



CRIMINAL LIABILITY OF CORPORATIONS FOR ENVIRONMENTAL CRIMES: AN ANALYSIS

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I. INTRODUCTION

Environment and development mutually influence each other and are like two sides of a coin, in case development gets priority the very nature of environment becomes victim, similarly if environmental protection is prioritized the development would be affected. It is too difficult to achieve both at the same time. In the modern era, we see the human nature to be selfish and their main aim is to achieve economic power, due to which environment is becoming the victim. To obtain the desires of an individual, he commits distractions to the environment directly or indirectly, individually or as an organized group. In terms of business organisation, corporate existence have reached every corner of the society and they carry asystematic business approach wherealmost every trade and business activities are covered by the business organisation in the form of a company. In the modern days majority of the people who work for the management of the company will have to do their best to gain maximum profit, in order to do so some of the managerial personalities would not hesitate to breach the legal system and many of them directly or indirectly through illegal means try toachieve maximum profit which certainly lead to violation of laws and in such cases the same could be treated as crime known asparticularly corporate crime and these corporate crime have different dimensions, one among same are corporate environmental crime.

Environmental crimes are called as a violation of environmental legislations with the potential harm to the ecology or biological system of the nature. The threat to global environment is increasing day by day; the dimensions of such environmental crimes are also getting close to the other forms of crimes. The victims of the environmental crimes are not only the human being but also every component of the environment (like climate change, ozone depletion and distractions of eco system and biological system). Now a day's corporation are committing destructions to the natural quality of the nature, intentionally or un-intentionally and directly or indirectly. Environmental crimes such as illegal logging, illegal fishing, illegal trade in wildlife, trading ozone depleting substance, illegal dumping of hazardous waste, trade in prohibited chemical substance and disposal of oil at Seas or Oceans are reported as major environmental crimes. These crimes committed by corporations to achieve maximum profits and these crime has global turnover of 20 to 40 billion dollar every year and it is very much close to global drug trade¹. Indeed the intention of this paper is to conceptualising the term corporate environmental crime as it is one of the major form of the corporate crime and this paper identifies some of the major corporate environmental crime across the globe with the discussion of concept of corporation, scope of corporation as institution, corporate criminal liability, basis for corporate criminal liability vis-a-vis it has discussion of Indian legislations with reference to corporate environmental crimes.

II. CORPORATE CRIMES

Corporate entity being a legal person could be a source for committing wrongs which could be classified a civil wrong and criminal wrong. It is not difficult to make a company to be held liable for their civil wrongs; they may responsible for civil actions such as specific performance, injunctions and compensations. Corporate Criminal wrongs (herein after called as corporate crimes) are committed by corporations through the officials or employees of the company with the intent to gaining profits and economic development of the corporation.

¹ Channing May, Report on Transnational Crime and the Developing World, March 2017, Global Financial Integrity.



Definition of Corporate Crime: To define corporate crimes, an Australian criminologist, Jhon Braithwaite² states “the conduct of corporation or employees acting on behalf of corporations, which is prescribed and punishable by law”, it means, in the first stage of definition identifies the employees or the company commits the wrong and at second stage company faces the wrong against itself. In the early days, criminals were separated from the company but over the years the concept of corporate veil has hidden a few faces behind it and protected them from being punished³. Corporate crimes generally considered as verities of occupational crimes or white collar crimes. The occupational crimes are usually committed by individual employees against the company itself but corporate crimes refers to situations in which corporate officials as managerial persons commit criminal wrong for the benefit of the corporation. White collar crimes are connected with the elite and professionals and it benefits the individuals but corporate crimes benefits the company⁴. The corporate crimes are usually committed within anonymous structure of action and communication and within a framework of generally legal activity⁵, thus causing injury to the society and lead to financial irregularities. More importantly it causes even globally destructions to the environment. The following crimes are recognized forms of corporate crimes;

- a) Conspiracy
- b) Contempt of court
- c) Bribery
- d) Illegal practices
- e) Environmental related offences
- f) Corporate frauds
- g) False claims
- h) Tax elusions
- i) Theft
- j) Manipulation of sales
- k) Exploitation of workers
- l) Restraint of trade
- m) Monopolies
- n) Violation of occupational safety and health laws
- o) Forgery
- p) Receiving stolen property
- q) Extortion
- r) Violations of Antitrust laws
- s) Computer crimes, etc.,

III. CORPORATE CRIMINAL LIABILITY

Corporations being a legal person or legal entity will have to bear certain liabilities and they have to be responsible for the actions conducted during the course of business activities. The corporate liabilities could be classified in two types, one is civil liability and another is criminal liability. The civil liability of corporation is not an issue, globally in all national laws or international laws they have recognised corporate civil liability, being legal entity the corporation will have to bear civil liability and aggrieved person will get remedy in the form of damages, injunctions and specific performance and other forms of remedy. In the case of criminal liability of a corporation is a much complicated and complex, because there are many issues like, who commits corporate crime? who should be held responsible?, what is the status of mensrea for corporate crime?, who are all victims of corporate crime? and finally on what basis a corporate entity could be made criminally liable?. To answer all the above issues, one should understand the legal status of corporate entity as a legal person, legal provisions and principles on corporate criminal liability. At the same time issue of corporate criminal liability

²Jhon Braithwaite, *Regulatory Capitalism; How It Works, Idea For Making It Work Better*, Edward Elgar publishing, 2008.

³In Assistant Commissioner Assessment II Bengaluru And Others V. Vellyyappa Textiles Ltd., And Others.

⁴Johannes kasper *Corporate Criminology cases and prevention of Corporate crime*, legal research bulletin, Kyusitn University Vol-3 2013 online edition.

⁵Ibid



focuses many complex issues, Firstly, Corporate entity being intangible and juristic authority, finding necessary essential elements for a crime is quite complex problem. Secondly, imposing of criminal sanctions on corporate entity is the issue, because a corporate entity cannot be put to imprisonment or held liable for death penalty and could not be applied here. Indeed for this issue the criminal laws were not appropriate for consideration. Finally, in criminal case the accused will have to be brought before the Court and prosecution should happen against the accused. This is obviously too difficult to address and may not be possible in the case of corporations.

In India traditionally the concept of corporate criminal liability could not be taken in to consideration without proper arrangement of legal provisions, because in the case of Assistant Commissioner Assessment II, Bengaluru and Ors v. Vliyappa Textile Ltd And Ors,⁶ the Court held that company cannot be prosecuted for offence under I.P.C⁷ and impose imprisonment without making corresponding legislative provisions, the I.P.C. provisions imposes imprisonment of the company but being company as legal person it cannot be prosecuted for the same. Indeed in this case the Supreme Court noted that, it is the responsibility of the legislatures to close the loopholes created by such legislation. In the case of State of Maharashtra V. Syndicate Transport Co, the court held that, it would be depended on the basis of the nature of the offences to hold a company liable for criminal actions and it resulting from the act of its members. In this above judgment, the court raises and important question of law regarding the liability of corporate body for individual on criminal charge involving the question of mensrea and it also refers Section 2 of Indian Penal Code. Section 11 of I.P.C and section 3(42) of General clauses Act 1897, while deciding this case court held that qualification while conceding the body of corporate entity cannot be indicated for offences like treason, murder, bigamy and rape etc., which can be committed only by human individuals or for offences which are compulsorily punishable with imprisonment as per as this case.

The definition of a person under section 11 of I.P.C would not attract for corporate entity for every crimes vested under I.P.C, because certain crimes are committed by only human being for offences which are accounting punishment with imprisonment. In the A.K. Khosal V. T.S. Venkateshan General Electric Company Ltd⁸, the charges against G.E, under section 415 and 420 of IPC were framed on the ground of cheating, the court held that, since mensrea is a very essential aspect to the crime of cheating, G.E being a corporate entity cannot prosecuted for the same offence. In the case of M.C.Mehta V. Union of India⁹ the Supreme Court has introduced a new doctrine called strict liability and in the DCM Shriram Gas leakage case Supreme Court enunciated for the first time the principle of absolute liability, the management were made liable directly for an act of omission and commission, but the problem is that the court did not impose imprisonment in both case due to legislative lacuna. The Supreme Court of India in Iridum India Telecom Ltd V. Motorala Incorporated and Ors¹⁰ held that, corporation will have the same position like individual and they could very well be convicted under statutory offence as well as under common law. The court further held that criminal responsibility of a company would arise when an offence is committed in relation to the business of company by an individual or body of persons during control of such corporation affairs and company will no longer has immunity from criminal prosecution on the ground that it is incapable of having the mensrea for the criminal offences. It identifies in the above discussion, the criminal liability of corporation is an ambiguous due to ambiguity in legislations and judgments by the court.

Basis for Corporate Criminal Liability: Corporate criminal liability has number of liabilities strategies under criminal law and it has many complex questions, one among them is which form of liability serves the purpose. Originally the courts used principles of respondent superior¹¹ to hold company vicariously liable for criminal act of their employees, along with this principle there are many such other doctrine giving space for corporate criminal liability such as, Aggregation theory, Theory of Identification, Attribution, Responsible Corporate Officer etc., When we speak about purpose of criminal liability, it is very important to understand choice of

⁶AIR204 SC 86

⁷ Section 276c, 277 and 278 of I P C

⁸AIR 1992 SC 1448

⁹AIR 1984 SC 1086

¹⁰AIR 2011 SC 20

¹¹<http://lawsschoolnerds.blogspot.com/2013/10/corporate-criminal-liability.html>



liability strategy which has to be determine for the same cause and to support and endorse fundamental values of our society by punishing their breach and to deter undesirable activity.

The followings are globally recognised strategies or basis for imposition of criminal liability against corporation.

1) Vicarious Liability: Vicarious liability is recognised and borrowed by common law principals and it is recognised in tort law, this principle imposes liability on the basis of their course or scope of employment. Initially it was applied on civil liability later on it was extended to criminal laws. Under corporate management it is the responsibility of an individual to discharge corporate activities which are entrusted as an employee or individual agent of the corporation,so being employer, thecompany remains liable under vicarious liability. The negligent or intentional act done by the employee of the corporation within the meaning of course of employment it means that, the act done by corporation itself and that leads to corporate liability under above principle. In the case of R V. Stevanovich¹², the court held that, the licence holder were held liable for the act or omissions of others on the basis of interpretation given to the statute which creates the offence and not merely by reason only of the relationship of master and servants. This concept indeed seems to be identified for the purpose of recognitionof common law and to answer in tort law. The reasons behind reorganisation of these principles are, to compensate the victims at better way and secured the interest of the corporation as well as some time employee's interest. At the same time under criminal law this principle is making a corporate liability for the reasons deference but fixing corporate criminal liability is a complex and problematic issue just because of mensrea in criminal cases with the few exceptions.

In India recently in case of State of Madyapradesh through CBI v. Sir Warren Anderson and others, all seven out of eight accused are convicted for the offence under sec 304A, sec 336 and sec 338 of I.P.C for the negligent act of corporation on the basis of vicarious liability.And in the other case Dehli pollution control committee v. M/S Haryana PanneerBhandar and Ors¹³ the Hazari court convicted a partner under vicarious liability principle. Usually, vicarious liability in India considered as common law principle, under many legislation it has scope, and this liability are imposed on the cases of negligence, strict liability and absolute liability. In India for environmental responsibility Indian courts are much depended on and used above said principles.

2) Theory of Identification: The theory of Identification finds in English law, and this helps in prosecution or implication of the criminal activities of responsible corporate officer. Company being identified as separate legal person, it is different form its promoters, owners or directors of the corporation¹⁴. The identification theory is one of the most important traditional method of making corporation entity liable for criminal act, most of the states under the principle of common law this doctrine impose liability on the basis of 'prof of criminal fault's, from where it identifies the person who are responsible for such criminal act and make them criminally liable. Usually the agent or corporate officials are apparently authority because the corporation knowingly entrusted its activities. According to this theory the top officials or the representative of the company are the liable parties and they have performed such activities by themselves or on delegation. This theory is narrower and it assumes that they will be directly liable, and it imposes liability on corporation for the intent and act of its employees.

The United Kingdome courts under its various decisions like, DPP v. Kent and Sussex Contractor Ltd, R v. ICR Haulage Ltd and Moore v. Bresler Ltd makes that, the corporations being independent entity could be subject to criminal liability. According to the identification theory, the liability for crime committed by the corporation is attributed to a person who has real authority or control over the conduct of the corporations and he shall be held liable criminally because the act or fault was committed by the company under his authority or supervision and he is being living person has the mind with knowledge or intention or by negligent, if he commits the act with guilty mind then that guilty is guilt of the company and it could be held criminally liable.

In India the supreme court in the case of Iridium India telecom Ltd v. Motorola Inc, held that, since the cheating is the offence which has punishment with mandatory imprisonment a corporation can be held liable for the same

¹²1983, 7ccc p 82 CR

¹³Appeal no;112/17

¹⁴Soloman v. Soloman 1897 AC22



on the basis of identification principle and court concluded that, company is capable of having mensrea and it could be made on the basis of 'controlling' or 'directing mind' and 'will'. But in the case of Reliance Natural Resource Ltd v. RI Ltd¹⁵, the SC discarded the application of identification principle on the fact that, the case did not fall in to their preview and further held that company being independent from its members could not be said to have had the knowledge and being separate entity present dispute did not match for the identification principle because it has more than a million shareholder, one person could not be said to have knowledge in his personal capacity.

3) **Aggregation Theory:** The theory of aggregation under criminal jurisprudence for corporate criminal liability identifies on the basis of identification of the person who is altogether having knowledge or intention and who has larger responsibility for such criminal act. For the purpose of application of this principle, one must establish that, the act was done in accordance with the authority or done within the course of employment of the company. According to common law principles, irrespective of the statues of individual employee, corporation will be held liable for all such acts. In the case of, Dollar Steamship v. United States¹⁶, the court held that dumping of waste in to the water was considered as illegal act and since that act was authorised by the corporation which is for the benefit of the company (not necessary that it should be directly benefited to the company) company shell be held liable criminally, further it is said that, a corporation shell not escape prosecution by dissolution after the criminal charge framed against them. Under aggregation principle, the company aggregate the knowledge of its employee in order to fix up the liability. Celia Wells says that, "aggregation of employee knowledge means that corporate culpability does not have to be contingent on one individual employee satisfying the relevant culpability criterion". The application of this principle on corporate criminal liability could be held a corporation criminally liable for its employee act which was authorised to act, not individually. Some of the critics are arguing that, the application of this principle due to lack of consistency with the traditional principle of criminal laws many of the states are refusing to adopt the aggregation principle.

4) **Theory of Attribution/Alter Ego:** The attribution principle could be able to fix up the corporate criminal liability, at the same time the question arises that, who shell be sent to jail under corporate criminal liability?. To answer this question theory of attribution will certainly useful. Courts adopt this device to attribute human elements (mental statues) to an equally abstract organisation called a corporation for the purpose of including to natural person. The corporate employee or the officials virtually the directing mind and will of the corporation and the actions and intent of the corporations need to have performed by its employee. The traditional criminal jurisprudence is requires the determination of the mensrea and actusreus, the law of corporate criminal liability applies attribution principle for imposition of criminal liability on the basis of the intentional or negligent act of the individual who was responsible officer at the time of commission of such corporate crimes.

IV. CONCEPT OF ENVIRONMENTAL CRIME

The term Environmental crime is relatively a new concept. It can be defined in the broader perspective as a violation of environmental criminal law. Environmental crime is allharmful or illegal acts which are directly or indirectly causing/resulting environment as a victim by way of destruction. Indeed it is more appropriate to use the term Offence against the Environment. Environment crime is one type of white collar crime, but it is important to note that all Environment crimes are not white collar crimes¹⁷. The environment harm and crime has been linked to the actions of individual, corporate bodies or organised criminals and their syndicates with regard to the manipulation of waste process and disposal or the production and distribution of toxic chemicals¹⁸. The basis of Environmental crime can be categorised in three ways such as violation of permitted conditions, violations committed outside the regulatory scheme, acts that would be illegal regardless of the regulatory provisions. More appropriately the term environmental crime focus on illegal activities associated with the

¹⁵2010, 7 SCC 1

¹⁶280 US 173

¹⁷ Marry Clifford.

¹⁸ Rob White, Green Criminology- Critical concepts in criminology, Volume 1, Routledge, London.



environment such as illegal fishing, illegal timber trading, illegal means of waste disposal, illegal usage of toxic chemicals, buying and selling of endangered species, smuggling of Ozone depleting substances etc. In the early stage the environmental crime were recognised as white collar crimes, but many environmental crimes did not match or fit to the concept of white collar crime, hence the environmental crime is relatively a separate branch of crime and on-going environmental conflict has offered academic approach as environmental crimes.

According to Yingyisity and David Emmons¹⁹, the definition of environmental crimes stresses on three important features. Firstly, environmental crimes violates existing environmental law, secondly environmental crime has two real victims i.e., people and environment itself, thirdly corporations as well as individuals are chief environmental offenders. The U N Environmental Programme and Interpol in their reports which has focuses on illicit trade in wild life and forest resources points out that, illicit wild life trade and forest resources not only damages environment sustainability it also destruct the sustainable economic development, reduces domestic revenue, interferes with the livelihood and undermines good governance as well as rule of law. This has been evidencing the growing involvement on the part of organised and terrorist group, corporate entities and individuals in pertaining to the many of these crimes²⁰.

Majorly the following activates are considered to be an environmental crimes which are also committed by both organized criminal groups and corporate entities.

- a) Unauthorized trade of animal and it parts and plants.
- b) Unauthorized trade of hazardous substances, ozone depleting substances and dangerous or harmful pesticides.
- c) Transport and trading of toxic, radioactive wastes.
- d) Illegal and unreported fishing.
- e) Illegal Timber trading or logging.
- f) Disposal of oil and other wastes against to law in to the seas and oceans.
- g) Illegal activities or contravention act to the biodiversity laws.
- h) Illegal mining and etc.

The above said activities commonly committed not only by individual but also large corporations and organized groups at locally as well as internationally, these organized groups are taking advantage of economic liberalization and globalization which are obviously casing huge risk to the environment. As like other trade or businesses organized crime the environmental crimes are expanded and lead by large corporations, companies and more importantly even political leaders are involved with such organized environmental crimes as well. The followings are major environmental laws in India which are responsible for environmental protection vis a vis imposes liability on stockholders

- 1) Constitution Of India
- 2) Indian Penal Code 1860
- 3) The Water Act 1974
- 4) The Air Act 1981
- 5) The Environmental Protection Act 1986
- 6) The Public Liability Insurance Act 1991
- 7) The National Environmental Tribunal Act 1995
- 8) Forest (Conservation) Rules, 1981.
- 9) The Indian Wildlife (Protection) Act, 1972
- 10) Biodiversity Act
- 11) Hazardous Waste (Management & Handling) Rules, 1989.
- 12) Noise Pollution (Regulation & Control) Rules, 2000, etc.

¹⁹ Corporate Environmental Crimes, report by The House of Commons Environment Audit committee, Published by authority of The House of Commons, London, 2005.

²⁰ Julie Ayling, Prevention of transnational environmental crime and regulatory pluralism, Book Title: Regulatory Theory, Published by: ANU Press. (2017)



V. CORPORATE ENVIRONMENTAL CRIME

During or after industrialisation the concept of corporations or corporate entities are getting more familiar as the most efficient and systematic business entities. The crimes are happening all the time and are being committed by not only individuals but also by organisations and corporate bodies. In the simple term corporate environmental crime means, crimes committed by corporate body which impacts on the environment or more especially any environmental crime that has been committed by any corporate body. The rise of public welfare offenses can be found in the food and drug Act which makes it a crime to introduce adulterated or misbranded drug into the stream of commerce. Environmental crimes committed by corporate entities accrue on following way²¹

- Ignorant of its environmental obligation which are imposed by environmental legislations.
- Result of negligent behaviours due to which environment becomes victim (examples; poorly managed, staffs are inadequately trained or equipped, etc).
- Most of the environmental crimes committed due to deliberate and intentional illegal act with the full knowledge.

The most serious environmental harms and the violation of environmental laws are dominantly committed by or through business institutions i.e., the corporate entities, the ‘Corporate environmental crime’ has become a major sect under the core concept of environmental crimes. These corporate environmental crimes may be committed with the intention of the profit/ business concerned capitalists/ corporates officials are ignorant of their environmental obligations such as proper management of eco-friendly standards, prompt working as per the governmental regulations, authentic equipment’s and training to their staffs, functioning through both corporate social and environmental responsibility and so on. Whereas the necessary environmental obligations are failed to comply by the corporate sector results in allowing the pollution incidents in a rapid and enormous rate. A company being a large body of individuals, and to identify a particular individual who is directly responsible for committing environmental crime is often dreadful/ outrageous. But till now, very few corporates has been held to such punishment.

VI. CORPORATE ENVIRONMENTAL CRIMINAL LIABILITY IN INDIA

In India even though we have number of environmental laws for the purposes of protecting environment, very few of them are having penal provisions to prosecute environmental criminal or make them criminally liable. The Indian penal code under section 11²² recognises the corporate entity as ‘Person’ (Legal person) and for some of the offences it imposes criminal liability. At the same time under many of its provisions, indirectly covers the said subject, section 268 to 294A deals with Public Nuisance and section 269 to 271 deals with Negligence. Indeed, in case corporation commits any crime it can be punished under IPC, but before that certain factors are too considered, the corporation cannot be punished for acts like rape because the only punishment for such crime is imprisonment. Mostly, the punishment imposed on corporations is both imprisonment and fine²³. In 2010 the Bhopal CJM court convicted 7 of accused in the Bhopal Gas Leakage case²⁴ for the act of negligently causing death under section 304A of IPC²⁵, Endangering life and safety under section 336²⁶,

²¹ Corporate Environmental Crimes, report by The House of Commons Environment Audit committee, Published by authority of The House of Commons, London, 2005.

²²Section 11 of The Indian Penal Code- “Person”, the word “person” includes any Company or Association or body of persons, whether incorporated or not.

²³Sahana.D and Arya R, International Journal of Pure and Applied Mathematics, Volume 120 No. 5 2018, 87-98

²⁴ State of Madhya Pradesh through CBI .Vs. Warren Anderson and Ors, Cr. Case No. 8460 / 1996, Delivered on 0 7, June 2010

²⁵Section 304A in The Indian Penal Code- [304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

²⁶Section 336 in The Indian Penal Code-Act endangering life or personal safety of others.—Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of



Causing hurt under section 337²⁷ and causing grievous hurt under section 338²⁸ IPC. This case even though an environmental disaster case we were unable to prosecute the offenders under environmental laws, because till date we were facing a huge legislative lacuna for the same, but under Indian penal code we were able to prosecute them and 8 of the accused are convicted for the offence discussed above. All 8 accused were some on or the other way responsible officers of the UCC or UCIL convicted for their negligent behaviours which causes not only environmental disaster but also huge impact on Society as whole. As per the Water Act, 1974, Air Act 1981 and Environmental (Protection) Act 1986 these three major primary laws in India directly or indirectly responsible for protection of environment and they have penal provisions to prosecute the offenders. For corporate environmental criminal liability under section 47²⁹ and 48³⁰ of Water Act 1974³¹ section 40 and 41³² of Air Act 198³³ and Section 16 and 17³⁴ of Environmental (Protection) Act 1986 relatively one and the same, they speaks about Environmental criminal Liability of the Responsible officer for environmental offences committed by the corporate of any Government Institutions will be prosecuted. Recently under water act the in the VikashBansal Partner M/s Haryana PaneerBhandar .v.Delhi Pollution Control Committee³⁵, Appellant VikashBansal sentenced to imprisonment for 2 years for the offence punishable u/s 24 r/w Section 43 of the

either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

²⁷Section 337 in The Indian Penal Code-Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

²⁸Section 338 in The Indian Penal Code-Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

²⁹Section 47 in The Water (Prevention and Control of Pollution) Act, 1974-Offences by companies.—(1) Where an offence under this Act has been committed by a 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: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,—(a) “company” means any, body corporate, and includes a firm or other association of individuals; and(b) “director” in relation to a firm means a partner in the firm.

³⁰Section 48 in The Water (Prevention and Control of Pollution) Act, 1974-Offences by Government Departments.—Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

³¹ According to NCBR Report 2016, under Water Act 1974,11 criminal cases was charged out of 11 only 3 were convicted-<http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>

³² Section 40 and 41 of Air Prevention and Control of Pollution) act 1981 are the same as section 47 and 48 of Water(Prevention and Control of Pollution) Act 1974-

³³ According to NCBR, Report 2016, under Air Act 1981, only 22 criminal cases was charged out of 22 not even single were convicted- <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>

³⁴ Section 16 and 17 of Environmental(Protection) Act 1986 are the same as section 47 and 48 of Water(Prevention and Control of Pollution) Act 1974

³⁵ Delhi District Court, Criminal Appeal No.: 112/17 vs Delhi Pollution Control- original case- Delhi Pollution Control Committee Vs M/s Haryana PaneerBhandar&Ors. CC No.: 535235/16



Water Act 1974. In this case, the court convicted the appellant on the basis of vicarious liability of partner being member of Partnership firm. The Union Carbide tragedy at Bhopal remains an outstanding example of the failure of the judiciary, government machinery and certain Sections of the civil society to provide justice to the victims as well as to future generations due to inefficiency and the lack of appropriate legal framework³⁶.

VII. CONCLUSION AND SUGGESTIONS

The process of globalization and the growth of interdependence in economic, social and environmental activities by corporate entities require greater international cooperation between States. One of the most pressing global issues is the predominance of national and multinational corporations in economic transactions and their accountability. All over the world criminal liability of corporations for their acts against environment is a developing concern after the Bhopal gas tragedy and B P oil spill incident. Traditionally criminal sanctions have not been imposed upon polluters in the form of enforcement of environmental criminal laws; it is evident that traditionally the civil remedies alone cannot act as a deterrent for environmental destructions. By imposing fine for corporate environmental crime would not do justice for environment, as environmental compliances by corporation has to be supplemented by more accountability criminally. In India some of the environmental laws, like Air Act³⁷ and Water Act³⁸ and Environmental Protection Acts³⁹ deals with the corporate criminal responsibility for such act which violate respective laws. Though environmental criminal laws or criminal jurisprudence state corporations liability for their crimes, it has been seen that there have been very few convictions. These facts are emphasizing the need of more elaborate and accurate provisions in the environmental laws to address the complex issue of corporate environmental crimes. India should rethink its criminal liability strategy with reference to the criminal liability for environmental crimes of the corporations and as we are witnessing that, only judicial interpretations on corporate environmental criminal liability by adopting some of the theories will not be enough and legislative measures should be taken seriously. Indian judiciary in the absence of specific provisions relating to environmental offences need have to take appropriate consideration of corporate criminal liability principles for resolving environmental crimes.

³⁶(12.10.2010)-<http://www.opendemocracy.net/openindia/v-n-haridas-and-yash-thomas-mannully/bewarebhopal> legal-frame work-needed-for-indias-use

³⁷ As per 2016 NCRB Report only 22 cases have been registered but Zero conviction

³⁸ As per 2016 NCRB Report only 11 cases have been registered but 3 were convicted

³⁹Section 40 of the Air Pollution Act, 1981, deals with offences by companies. Similar provision is contained in Sec. 16 of the Environment (Protection) Act, 1986 and Sec. 47 of the Water Pollution Act, 1974.