

## ENFORCEMENT OF CORPORATE CRIMINAL LIABILITY IN ENVIRONMENTAL CRIMES:

### An Indian Perspective

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*[Abstract: This paper aims to understand the importance of laying down liability for offences of environmental crime when committed by corporate bodies. Determination of corporate liability for such activities harming the environment which has not been included within the ambit of a crime unless being committed by natural persons will be the focal point of the research paper. There is no debate regarding environmental crimes being committed by both corporate bodies and natural persons. The debate here is what should be the determinable factor for making the corporate bodies liable as the effect especially industrial companies produce has a far-reaching detrimental consequence. It cannot be denied that any direct or indirect activities of human beings affect the environment. Economic growth and environmental protection are inversely proportional to a great extent and it has been observed that at the time of development, there has been a dilapidation of natural resources and an increase in environmental pollution. Economic development is a necessity for all developing countries and it is also linked with environmental protection otherwise it will be an irrelevant topic to cater. The relation between both is evident in every nation. Conservation of the environment has been a prime initiative throughout the globe in recent decades. One cannot deny the fact that there are impediments in enforcing criminal liability for the purpose of environmental degradation, especially in developing countries as it was well established in the Bhopal gas leak disaster. Accordingly strengthening the regulatory and institutional framework of developing countries needs active support at the international level by regulating the transnational activities of the corporates. The paper will also look into some important judgments that have been crucial in contributing to the environmental jurisprudence of this country. There are many principles that have been articulated by the judiciary for enforcing liability on corporations for causing environmental harm but the question that remains unanswered is whether the quantification of punishment produces a deterrent factor or not. The continuous growth of corporate entities and their impact on social and economic life are inevitable in our country due to which attention has to be paid to deciding the corporate criminal liability concerning crimes of environmental pollution. There have been opposing views with respect to this new pathway of liability concerning crimes against the environment. The jurisprudential disputes from time to time have resulted in the*

*need to take a more practical approach to the implementation of criminal legislation that will deter corporate bodies on environmental issues.]*

## I

### **Introduction**

The issue of environmental pollution has become a prominent subject of discussion across various domains, as every action undertaken by humans, whether directly or indirectly, has an impact on the environment. Economic growth and environmental protection are inversely proportional to a great extent and it has been observed that at the time of development, there has been a dilapidation of natural resources and an increase in environmental pollution. Economic development is a necessity for all developing countries and it is also linked with environmental protection otherwise it will be an irrelevant topic to cater. The relation between both is evident in every nation. Conservation of the environment has been a prime initiative throughout the globe in recent decades. To ensure effective decision-making and enforcement regarding regional development initiatives with conservation objectives, local policymakers, and planners require comprehensive information on the direct and indirect economic and environmental consequences of proposed actions within the region. Fortunately, international agendas now recognize the involvement of corporations, organizations, and economics in the process of envisioning and addressing environmental concerns. However, the question of whether environmental protection should be considered a luxury or a necessity remains a challenging one to justify. Environmental protection holds the dual nature of being both a luxury and a necessity, as it is essential for the economic development of a nation. However, its relevance may be questioned in developing countries where immediate needs of the impoverished population take precedence, and environmental degradation is occurring at an alarming rate. The interconnection between economic growth and environmental conservation is evident across countries, whether they are developing or developed. Consequently, initiatives for environmental conservation have witnessed significant expansion worldwide in recent decades. Scholars of social sciences, policy makers and regulators have begun to critically examine the economic, social and political dynamics of environment conservation. These examinations are done with the purpose of implementing regulations for environmental crimes that are caused by corporate bodies.<sup>1</sup>

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<sup>1</sup>Asha B Joshi, *Corporate Environmental Responsibility: A Liability or Challenge*, SSRN (2012).

The severe aftereffects of the activities of man on the environment have resulted in an increasing concern for the environment.<sup>2</sup> The realisation of such an impact was particularly seen after the United Nations Conference on the Human Environment (UNCHE).<sup>3</sup> The concept of sustainable development was a well discussed topic in both The Earth Summit<sup>4</sup> and Stockholm and its application in all developmental activities should be anticipated because of environmental considerations. Natural resources are regarded as the most important of all resource providers to businesses. Corporations, on the other hand, abuse the natural environment for their own gain. The UN-mandated sustainable development goals attempt to balance the three Ps: profit, planet, and people. Governments, through policies, regulators, through monitoring, corporations, through innovation, and customers, through altered lifestyles, have all worked to achieve these goals and create a better future.<sup>5</sup> In today's context, corporate environmental responsibility (CER) has become an important aspect of a company's overall responsibility. The Indian government has strengthened several regulations to protect the environment and promote CER.

The environmental protection regulation is regarded as one of the most recent steps taken to reduce pollution. It should be noted that the issue of people destroying the environment and the space they share with other living things has gotten worse. As a result, international attention to environmental issues in the second half of the twentieth century may have come too late hence, the legal dealings with respect to this has been found to be not up to the mark.

These laws prescribe various forms of liability in the event of a breach of their provisions, including criminal liability.<sup>6</sup> Effective enforcement is however a sine qua non to any system of regulation as laws by themselves would not ensure a safe and healthy environment unless they are complied with or in the event of non compliance effectively enforced. Enforcement of environmental regulations indeed poses a significant challenge for developing countries, leading to the depletion of natural resources, severe pollution, and environmental degradation. Moreover, these countries often resort to foreign forums for environmental litigation due to their limited capacity. Criminal enforcement of environmental laws tends to be even more

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<sup>2</sup>UNEP, GLOBAL ENVIRONMENTAL OUTLOOK REPORT 1997 UNEP/GRID-Sious Falls (2007).

<sup>3</sup>United Nations Conference on the Human Environment, *Non-binding Declaration of the UN Conference on the Human Environment, Stockholm, Sweden, 1972*, 11 ILM 1416, (June 5, 1972).

<sup>4</sup>United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development, 1992*, U.N. Doc. A/CONF.151/26 (Vol. I), (Aug 12, 1992).

<sup>5</sup>Brundtland Commission Report S.W. Onuosa, *Sustainable Development of Petroleum Resources: The Rumpus and Resolution in Environmental Regulation of Oil of Oil and Gas* 433 (Gao, Z., ed., 1998).

<sup>6</sup>*Supra* note, 1.

challenging than civil litigation, as demonstrated by the tragic Bhopal gas disaster, which exposed the difficulties in holding responsible parties accountable for environmental crimes.<sup>7</sup> The criminal trial for this major disaster in the history of the world took more than 20 years.<sup>8</sup> The outcome was unsatisfactory and received a lot of backlash. The questions that arose after the said disaster were Why were the criminal aspects overlooked? What obstacles did the Indian government and its legal system encounter in the past and still confront today in relation to prosecuting the incident criminally? Can these challenges be surmounted, and if so, what are the potential solutions? The answers to these issues will be sought in the said paper. While some argue that non-command and control measures are more effective for environmental regulation, it is important to note that criminal liability is utilized as a regulatory tool in the national legislation of numerous countries worldwide, as well as under international law.<sup>9</sup> Developing countries, where environmental impacts often have direct implications for human life and health, must prioritize the effective enforcement of criminal sanctions in appropriate cases to safeguard both people and the environment. The Bhopal incident serves as a significant case study as its enforcement issues and aftermath continue to be relevant in addressing enforcement challenges faced by developing nations today. Additionally, the incident offers the advantage of being a single event with relatively ascertainable facts. This paper primarily focuses on the challenges associated with criminal enforcement, specifically concerning transnational corporations. Ancillary issues surrounding the suitability and effectiveness of criminal sanctions as an environmental regulatory tool, including their goals and deterrent impact, will only be examined in this discussion if they directly relate to the current question at hand.<sup>10</sup> It is essential to analyze both the legal and extra-legal constraints to criminal enforcement. The main emphasis in this analysis will be on India and its legal framework, while also drawing on other jurisdictions for comparative analysis and potential solutions. It is essential to recognize that the arguments presented in this paper are general in nature, considering the specific circumstances of the Bhopal case. It is acknowledged that experiences in different developing countries may vary due to their distinct contexts and circumstances.<sup>11</sup>

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<sup>7</sup>J. Cassels, *Outlaws: Multinational Corporations And Catastrophic Law*, 31 *Cumb. L. Rev.* 311(2001).

<sup>8</sup>*Id.*

<sup>9</sup>D. R. Fischel and A. O. Sykes, *Corporate Crime*, 25 *J. Legal Stud.* 319 (1996).

<sup>10</sup>B. Cho, *Emergence of an International Environmental Criminal Law?* 19 *UCLA J. Env't'l L. & Policy* 11(2000/2001)

<sup>11</sup>Emeseh, Engobo, *Challenges to Enforcement of Criminal Liability for Environmental Damage in developing countries: with particular reference to the Bhopal Gas Leak Disaster*, *OGEL* 5 (2003).

In the environmental jurisprudence there are some universal regulations for environmental protections whereby human beings are expected to conserve the environment from any kind of abuse and misuse. As a result, it can be argued that environmental legislation and the identification of various types or forms of infringements are still in their infancy. Furthermore, there is no comprehensive legislation that provides general rules on how to solve legal problems for environmental protection up to the present day.<sup>12</sup> The paper will delve into environmental protection from the legal point of view of criminal activities done by corporate entities. The latter having a juristic personality is treated as having a separate legal identity of its own and that may be a matter of concern for deciding the liability factor. Increasing industrial activities and other related activities have caused excess pollution and resulted in environmental deterioration. This can be concluded without any doubt that the environment is no longer a basis of comfort and enjoyment but has changed into a source of epidemics. The damage that has been done to the planet's air, soil, and water has established a need to develop legal and legislative controls. Strict adherence to these controls is essential to safeguard and conserve the environment. Furthermore, individuals who breach these rules and regulations will be held accountable for their actions and may face criminal charges and penalties upon conviction. These laws aim to establish and define standards grounded in scientific studies and research regarding water, air, soil pollution, and their detrimental impact on the planet. They also serve as a basis for devising measures and strategies to mitigate the severity of the issue.<sup>13</sup>

### **Understanding the term 'Environment'**

Throughout history, humans have coexisted with the environment, relying on it for various needs. Interestingly, the environment also depends on humans to ensure its preservation and maintenance in an untouched condition. The issue of climate change gained considerable attention at the United Nations Conference on the Human Environment held in Stockholm, Sweden, in June 1972. During this conference, the importance of developing a shared perspective and guiding principles emerged, aiming to inspire and educate individuals on environmental stewardship and conservation. The main aim of the conference was to request the

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<sup>12</sup>*Id.*

<sup>13</sup>Ameel Jabbar Ashour & Harlida Abdul Wahab, *Criminal Liability of Corporate Bodies for Polluting The Environment: Sharia And Law Perspectives*, II IJMAS 2, 222-228 (2016).

government and the people to preserve a better environment that will benefit all including the future generations.<sup>14</sup>

The conference achieved, amongst others, the following three major results. Primarily it came up with twenty one principles which is known as the Stockholm Declaration. Secondly an action plan was adopted by the participating countries which had 109 suggestions. various environmental issues can be combatted with the help of the said action plan which are divided into several categories. Such categories include Environmental Assessment Program (earth observation), The said action plan contains specific procedures to deal with the various environmental issues. The said environmental action plan is separated into different categories such as those having a global impact like the Environmental Assessment Program (earth observation), actions concerning the environment and its oversight at a global level, along with strategies to support the assessment and control measures implemented both nationally and internationally. Lastly creating UN Environment Program Foundation (UNEP) will facilitate and organize international environmental activities.<sup>15</sup>

According to the first principle outlined in the Stockholm Declaration, it is explicitly stated that it is the duty of humans to safeguard and enhance the environment. The said first principle states that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”<sup>16</sup>It has been a well-established fact that environment in general includes all sorts of creatures. It is defined as “a set of natural, social and cultural systems in which human and other creatures live in a way that derives their victuals and perform their activity”.<sup>17</sup>The said definition serves on a single plate the need of humans as well an habitat around them that produces harm to their health.

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<sup>14</sup>UNITED NATIONS, *United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm*, available at:<https://www.un.org/en/conferences/environment/stockholm1972> (last visited May 25, 2023).

<sup>15</sup>CLEARIAS, *Stockholm Declaration: UN Conference on the Human Environment 1972*, available at<https://www.clearias.com/stockholm-declaration/#:~:text=The%20Action%20Plan%20contained%20three%20main%20categories%3A%20Global,these%20categories%20were%20broken%20down%20into%20109%20recommendations>(last visited May 25, 2023).

<sup>16</sup>THE FACT FACTOR, *Stockholm Declaration (Apr 9, 2019)*, available at [https://thefactfactor.com/facts/law/civil\\_law/environmental\\_laws/stockholm-declaration/871/](https://thefactfactor.com/facts/law/civil_law/environmental_laws/stockholm-declaration/871/)(last visited May 25, 2023).

<sup>17</sup>*Supra note*8.

This definition includes natural and synthetic products that meet the needs of humans as well as everything around them that may affect their health. The term "environment" is all-encompassing or comprehensive because it includes everything that exists naturally or is created by humans. A healthy environment is one that is clean and free of bacteria that cause infectious diseases, as well as all types of polluting agents that are created naturally or artificially. International conventions have approved the broad understanding of the term environment but the international jurisprudence has failed to capture a precise concept for the same. As a result, numerous terms associated with the environment have emerged which do result in some ambiguities.<sup>18</sup>

## II

### **The Interrelationship between Business and Environment**

The community uses the environment for various purposes because of its composite elements such as rivers, lakes, mountains, plains, available natural resources, etc. The purpose can vary from livelihood, settlement, undertaking business, and multiplying the sources of income. In the absence of any environment, it is not possible for any organization to exist.

The concept of sustainable development poses a challenge for industries, as they are expected to prioritize high-quality production while efficiently utilizing resources and minimizing waste. In the current scenario, organizations and the business world have a multifaceted responsibility. They are not only accountable for producing goods and services that meet consumer demands but also for ensuring environmental protection and conservation throughout the entire process. Various business activities can have detrimental effects on the environment in diverse ways. Environmental pollution can manifest in various forms, such as air and atmospheric pollution, water pollution, marine pollution, land pollution, and noise pollution. The degradation of the environment can be attributed to multiple factors, but it is evident that industrialization plays a significant role in causing environmental harm. When industrialization is driven by lax environmental protection regulations, lenient enforcement, and delayed implementation of such regulations, it can result in considerable negative impacts on the environment. The environmental movement originated in the 1960s, during which corporations began to be increasingly involved in environmental protection. The notion of environmental responsibility emerged as a significant social obligation for corporations, aiming to address public and societal

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<sup>18</sup>*Id.*

interests. Campaigns against corporations gained momentum following major environmental disasters, such as the toxic exposure at Love Canal, the Union Carbide gas leak in Bhopal, the Chernobyl nuclear power plant meltdown, and oil spills like the Exxon Valdez and Dow Chemical's incidents. These incidents sparked public outrage and intensified the focus on corporate accountability in environmental matters.

In response to public concern, a number of corporations started to address environmental issues by adopting codes of ethics and implementing principles of Corporate Social Responsibility (CSR). These initiatives aimed to demonstrate the commitment of companies to responsible and sustainable business practices, including environmental stewardship. Through codes of ethics and CSR principles, corporations sought to integrate environmental considerations into their operations and decision-making processes, taking into account the impact of their activities on the environment and the broader society.<sup>19</sup> Corporations often adopt self-regulating codes and policies as a means to mitigate agitation and respond to pressure from various stakeholders. Independent auditors play a crucial role in continuously evaluating and monitoring the effectiveness of environmental management policies, certification programs, self-monitoring practices, and voluntary participation initiatives. Alongside the concept of Corporate Social Responsibility (CSR), the 1990s witnessed the promotion of several other corporate movements, including the Triple Bottom Line approach that emphasizes considering people, planet, and profits, Stakeholder Theory, Environmental Management Systems (EMS), Life Cycle Assessments (LCA), and biomimicry. These concepts and practices aimed to promote sustainable business practices, holistic environmental considerations, and better integration of environmental concerns into corporate decision-making processes. The ideas and concepts mentioned have indeed played a significant role in changing corporate culture and management practices, placing greater emphasis on environmental considerations. This movement towards environmental protection has been a global phenomenon, influencing businesses worldwide. Today, there are various motivating factors that have led to the transformation of business practices. These factors often revolve around opportunism and market motives, as companies recognize the growing importance of environmental concerns in shaping consumer preferences, regulatory requirements, and market competitiveness. As a result,

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<sup>19</sup> Emeka Emmanuel Okafor, *et al. Environmental Issues and Corporate Social Responsibility: The Nigeria Experience*, 23 J HUM Ecol 2, 101-107, (2017).

businesses are increasingly incorporating environmental consideration.<sup>20</sup> Few corporations target shareholders by improving their efficiency and others try to target environmentally conscious consumers by differentiating between products in order to capture additional market share.<sup>21</sup>

It is true that many corporations have embraced "green" practices, which can serve as a form of hidden advertising to enhance their reputation and market significance. However, there is a growing concern worldwide that certain businesses may be engaging in deceptive practices, misleading the public about their environmental impacts. This phenomenon is known as "greenwashing." Greenwashing occurs when corporations make claims of being environmentally friendly in their advertising, marketing, event sponsorship, educational materials or reporting, creating the impression that they are actively working to improve society's ecological footprint. The authenticity and genuineness of many corporate campaigns in this regard remain unclear. Despite this, numerous influential and well-established business entities have aligned themselves with the cause of environmental responsibility. The view that has been agreed upon by many is that the things that are good for the environment are also beneficial for the business.<sup>22</sup>

The concept of "harm" and "environment" is significant in recognizing the widespread damage occurring to the environment, both as a result of human activities and natural disasters worldwide. The environment encompasses air, water, land, and soil, and any destruction or degradation of these elements has adverse effects on human health, biodiversity, and the entire ecosystem. As a response to these concerns, the protection of the environment has become enshrined in the civil and criminal laws of numerous countries at regional, national, and international levels. In relation to human rights, the United Nations International Covenant on Civil and Political Rights includes provisions that highlight the environmental dimension. Articles 1, 2, and 3 of the Covenant emphasize the interconnectedness between environmental preservation and the fundamental human rights of individuals. This recognition underscores the importance of safeguarding the environment for the well-being and dignity of all people. Understanding corporate responsibilities in protecting the environment is crucial, as it sheds light on how various activities conducted by corporations worldwide can cause harm and

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<sup>20</sup>GOVERNMENT OF LOUISIANA, available at: [www.deq.louisiana.gov/portal/Default.aspx?tabid=2336](http://www.deq.louisiana.gov/portal/Default.aspx?tabid=2336) (last visited May 25, 2023).

<sup>21</sup>STEINBRENNER INSTITUTION, *What does "Corporate Environmental Responsibility" mean?* available at: [www.andrew.cmu.edu/course/99-522/ejbackground.html](http://www.andrew.cmu.edu/course/99-522/ejbackground.html) (last visited May 25, 2023).

<sup>22</sup> Magali A. Delmas & Vanessa Cuere Burbano, *The Drivers of Greenwashing*, 54 Sage J. 3 (2011).

degradation to the environment. Corporations play a significant role in shaping the state of the environment through their operations, resource consumption, waste generation, and emissions. It is essential to recognize the potential negative impacts of corporate activities on the environment and to encourage responsible practices that minimize harm and promote sustainability. By understanding these responsibilities, corporations can actively work towards mitigating their environmental footprint and contribute to the preservation and conservation of the environment for present and future generations.

### III

#### **Degradation of the Environment by the Corporate Bodies**

It is worth noting that the major nuclear and industrial powers are the worst polluters because they do not care about environmental safety or comply with international agreements, and they are the ones who take advantage of the greed and ignorance of some small poor countries by exporting and burying their hazardous nuclear waste there. The same large industrial countries have also failed to take environmental initiatives because it would result in higher product prices.<sup>23</sup> Furthermore, the majority, if not all, of the international declarations or resolutions addressing environmental pollution lack legally binding obligations. Consequently, states that fail to adhere to these declarations or resolutions cannot face criminal sanctions. Unfortunately, major powers often choose to disregard these measures, as complying with them could potentially undermine their economic interests. Hence, it is crucial for countries concerned to contemplate the establishment of environmental pollution as an international crime, punishable under international criminal law. When reading the basic law that regulates the International Criminal Court, one can see that Article 7 encompasses acts considered to be crimes against humanity, but there are no provisions that recognise environmental pollution as a crime.<sup>24</sup>

#### ***Measuring Environmental Damage***

Measuring environmental harm within existing regulations poses challenges as it is difficult to quantify and often involves invisible offenses. Proving the offense and identifying the wrongdoer can be a complex task. To identify environmental harm or crime, it is important to consider detailed studies and observations conducted by

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<sup>23</sup>ANUP SHAH, *Corporations and the Environment* (2002), available at: [www.globalissues.org](http://www.globalissues.org) (last visited May 25, 2023).

<sup>24</sup>Rome Statute of the International Criminal Court, 1998.

reputable institutions that focus on common regional offenses. The risk levels associated with environmental harm can be assessed using either a science-based approach or by incorporating indigenous knowledge and technology. Both methods provide valuable insights into the potential impacts of activities on the environment and help evaluate the severity of harm.

Environmental liability is a term that can be examined from legal and accounting perspectives. From an accounting standpoint, liability refers to the anticipated economic sacrifice resulting from existing responsibilities. Accounting institutions view liability as the potential loss of economic resources or the obligation to provide services in the future. Understanding environmental liability from both legal and accounting perspectives is crucial in addressing the financial implications and responsibilities associated with environmental harm.

Imposition of liability can be done in various ways such as voluntarily entered as a contractual obligation or in a unilateral manner. Law has been very articulate in establishing liability as well as laying down as to who will be responsible for discharging the same.<sup>25</sup> When we talk about environmental liability the basic principle that establishes the same is called the 'the polluter pays principle' whereby the responsibility for damaging the environment is reverted back to those who have caused it in the first place.<sup>26</sup>

Environmental liabilities imposed on corporations can stem from a variety of sources, including regional, national, and international statutes, regulations, ordinances, declarations, and treaties. These legal instruments establish frameworks and guidelines for dealing with environmental issues and holding corporations accountable for their actions. Environmental liabilities are addressed through both civil and criminal law. Individuals, communities, and organisations can use civil laws to seek compensation or remedies for environmental harm caused by corporations. These laws frequently focus on tort claims and provide mechanisms for corporations to be held financially accountable for their environmental impacts. Criminal laws, on the other hand, address more serious cases of environmental harm in which corporations' intentional or negligent actions cause significant environmental damage. Criminal prosecutions can result in fines, penalties, or even imprisonment for responsible corporate employees. The integration of environmental liabilities into civil and criminal law demonstrates the significance of

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<sup>25</sup> White Rob, CRIMES AGAINST NATURE: ENVIRONMENTAL CRIMINOLOGY AND ECOLOGICAL JUSTICE (2008).

<sup>26</sup> OECD, *The Polluter Pays Principle*, available at [https://read.oecd-ilibrary.org/environment/the-polluter-pays-principle\\_9789264044845-en#page1](https://read.oecd-ilibrary.org/environment/the-polluter-pays-principle_9789264044845-en#page1) (last visited May 25, 2023).

holding corporations responsible for their environmental impact. These laws aim to deter harmful practices, promote responsible behaviour, and ensure that corporations bear the costs associated with environmental damage they may cause by imposing legal obligations and consequences. Various types of environmental liabilities are compliance, remediation, Fines & Penalties, compensation, Damages for Natural Resources, Punitive Damages, etc.<sup>27</sup>

The primary purpose of imposing environmental liability on corporations is to install a sense of responsibility and awareness, compelling them to consider the potential consequences of their actions on the environment. Through environmental liability, corporations are held accountable for their actions and may be required to take measures to reverse or restore environmental damage. They may also be subject to compensation, fines, penalties, or charges aimed at addressing the environmental harm caused. In essence, environmental liability serves as a means of informing and reminding corporations about the potential legal repercussions, such as fines, penalties, or even imprisonment, for violating environmental laws. It acts as a deterrent, encouraging corporations to comply with regulations and adopt practices that promote environmental sustainability and prevent harm to the natural world.

#### *Corporate Environmental Crimes:*

Environmental crimes committed by corporations can stem from various causes or reasons. One such cause is a lack of awareness or disregard for environmental obligations on the part of the business. This may arise when the business is unaware of its responsibilities or fails to prioritize environmental considerations. Negligence is another common factor contributing to environmental crimes. In cases where businesses are poorly managed, inadequately trained, or fail to maintain equipment and infrastructure to required standards, the risk of pollution incidents increases. Negligent behavior, such as the failure to implement proper protocols or the disregard for environmental risks, can lead to environmental harm. It is essential for businesses to recognize their environmental responsibilities, stay informed about regulations, and ensure proper management, training, and maintenance practices are in place. By taking proactive measures and adhering to environmental standards, corporations can reduce the likelihood of committing environmental crimes and contribute to the preservation and protection of the environment.<sup>28</sup>

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<sup>27</sup>CORPORATE ENVIRONMENTAL CRIME, *available*

at: <http://environmentcrimes.com/Corporations/Corporate%20crime.htm> (last visited May 25, 2023).

<sup>28</sup>*Supra* note 23.

Environmental crime can be examined and comprehended from multiple viewpoints, including who the victim is, the source of its occurrence, the time span over which it is visible, and the types of issues it summarises. To distinguish between wrong and right environmental practises, standardisation should be enforced through legal instruments or law. Environmental crimes can be illegal dumping of waste, pasting or spoiling public spaces with advertising posters and pollution incidents, whether that is as a result of chemicals, farm slurry or general sewage waste, being discharged into the watercourse. Narrowing down the damages done to the environment it can fall under any of the forms like animal, field, forest, emission, soil, storm and water. The most depressing cause, however, is when corporate environmental crime is the result of a deliberate and purposeful illegal act, a decision made with full awareness that the act is illegal and will cause environmental harm.<sup>29</sup> When corporate environmental crime is committed on purpose, it demonstrates a serious disregard for the environment as well as the potential consequences of such actions. It emphasises the importance of strict penalties, strong enforcement, and a comprehensive regulatory framework to deter such behaviour and hold responsible individuals and corporations accountable for their actions.

Many large projects in the developing world are constantly criticised for destroying the environment and are asked to slow down or stop their work. According to investigations carried out, the environmental crime can be any criminal activity which is<sup>30</sup>

- Actual Harm That Can Be Demonstrated That Has Harmful Impact on Human Health or the environment.
- Failure to Report an Actual Discharge, Release, or Emission That Has a Harmful Impact on Human Health or the Environment,
- A Trend of Illegal Conduct in a Particular Industry.

When investigating cases of environmental crime, it becomes clear that corporations can exhibit a pattern of repeated violations. They may wilfully violate rules and regulations, commit fraud, or manipulate information to conceal their actions.

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<sup>29</sup>*Id.*

<sup>30</sup>A DEPARTMENT OF THE STATE OF LOUISIANA, *To report an environmental crime to LDEQ CID, call 225.219.3944 or submit an online Criminal Complaint form, available at: <https://deq.louisiana.gov/page/criminal-investigation#:~:text=To%20report%20an%20environmental%20crime%20to%20LDEO%20CID%2C,adverse%20impact%20on%20our%20water%2C%20land%2C%20and%20air>* (last visited May 25, 2023).

Corporations, as significant actors in various sectors, have the potential to have a significant impact on the environment, whether that impact is positive or negative, direct or indirect.<sup>31</sup>

## IV

### **Liability of Corporate bodies in Environmental Crimes**

#### *Corporate Criminal Responsibility*

The prevalent notion in criminal jurisprudence and laws is that corporate bodies do not inquire about the crimes committed by their representatives while performing their duties, even if it is in their own best interests. However, criminal responsibility for the crime is determined by which delegates of these corporate bodies committed the offence. This has not prevented it from deviating from the general rule, which is a trend in most modern criminal laws, based on objections to the general rule, which is not the corporate body's responsibility. The discussion with respect to this can be divided under three heads.

#### *The Oppositions with respect to the Accountability of a Corporate Body*

Many scholars objected to the idea of criminal liability of corporate bodies because as per their perception a corporate body is a legal construct that arises from practical needs to meet the needs of public or private interests. As a result, the corporate body is not an autonomous entity with its own will, but rather the will of the human being who represents it. Secondly the purpose for which a corporate entity is created is vital to decide about its existence and eligibility. Thirdly, under the principle of personal punishment human beings who have created the corporate body will be punished, and hence validating criminal responsibility here will be a violation of the said principle. Fourthly when we talk about corporal punishment it cannot be linked with corporate bodies as it has no head which can be hanged nor any body that can be imprisoned. Lastly, it is believed that punishment is given to deter or to rehabilitate which cannot be attained by punishing a corporate body. As a result, some scholars argue that corporate bodies can commit environmental crimes, but they cannot be effectively punished because they are regarded as incompetent individuals who gain nothing from such penalties.

#### *Criticizing the Opposition's Viewpoint*

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<sup>31</sup>MURTHY KVB, *Business Ethics and Corporate Responsibility – A New Perspective*, available at papers.ssrn.com(last visited May 25, 2023).

Modern jurisprudence has come up with a lot of criticisms with respect to the objectionable view against a corporation's liability in matters of environmental crime. The viewpoint that a corporate body is an assumption made by the legislation due to practical necessity and its will is borrowed from the will of the human being who represents it as an invalid view, either legally or in reality, but the right, which is a trend of modern jurisprudence, is that a corporate body's will is independent of the members' will who form it. This is what German jurist (Otto Gierke) meant by his foundation of the theory of the real will of a corporate body.<sup>32</sup> Secondly, it is essential for the supporters who forbid criminal responsibility for such crimes to show proof regarding civil responsibility is a better choice as compared to criminal liability. Thirdly The viewpoint that the purpose for which a corporate entity is created is critical in determining its existence and eligibility has not been accepted because allocating a corporate body for a specific matter is not inconsistent with the potential of assigning it the crime of environmental pollution. It has been seen that for providing valuable services, especially in matters of protecting the environment corporate entities may be rewarded so the question that can be raised under this context is why cannot they not be punished for acts that are criminalized under the law. Lastly, the view that punishing a corporate entity for environmental crimes violates the personal punishment principle is incorrect. This is due to the fact that the punishment of those individuals who form a corporate body is required by necessity and public interest, and it is greatly beneficial to society that the individuals do things correctly and comply with the legal obligations imposed on them.

### *Acknowledging Criminal Responsibility of Corporate Bodies*

In modern jurisprudence, there is a growing recognition in many countries around the world that corporate bodies can be held criminally liable for environmental crimes that endanger human life. Concerns have been raised as a result of the expansion of corporate activities and their significant environmental impact. As a result, there is a call to treat corporate bodies on equal footing with natural persons and subject them to the same criminal law provisions that apply to individuals. This approach seeks to ensure that corporate entities are held accountable for their actions and face appropriate legal ramifications for their involvement in environmental offences. In order to counter the argument of not being able to lay down the death penalty and other bodily punishments as it is given to natural persons it can be said that it can be substituted with the punishment of elimination of the said corporate

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<sup>32</sup>Otto Gierke, Ernest Barker, *Natural Law and the Theory of Society* 35 Columbia Law Review 3, 469-473 (1935).

body committing the crime. Additionally, other punishments that can be appropriate for corporate bodies are fines, confiscation, and the deprivation of certain privileges like accepting donations or the establishment of branches, suspending its activity, or closing all or some of its branches for a certain period.<sup>33</sup> As a result, some jurists have proposed applying Criminal Law provisions to corporate bodies by substituting imprisonment for financial penalties.<sup>34</sup>

## V

### Relevant Laws and Challenges to Enforcement in India

#### *Relevant Laws in India*

The investigation into the Bhopal gas leak case revealed that the charges brought against the accused persons were solely based on violations of the Indian Penal Code, which have no direct bearing on an industrial activity causing environmental damage. From this case what was assumed that there was no relevant environmental legislation providing for criminal liability in India. This is not true, because at the time of the occurrence, there was legislation safeguarding the environment that included criminal penalties for violations of its provisions.<sup>35</sup> In fact, the 42nd amendment to the Indian Constitution<sup>36</sup> already imposed a duty on the state to protect the environment under Article 48A.

To protect the environment there are particular legislation such as the Factories Act,<sup>37</sup> the Air (Prevention and Control of Pollution) Act<sup>38</sup> and the Water (prevention and Control of Pollution) Act.<sup>39</sup> The primary goal of the Factories Act is to ensure public safety and health in relation to industrial activities. It establishes regulations for factory workers' working conditions, health and safety measures, and welfare provisions. While the Act addresses some aspects of environmental protection, its primary focus is on physical and mechanical safety rather than dealing specifically with hazardous substances. The Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act, on the other hand, are specifically designed to address pollution-related issues. The Air Act is intended to

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<sup>33</sup>*Supra* note 8.

<sup>34</sup>*Id.*

<sup>35</sup>D. SHARMAN, *India's Regulatory Structure and Background* (1996), available at: <http://www.worldbank.org/nipr/india/india-back.htm> (last visited May 25, 2023).

<sup>36</sup>This was adopted in 1996 and came into effect on 3rd January, 1977. See Sharman, *ibid*, at 1

<sup>37</sup>The Factories Act, 1948.

<sup>38</sup>The Air (Prevention and Control of Pollution) Act, 1981.

<sup>39</sup> The Water (Prevention and Control of Pollution) Act, 1974.

prevent and control air pollution by regulating emissions, establishing standards, and establishing authorities in charge of monitoring and enforcement. The main function of this body under the Act is to “improvethe quality of air and to prevent, control or abate air pollution in the country.”<sup>40</sup> To discharge this function, the Board is to “lay down standards for the quality of air,”<sup>41</sup> and to carry out inspections. It is also to regulate the discharge of pollutants into the air and in this regard the consent of the Board is required for the establishment of a plant in an air pollution area.<sup>42</sup> Breach of the provisions of the Act attracts penal sanctions. Perhaps none of the charges were brought under these laws because of the loopholes inherent in them which may have made it difficult or even impossible to secure a conviction.

Similarly, the Water Act focuses on water pollution prevention and control by regulating the discharge of pollutants into bodies of water and establishing bodies such as the Central Pollution Control Board to oversee its implementation.

### *Challenges to Enforcement*

The challenges to enforcement of criminal liability can be discussed in a two-fold manner one being extra-legal in nature and the other being legal.

#### **i. Extra Legal**

The effective enforcement of environmental criminal laws has been hampered by a variety of non-legal factors, including political, economic, and social factors. These elements are frequently linked and intertwined. One notable challenge is the lack of political will to impose criminal penalties for violations of environmental laws, particularly when transnational corporations are involved. Several indicators point to a lack of political will in the Bhopal incident. Indian government did not seek for extradition even after the issuance of a warrant of arrest against Warren Anderson. Also, there was suppression of facts with respect to the effects of the disaster and medical research that was undertaken. This lack of political will is closely tied to economic and social factors.

Developing countries face significant challenges in attracting foreign direct investment and establishing industries to utilise their natural resources in the context of globalisation. It is widely assumed that one of the primary benefits of foreign

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<sup>40</sup>Amendments made in 1987 have however addressed some of these issues such as safe plant design, safety requirements for hazardous substances and disclosure of information on hazardous substances amongst others. *See* sections 7-B, 31, 41-B, 41-C and 111.

<sup>41</sup>The Air (Prevention and Control of Pollution) Act, 1981, S. 3.

<sup>42</sup>The Air (Prevention and Control of Pollution) Act, 1981, S.16(2)(h).

investment in these countries is their lower environmental standards. As a result, there is a widespread belief that strict enforcement of existing environmental laws will deter much-needed foreign investment. Furthermore, these businesses play an important role in providing employment opportunities for the citizens of these countries. As a result, governments may be reluctant to jeopardize these jobs or antagonise the companies, even if they benefit from them unofficially. As a result, environmental issues are frequently regarded as a luxury that developing countries cannot afford. An observation of the said legislations has shown various loopholes and therefore they are not well equipped to address issues of criminal environmental damage. Conflict of interest in the monitoring and enforcement of environmental laws against multinationals by most developing countries is also another relevant factor. As a result, the government bears joint responsibility for any environmental damage. As a result, regulatory bodies that receive funding from and are heavily reliant on the government<sup>43</sup> are less aggressive in monitoring and enforcing laws against these companies.

The overwhelming financial influence of multinational corporations appears to have an impact on developing-country governments as well. These companies have vast financial and intellectual resources, which can be devastating in the event of legal action. Most governments in developing countries are frequently exhausted by the lengthy litigation process. This factor was evident in the Bhopal case, where the protracted trial pushed the Supreme Court to issue a settlement order without a full trial of the legal issues. As a result, the Indian government agreed to a settlement that initially included the condition of no further civil or criminal liability.

When environmental damage is perceived as merely a violation of administrative regulations or an unavoidable occurrence, the emphasis on criminal prosecution tends to wane. Corporate bodies are portrayed as responsible entities with genuine environmental concerns, and they are viewed as requiring assistance rather than coercion in their environmental protection efforts. In developing countries, where multinational corporations are frequently viewed as benefactors, there is even less perception of criminal activity. The use of terms like "accidents" helps to cloak these acts in respectability and distance the companies from blame. Invariably, the disaster is seen as an unfortunate incident for which the benefactor is only required to alleviate the suffering of the victims, and the companies are usually willing to do so by offering financial compensation as a demonstration of their good intentions.

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<sup>43</sup>D. BISWAS, *Environmental Legislation: Challenges of Enforcement*, available at: <http://www.cleantechindia.com/neweic/environment.html> (last visited May 25, 2023).

Social factors, which are inextricably linked to economic factors, have also contributed to the current situation. Environmental disasters frequently affect the poorest people, even in developing countries where people are already struggling to survive on a daily basis. Environmental issues are not a primary concern for this group of people. When agreeing to the compensation order, the Indian government and the Supreme Court took this into consideration. Furthermore, due to a lack of resources to fight multinational corporations in court, these victims frequently accept out-of-court settlements that provide insufficient compensation for the actual damage suffered. Furthermore, as previously stated, these companies are significant employers in a variety of fields. As a result, the general public may be hesitant to support criminal prosecution of these companies if it means losing jobs that support their livelihoods. There is a sense of loyalty to these corporations on which they rely for survival. Recognising the role of public pressure in advocating for better environmental standards and enforcement against corporate bodies around the world is critical.

## **ii. Legal**

Ineffective enforcement is hampered by inelegantly drafted laws that result in vague and/or ambiguous provisions or outright lacunae or loopholes; a lack of specific environmental standards; and very high standards for culpability, which causes problems with proof and inadequate penalties. After the Bhopal disaster, the Indian laws suffered from lacunae and had to be amended. For instance, there was no concept of harm rising from hazardous substances before 1987 in the Factories Act.

As seen in the Bhopal case, jurisdictional issues make enforcing laws against parent companies difficult. Because transnational corporations (TNCs) are not recognised as legal entities in their own right, legal arguments must be overcome in order for them to be subject to the jurisdiction of national courts in the countries where their subsidiaries operate. When the parent company divests its shares in the subsidiary following the incident, the situation becomes even more complicated. The burden of proof in criminal trials is typically higher than in civil cases. Furthermore, both the corporation and individual corporate officers must demonstrate the necessary mens rea (intent or knowledge of wrongdoing). These legal complications complicate holding parent companies accountable for their actions.

To establish criminal liability under the Water Pollution Act, the accused must have knowingly caused or permitted the entry of pollutants into the water. Meeting this burden of proof, however, is not always easy. Some developed countries, such as the

United Kingdom and the United States, have addressed this issue by enacting strict liability offences for certain environmental damage and broadening the interpretation of relevant legal terms. Ineffective enforcement is also exacerbated by insufficient penalties in two ways. For starters, the penalties imposed are frequently deemed insufficient to serve as a deterrent to polluters. As a result, enforcement is viewed as futile, resulting in fewer prosecutions and a decrease in the deterrent effect of the laws. Furthermore, even when sanctions are imposed, they are frequently reduced during sentencing, lessening their impact.

## VI

### **Conclusion**

Despite legislation, developing countries face significant challenges in enforcing criminal liability for environmental damage, as the Bhopal gas leak incident demonstrated. Extra-legal factors, in addition to legal constraints and institutional shortcomings, contribute to this situation. The need to create a favourable environment to attract foreign investment, which is critical for these countries' development, has hampered the willingness to enforce environmental laws. Furthermore, these countries economic and social constraints result in a lack of coordinated public pressure to compel government action. While efforts to improve laws and institutions may improve enforcement to some extent, they will not be sufficient to address the problem. Aside from financial and technological constraints, the power imbalance between these countries and multinational corporations allows the former to continue to serve as a safe haven for environmental misbehaviour. As a result, both international law and relevant international organisations must assist developing countries, not only by providing financial assistance to strengthen their institutions but also by reining in multinational corporations' excessive behaviour.