed on the company and then the sentence of fine is to be imposed and the court has got the judicial discretion to do so. This course is open only in the case where company is found guilty but if a natural person is so found guilty, both sentence of imprisonment and fine are to be imposed on such person. Further court remarked that “...there is no blanket immunity for any company from any prosecution for serious offense merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake series of activities that affect the

life, liberty and property of the citizens and therefore no description of court they held to be liable as according to law”.

2.3. Corporate Criminal Liability in Environment Hassles

As we can see in the above discussion that if a Corporation had done anything then the corporation was liable for the punishment whether it is in the form of damages, imprisonment or any penalty. When corporations and the people working for them fail to comply with environmental laws, they are not only vulnerable to civil and administrative penalties, but increasingly to criminal sanctions as well if a corporation had done any criminal act then their criminal act had affected the environment in the negative way. Here environment is not only related to the general environment in which we all live but here we are going to focus on the environment of the corporation by which a Corporation was made and without them a Corporation is not able to survive. So here we are going to see the impact of corporate criminal liability on corporation's natural resources, employees, and also on a general environment.²⁵

(a) Natural Resources: in all over the world corporations had exploit the natural resources of the countries because the government across the world have given a free hand to corporations to exploit the nature and community resources because corporation were helping the government in the progress of the economy and increases the revenues of the government by doing so government had depriving the right of common people to use the natural resources. For instance, in India, Corporations at Eloor, Kodaikanal and Gujarat have not only destroyed the water and land resources in these areas, but also impoverished communities by degrading their livelihood resources and health. All these communities suffer from disasters similar to Bhopal. Inaccessible to clean and safe drinking water was found to be a major problem in all these areas. The companies either pollute the water resources to an extent where it is no more portable or over exploit it till the water table goes down or dry up the wells. A befitting example could be of Coca-Cola bottling plant in Kerala where company extract excess amount of water from the ground due to which the water level has gone very low and nearby villages are suffering from scarcity of water. It is important to note that most of damage caused to the environment are irreversible.²⁶

(b) General Environment: by the general environment we mean the environment we all live peacefully and it is our fundamental right also given by our Constitution to live peacefully in the environment. but because of the harmful act done by the corporation we are unable to live peacefully in the environment.

The “right to a healthy environment” as a fundamental right of Indian citizens has emerged from PIL-based judicial action. Some of the silent principles and norms evolved by judiciary to assess environmental liability situation include²⁷

- ✚ Absolute liability of hazardous industries;
- ✚ Polluter pays principle;
- ✚ Pecuniary principal; and
- ✚ Constitutional “Right to safe environment.”

Absolute liability of hazardous industries

Following the *Bhopal gas leak tragedy*²⁸, the Indian Supreme Court found this rule inadequate to deal with situations where messes do not have the resources to enter into litigation against a powerful industrial company.

The Right to compensation in environmental cases has been traditionally into strict liability as enunciated in *Rylands v Fletcher*²⁹. A Portion of the ruling provide that “A person who for his own purpose brings into his

land and collect and keeps there anything likely to mischief if it escapes, must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequences of its escape.”

In the *Bhopal gas leak*³⁰ case, therefore, the Supreme Court laid down new judicial norm of “absolute liability” for a hazardous and inherently dangerous industry to pay compensation.

Polluter Pays Principle

The principle of absolute liability in cases of environmental injury has further found judicial validation in the polluter pays principle, which has become the law of land through Supreme Court judgement.

In the *Bichhri case*³¹, while imposing the cost of remediation on the polluter, the Supreme Court held: “Where an enterprise is engaged in a Hazardous or inherently a dangerous activity and causes harm to anyone on the account of accident, enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions as laid down in tortious principle of strict liability under the rule laid down in *Rylands vs. Fletcher*³².”

Further, in the *Vellore tanneries pollution case*³³, the supreme court has elaborate on the polluter pays principle as follows: “The ‘Polluter Pays Principle’ as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of ‘Sustainable Development’ and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost reversing the damaged ecology.”

Right to life in article 21 includes right to safe environment

Article 21 of the Indian Constitution guarantees³⁴: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This article has proved a fertile source of judicial innovation and interpretation to expand the scope of meaning of substantive constitutional rights and invest them with the force of justifiability. The right to live in a healthy environment has emerged as an inherent and implied right to life enshrined in Article 21 of the Constitution through judicial interpretation.

Therefore. Under Article 32³⁵ of the Indian Constitution, any citizen or concerned group can initiate a PIL with the Supreme Court of India in case a threat of environmental degradation or contamination is perceived. In such cases, the “onus of proof” may still lie with the actor or with the developer or industrial to show that the action is or was environmentally benign or that the entity exercised all diligence to prevent the degradation or contamination.

2.4. Limitations in the Law

The law requires authentic proof beyond reasonable certainty or the immediate contribution of the management top rank in the specific activity, which is the reason for death, to hold them liable for culpable homicide. Along these lines, there is a crying requirement for a law which will make vicarious liability with respect to the senior management, in case of operational failures of corporations resulting in deaths.³⁶ Cases like this show that it is so natural to raise the intruder of middle management bungles to get away from the liability of graver charges in occurrences of mass homicides which result from corporate avarice. Indian companies are once in a while managed on professional lines. Value proprietors manage each progression in compromising to boost benefit, at the expense of public safety.

In the recent Judgement *Mani Kumar Chhetri v State of West Bengal*³⁷ states that,

“It may be apposite to note that in [the] United Kingdom, a legislation, namely The Corporate Manslaughter and Corporate Homicide Act 2007, has been enacted to hold companies accountable for the failures of senior management resulting in death of persons. However, in the absence of any legislation in India making a company culpable for death by [a] rash and negligent act, the question of making the directors and/or officers of the company vicariously liable for such act cannot arise and their penal liability is to be examined under the various provisions of the Indian Penal Code. In this perspective, the plea of non-joinder of the company as an accused is rendered irrelevant to the validity of the prosecution of the petitioner and other accused persons in the instant case.”

The judgment, however balanced on legal principles in light of point of precedent, loses the ground substances of company management in family-owned businesses. In such businesses, the order of a couple in charge of undertakings abrogates the interests of some other stakeholder. Furthermore, public safety agreed the minimum criticalness, when weighed against the inspiration to make profits. Unfortunately, repeated occurrences of deaths because of corporate negligence, from the times of the Bhopal gas tragedy to the present, have failed to shake our legislators out of their profound sleep of inaction. They are yet to plan a law accommodating corporate criminal liability in heinous crimes, for example, guilty murder or involuntary manslaughter. Indeed, even the Law Commission of India seems to have deliberately ignored; and is yet to propose a substantive enactment in this field. Without a particularly characterized enactment on corporate liability and-going just by the standards of common law, it is hard to hold the CEO of a company or the top managerial staff of a company criminally liable for a act that has brought about the passing of people, unless they are caught in the act in executing the act itself or were specifically associated with its commission or omission.³⁸ Interestingly, some different nations, for example, the United Kingdom (UK) and Australia, have enacted exceptionally characterized law to hold the senior management responsible for criminal negligence, commission or omission which brings about the death of a man or people. As indicated by the UK's Corporate Manslaughter and Corporate Homicide Act of 2007, the senior management, including the company itself can be discovered liable of the offense. In November 2003, Australia passed the Crimes (Industrial Manslaughter) Amendment Bill of 2002, making the offense of industrial manslaughter.³⁹ Henceforth, the Australian law too perceives industrial homicide, by ascribing criminal liability to enterprises in industrial fuss. The penal code, a law encircled two centuries prior, does not take into the principles of vicarious liability, which would make chiefs legitimately in charge of the acts of the company. In any case, appending obligation regarding involuntary manslaughter is terribly insufficient in cases of mass deaths. In the *Upahaar cinema case*⁴⁰ and in the *Bhopal gas tragedy case*⁴¹, which are both incidents of mass deaths because of corporate negligence, the Supreme Court supported the conviction of the top management for involuntary manslaughter and not culpable homicide.

2.5. Unilever Kodaikanal Mess⁴²

Chesebrough Pond's set up thermometer Factory in Kodaikanal, then, Hindustan Unilever Limited (HUL) buy that factory. Unilever dumped toxic mercury in Kodaikanal, poisoning, it's workers & the forest. In past 15 Years Unilever has done nothing to clean up the contamination & compensate its workers & their families despite talking a big game about Corporate Social Responsibility.

A 2002 study by URS Dames & Moore, HUL's own consultant reports that the factory discharge more that 1.3 tonnes of mercury in the pamper shola reserved forest. Approximately 1 gram of mercury, released every year from the atmosphere, can contaminate the fish in a 20acres lake, with this we can estimate what they did in Kodaikanal. Also, this study found that HUL had illegally sold mercury-bearing waste containing nearly

440kg of mercury to scrap merchants. Lastly, Companies own study in 2015, as found that mercury in sediments taken from a stream entering the Pambar Shola was 5 times higher than safe limits.

3. Corporate Criminal Liability in America⁴³

The American approach to corporate criminal liability is based in what is known as “the aggregation theory.” This theory contemplates that while no single employee may have sufficient information necessary to constitute the required *mens rea* of the concerned offence, if multiple individuals within the corporation possessed the element of such knowledge, collectively, the aggregate knowledge can be attributed to the corporation. As a result, in some situations, corporations will be liable, although no particular employee may be liable.

Another innovation in American Law of corporate criminal liability came in the shape of the Model Penal Code formulated by American Law Institute in 1962. Although it has not been adopted by congress, several States have implemented a more limited form of corporate criminal liability based on the American Law Institute Model Penal Code (MPC). With limited exceptions, the American Law Institute rejected respondent superior doctrine. The MPC permits imposition of corporate criminal liability when the commission of the offence was authorized, requested, commented, performed or recklessly tolerated by the Board of Directors or by a high managerial agent acting on behalf of the corporation within the scope of his/her office or employment. This would make it reasonable to assume that their acts are in some substantial sense reflection of the policy of the corporate body and the shareholders are likely to be in a position to bring pressure to bear to avoid liability.

In American Law, a corporation may be held criminally responsible for anti-trust violation committed by its employees if they were acting within the scope of their authority, or apparent authority for the benefit of the corporation, even when such acts were against corporate policy or expressed instructions.

American Law also provides for another option in corporate criminal cases viz. a “deferred prosecution” or non-prosecution agreement. By such to grant amnesty in exchange for the defendant agreeing to grant amnesty in exchange for the defendant agreeing to fulfil certain requirements.” A case of corporate fraud, for instance might be settled by means of a deferred prosecution agreement in which the defendant agrees to pay fines, implement corporate reforms and fully cooperate with the investigation. Fulfilment of the specified requirement will then result in dismissal of the charges.”⁴⁴

4. Conclusion

Merely put all the blames for pollution on corporations would be wrong, but their acts can cause some irreversible damage to the society at large, so they have to show greater sense of responsibility towards environment. Further, Corporate criminal Liability is an evolving subject subject, all over the world. Although, in India, The law should be amended quickly by raising the magnitude of punishment in instances of involuntary manslaughter caused by corporate negligence. There have been rehashed cases of mass deaths because of corporate negligence, and consequently there is sufficient ground for expanding the most extreme punishment in such cases, and making a solitary law to manage corporate homicide or manslaughter on the lines of the UK enactment. Also, American concept of “Deferred prosecution” in corporate criminal cases might really helpful to facilitate victims which gives them similar sense of restorative justice.

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