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# CORPORATE CRIMINAL LIABILITY ON ENVIRONMENTAL CRIMES: AN ANALYSIS

-Dr Sumanth H M<sup>1</sup>

## ABSTRACT

Environmental crisis like; climate change, acid rain, air pollution, water pollutions, ozone depletion, biodiversity loss and pandemics, etc. are all parts of the new societies. Environmental crisis in the society is causing not only disappearing natural habitats, the extinction of rare plant and animals, but there is also a rise in ecological disasters. Environmental pollutions are causing number of abortions, skin damages, allergies, births of disabled babies; headache and an increased number of multiple types of cancers to the human as well as to non-humans and these are seen to be growing at the national and global level. Environmental Crimes have been identified as serious crime which is a fastest growing area of criminal activity, these crimes have numerous consequences on the security and economy of the country and this seems to be affecting the property values and our future human and non-human generations. Environmental crimes are affecting the environment and the quality of life and wellbeing of human beings. It damages the natural quality of environment, terminates habitations and biodiversity, decreases forest and wildlife sources, destroys watersheds, and adversely affects the quality and quantity of water, etc. In due course, it also affects unfavorably on agriculture, food security, and the overall quality, and amount of environmental wealth.

**Key Words:** Environmental Pollution, Crimes, Damages, Biodiversity, Ecological Disasters.

## INTRODUCTION

Both development and environment are mutually influences each other and both are like two sides of a coin, in case development gets priority the very nature of environment becomes victims, at the same time if environment is prioritized the development will be very difficult to seen, it is too difficult to achieve both. In the modern era of human nature becoming selfish and their main motto is to achieve economic power, due to which environment becoming victim. To achieve maximum wants he commits distractions to the environment directly or indirectly by individual or

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<sup>1</sup> Associate Professor of Law, Government Law College, Ramanagara Karnataka-562128

organized group. In terms of business organization corporate existence reached every corner of the society and certainly it carries systematic business approaches, almost every trade and business activities covered by the business organization in the form of company. The existence and progress of the said company depends on the personalities whoever dedicated towards the same. In the modern days majority people whoever works for the management of the company will have to do the best for gaining profit, in order to achieve the same, some of the managerial personalities will not hesitate to breach the legal system and many of them directly or indirectly carries illegal means to achieve maximum profit which is certainly leads to violation of laws, such be in the case it also treated as crime more particularly corporate crime and it has different dimensions, one among them is corporate environmental crime.

Environmental crime is 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, at the same time the dimensions of 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 to the all forms of ecological and biological system). Breach of environmental laws can be classified as civil and criminal wrong, the civil wrongs attract civil action which leads to claim of damages and criminal harms attract criminal action like fine and imprisonment.

At present days corporations intentionally or unintentionally commits some distractions to the natural quality of the environment, more particularly their business activities breaches environment norms which would be treated as environmental crimes. The total value of the major forms of international environmental crimes are like, illegal logging and illegal fishing, illegal trade in wildlife and trade in ozone-depleting substances, and illegal dumping of hazardous waste may be on the order of \$20-40 billion a year, about 5-10% of the size of the global drug trade. Compared to the "war on drugs," however, the resources and political will that are being devoted to tackling the problems of international environmental crime are derisory, yet, also unlike the drug trade, they threaten every citizen of the world and also undermine several key environmental treaties. Indeed the intention of this chapter is to conceptualizing of the very nature of corporate environmental crime as it one of the major form of the corporate crimes. At the same time this work identifies some of the major corporate environmental crimes across the globe with the discussion of the basis for corporate criminal liability vis-a-vis individual criminal liability for the same. And finally this chapter also discusses Indian legislations which are responsible for corporate environmental crimes.

## CONCEPT OF CORPORATION

A corporation legally enjoys rights and responsibility as individual where it can be a party to the contracts, have loans and borrowings, acquire property and sell the same etc. Corporations being legal person will have to get registered under specified laws.<sup>2</sup> Corporation or corporate entity is an organization formed by the group of people and once it gets registration it acquires or possesses some of the rights and liabilities as like natural person, and it is majorly formed for the purposes of business activities or charity. Basically in the initial stage, the status of person under law is limited to natural person but later this concept got changed or extended to 'legal person' or 'legal entity'.

The modern legal concept of person is not limited but it is extended to even Corporations, Companies, Associations, Firms, Societies, Joint Stock Companies, Governments and NGOs etc. In India the concept of corporation is usually used by the law, courts and scholars as a 'legal entity' or 'legal person', because of their nature, which can be owned by a group of people or its members or shareholder's. Under, I.P.C.1860<sup>3</sup>, Water Act 1974, Air Act 1981 and some of other Indian legislations give scope for reorganization of company or corporate entity as "legal person". At the same time Indian judiciary also made effort to elaborate and construct the term person in inclusive approach. To understand the above, the recent judgments would make it clear for better understanding of the topic<sup>4</sup>. A corporation enjoys most of the rights and responsibilities that an individual possesses (where it can enter contracts, lend and borrow money, sue and be sued, hire employees, own assets and pay taxes.) to an extent which can be referred to as a 'Legal person'. The origin and evolution of the corporation is of far ancient. As quoted by Marshall L.J, "They are not novelties; they are institutions of very ancient date<sup>5</sup>." The earliest ages of corporation were open for various social activities for the betterment of their co-existence. However, the modern concept of corporation though its scope and subject matter has been widened to an impeccable extent, the purpose is only confined to profit making in today's perspective. The large business corporation has strongly influenced the control of property in the modern world. They are typically controlled by a small minority of capitalists. In the contemporary world the corporations have been creating a vast significant impact in terms of social, economic, political and even the environmental aspects. Various corporations of the world dominate the manufacturing, energy, service and daily needs of most of the countries. At the same time it also becomes a source of poverty, deprivation

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<sup>2</sup> In India a company being corporate person needs to be incorporated by following some of the procedure specified under companies Act 2013

<sup>3</sup> Section 11 of Indian penal code 1860 defines person as "the word person includes and company or association, or body of person whether incorporated or not"

<sup>4</sup> In Mohd. Salim vs State of Utharakanda, WP126/2014, on 20.03.2017 and Vikash Bansal vs DPCC, Delhi District Court Criminal Appeal No.: 112/17 vs Delhi Pollution Control Board, decided on 21 November, 2017.

<sup>5</sup> Bank of the United States VS Dandridge, 25 U.S 64 (1827).

and environmental disasters. These problems are getting worse in many respects in the present era of modernization, urbanization and industrialization. The destruction of natural environment is the most inevitable issue to be sorted due to the conduct of corporation.

## **CORPORATE CRIMES**

The concept of corporation is briefly discussed above in this chapter, now it is very important to know about corporate crimes and the criminal liability of the corporate entity. Corporate entity being legal person may commits wrong which can be classified as civil wrong and criminal wrong. It is not complex to make corporation liability for its civil wrong<sup>6</sup> for an act or wrong which is civil in nature and liability under civil law in the form of specific performance or injunction or in the form of compensation would be the remedy for it which may be easily bared by corporate entity. Whereas criminal wrong of the company or corporate entity it is not so easy to held corporation liability for the criminal act but certainly the new development in the field of law and jurisprudence to making corporate criminal liability. Even though corporate crime is not a new concept, making criminal liability is relatively a new complex issue.

Corporate crime is a criminal wrong committed with the intention of achieving economic interest of the corporation by the officials of corporate entity<sup>7</sup>, this can be defined as ‘a crime committed by a corporation with the intention of development or economic growth of structural economic system’. At present days or age the scams and crimes by the companies or business organizations are throwing a lot of complex challenges at all level and similarly it poses significant threat to the welfare of the community. Even though criminology is not dealing with corporate crime as separate branch of its disciple, it attracting the society to treat or consider it as separate branch of crime, even from the criminologists perspective, corporate crimes are considered under the categories of white collar crime, they won’t considered as a separate discipline. Corporate crimes are generally committed with anonymous structure of actions and communication and their visibility, most of the cases of such crimes, there would be no personal contact with the victims and offenders. As like white collar crimes it is connected or linked with the professional class of people, at the same way corporate crimes are making benefit to the corporation as whole and it may include the investor and individual in the top officials of the company. Both white collar crime and corporate crime are similar because in majority cases both are involved with the business

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<sup>6</sup> As defined under the work of Glanville Williams. Learning the Law. Eleventh Edition. Stevens. 1982; “civil wrong or wrong is a cause of action under the law of the governing body. Tort, breach of contract and breach of trust are types of civil wrong. Something that amounts to a civil wrong is said to be wrongful. A wrong involves the violation of a right because wrong and right are complementary terms”.

<sup>7</sup> Prof. DR. Johannes Kaspar, Kyusta Uni, “Corporate criminology”- Causes and prevention of corporate crimes, Legal Research Bulletin

activities. Corporate crimes are generally committed by its responsible officials or executives for the benefit of their corporations it is typically committed as illegal actions or behavior of corporation or its agents for the benefits of the both. The problem of corporate crime is unique and complex due to several reasons, the primary one being the nature of corporate form. The corporate entities now become the dominant institution in the society. The corporations have enormous powers by virtue of its independent existence. The owners, as public shareholders, are scattered and ultimately the management lies in the hands of few who have been identified as 'alter ego', 'directing mind and will' at various times by various courts.

Corporate crime is a crime committed for the economic interest of a corporation<sup>8</sup>. It could be defined as it is committed by a corporation to develop/grow economically having structures of economic system. Corporate crime carries a significant risk to the safety of the community, specified the persistent attendance of corporation in a extensive variety of events in our society and the influence of their accounts on a much widespread cluster of people they are affected by the individual acts potential for both economic and corporeal damage produced by a company<sup>9</sup>. Corporate crimes are measured to be the general diversities of White collar crimes. Apparently, there is no distinct branch of criminology dealing with corporate. The illegal behavior of companies are tried to understand by applying the present theories related to individual wrongdoing. Corporate crimes are generally committed within unidentified structure of act and message and within the frame work of commonly legal activity. They are difficult to notice and are categorized by their low visibility. Where in most of the cases, there will be no individual interaction among the criminal and the victim. Further, there may not be an individual victim in many cases. Where, the combined victims could be other companies, agencies, the state or society in general. Edwin Sutherland introduced the term 'White collar crime' focusing the arena of criminal acts which are committed by the people in upper class of the society in contrast to the belief the criminal acts are only committed by persons belonging to lower strata of society. Since white collar crimes are linked to professional and elite class, the corporate crime has a link to white collar crime. It deals with a company as a distinct entity. It benefits the corporation as a whole which may include investors and individual in the high position in the company. White collar crime and corporate crime are similar as both are involved with business. The difference is that white collar crime benefit the individual and corporate crime benefits the corporations. Corporate crime generally committed through the responsible executives for the benefit of their corporation with the structure of corporate activities. In a way corporate crime comes within the purview of white

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<sup>8</sup> ibid

<sup>9</sup> Law Reform Commission of New South Wales, 2001.

collar crimes, this is typically seen as illegal activities or behavior of the corporate entity or their agents for the benefit of the firms. Corporations being juristic person may be charged for their illegal act through their agents like responsible officer or managers whoever does an act in behalf of the company.

## **CORPORATE CRIMINAL LIABILITY**

Corporation being a legal person or legal entity will have to bear certain liability as they possess rights, the activities of the corporation are carried for the benefit of the company, at the same time corporate entity will have to responsible for the actions conducted during the course of business activities, and it may civil or criminal liability. When we consider civil liability of the company, the problem is not that much complex but under criminal liability there are many issues like who should be held criminally liable?, whether corporation being legal person could commits crime?, what is the statues of Mens Rea for corporate crimes?, who is an victims of corporate crime?, and on what principal corporate entity could be made liable?, to answer all above complex issues we need to know the philosophy and legal principles which are giving basis to make corporate criminal liability. All the way through development of the doctrine of corporate criminal liability faced many major problems, like:

- The failure to identify or demonstrate criminal intent of a juristic, fictional being. As corporations are incorporeal legal bodies, finding the necessary for the commission of a criminal act proved to be quite the obstacle.
- Sanctions were the second problem. A corporation cannot be confined or placed to death; hence the risk of imprisonment which plays a major role in criminal law could not be applied here. This led to speculation that criminal law was not fitting for the application of this doctrine.
- Courts required the accused in a criminal case to be physically brought before them for proceedings to take place. This was obviously not possible in the case of corporations.

Traditionally in in India corporate criminal liability cannot be taken in to consideration without making concern legislative arrangements. In the Assistant Commissioner Assessment-II, Bangalore and Ors Vs. Velliappa Textiles Ltd. and Ors<sup>10</sup> court held that, corporate criminal liability cannot be forced without making corresponding legislative changes. For example, the imposition

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<sup>10</sup> The Court was of the view that the company could be prosecuted for an offence involving rupees one lakh or less and be punished as the option is given to the court to impose a sentence of imprisonment or fine, whereas in the case of an offence involving an amount or value exceeding rupees one lakh, the court is not given a discretion to impose imprisonment or fine and therefore, the company cannot be prosecuted as the custodial sentence cannot be imposed on it.

of fine in lieu of imprisonment is required to be introduced in many provisions under penal statutes. Prior to the twentieth century, it was believed that a corporation lacked the required for the commission of a criminal act and hence to attain a criminal conviction. The idea that “A corporation has no soul to damn and no body to kick” was widely prevalent at that time. At present, the directors, employees and officers are all liable for criminal acts committed by them which they have actual authority to perform or appear to have authority to perform as observed by an average reasonable man.

The development has been slow in India, we have been slow to even to adopt the practices used in any foreign country. As late as in 1964, courts were unwilling to hold corporations responsible for crimes that were done with intent. In *State of Maharashtra V. Syndicate Transport Co* held that it would depend on the nature of the offence to hold a corporation responsible for criminal action resulting from the action of its individual members. Section-2, of IPC reads that every person shall be held liable under the Code for punishment. Under Section-11, a corporate body is included in the definition of ‘person.’ It was argued that though a corporate body was included in the definition, there were certain offences that could be committed only by an individual. So where the IPC provided that certain offences were to be punished only with imprisonment, it would not be possible to impose this on companies.

In the context of Mens Rea, offences in India seem to have been influenced by England. In *A.K.Khosla Vs. T.S.Venkatesan*<sup>11</sup> General Electric Company Limited (GE) was accused by Shaw Wallace Limited (SWL) of resorting to false practices and making false representations in inducing SWL to enter into an agreement to purchase equity in GE. Charges were framed against GE under Sec-415, 420, of IPC on grounds of cheating. The court held that cheating is an offence where Mens rea is an essential ingredient. The accused being a corporate body cannot be said the necessary Mens rea as such, so it cannot be prosecuted for an offence under Sec-407, IPC. A contrary view however was taken in *Keshub Mahindra v. Union of India*<sup>12</sup>, and he was held personally responsible on charges of manslaughter as Managing Director of Mahindra & Mahindra. In *M.C.Mehta v. Union of India*<sup>13</sup>, or in Bhopal gas leak case, the courts introduced the principle of strict liability. The *D.C.M.Shriram Gas leak case*<sup>14</sup> went a step further and the Supreme Court enunciated for the first time the principle of absolute liability. The Factories Act, 1948 was

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<sup>11</sup> *A.K.Khosla v. T.S.Venkatesan*, AIR 1992 SC 1448

<sup>12</sup> *Keshub Mahindra v. Union of India*, (1996) 6 SCC 1456.

<sup>13</sup> AIR 1984 SC 1086.

<sup>14</sup> *M.C. Mehta And Anr vs Union Of India & Ors*, 1987 AIR 1086, 1987 SCR (1) 819



amended and the directors of a company were defined as “occupier” of a factory and were made responsible directly for all acts of omission and commission. This definition was challenged by many industries, but the court ruled in favor of making the top management responsible for all actions. The current position in India uses the identification doctrine and holds directors to be personally liable. It is submitted in this Paper that India needs to rethink its liability strategy, and that the identification doctrine is inappropriate for use

There are certain things not wrong in themselves, but are deemed criminal for the sake of the public good. This sufficiently accounts for corporate liability for absolute and strict liability offences. But the case is different for Mens Rea offences. There are people who argue that the need for corporate criminal liability arises only when regulatory methods have been exhausted. But this view is inconsistent with the purpose of criminal liability, i.e. deterrence. As Glanville Williams writes, “the result of a rule disregarding fault may be that businessmen come to regard fines as part of their overhead costs. This attitude of indifference thus engendered toward the criminal process through the inflation of law may well spread to other offences, where an element of fault is present. The ultimate result may be a decrease in the preventive effect of the law.” The conflict brings into focus the need to co-ordinate the liability strategy used with the aims corporate criminal liability seeks to achieve.

## **CORPORATE ENVIRONMENTAL CRIMES**

During or after industrialization the concept of corporations or corporate body is got 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 organizations and corporate bodied. In this study from the beginning we have discussed about concept of environmental crimes, corporate and the corporate crimes here it's very important to know about corporate environmental crimes. 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 way<sup>15</sup>;

- Ignorant of its environmental obligation which are imposed by environmental legislations.

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<sup>15</sup> Corporate Environmental Crimes, report by The House of Commons Environment Audit committee, Published by authority of The House of Commons, London, 2005.

- Result of negligent behaviors 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 or occurs in business setting 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 occur because 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. These necessary environmental obligations are failed to comply by the corporate sector, the results in allowing the pollution incidents to occur in a rapid and massive rate. A company being a large body of individual, and to pinpoint a particular individual who is directly responsible for committing environmental crime is often dreadful/outrageous. But till now, very few corporate have been held to such punishment as an individual is getting under the penal provisions.

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-11 it recognizes 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 fine<sup>16</sup>. In 2010 the Bhopal CJM court convicted 7 of its accused in the Bhopal Gas Leakage case<sup>17</sup> for the act of negligently causing death under section-304A of IPC, Endangering life and safety under section-336, Causing hurt under section-337 and causing grievous hurt under section-338 of the IPC. This case even though an environmental disaster case we were unable to prosecute the offenders under environmental laws, because till date we were

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<sup>16</sup>Sahana.D and Arya R, International Journal of Pure and Applied Mathematics, Volume 120 No. 5 2018, 87-98

<sup>17</sup> State of Madhya Pradesh through CBI .Vs. Warren Anderson and Ors, Cr. Case No. 8460 / 1996, Delivered on 07, June 2010

facing a huge legislative lacuna for the same, but under Indian penal code we were able to prosecute them and 7 of the accused are convicted for the offence discussed above. All 7 accused were some on or the other way responsible officers of the UCC or UCIL convicted for their negligent behaviors 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-477 and 48 of Water Act-1974, section-40 and 41 of Air Act 198, and Section-16 and 17 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 Vikash Bansal Partner M/s Haryana Paneer Bhandar .v. Delhi Pollution Control Committee<sup>18</sup>, Appellant Vikash Bansal sentenced to imprisonment for 2 years for the offence punishable u/s 24 r/w Section 43 of the 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 proper legal framework<sup>19</sup>.

## **PROSECUTION AND PUNISHMENT**

In the year 2010, the 7 of the responsible corporate officials of the Indian Union Corroborate Corporation (IUCC) were convicted under Indian penal code for the act of negligent under corporate criminal Liability. This conviction happened after 26 years of the incident, which means there are many problems with the prosecution (legislative, Administrative, Investigations etc.). In many cases the courts stopped the prosecutions simply for the reasons of not having clear laws to prosecute. But at the same time laws like, the Water Act, Air Act, Environmental protection Act and many other environmental and other laws providing the scope for prosecution of the responsible corporate officials or the persons who is in charge for the activities, and they are machining them criminal liability.

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<sup>18</sup> Delhi District Court, Criminal Appeal No.: 112/17 vs Delhi Pollution Control- original case- Delhi Pollution Control Committee Vs M/s Haryana Paneer Bhandar & Ors. CC No.: 535235/16

<sup>19</sup>(12.10.2010)-<http://www.opendemocracy.net/openindia/v-n-haridas-and-yash-thomas-mannully/bewarebhopal-legal-frame-work-needed-for-indias-use-o>

## CONCLUSION

The process of globalization and the growth of interdependence in economic, social and environmental activities by corporate entities require greater international cooperation between states at the same time economic, and the white-collar-crime has grown substantially. 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 the act against environment is a developing concern that to Bhopal gas tragedy and B P oil spill incident. Traditionally criminal sanctions have not been imposed upon polluters in the forms of enforcement of environmental criminal laws, it evidencing that traditionally the civil remedies alone cannot act as a deterrent for environmental destructions. By imposing fine for corporate environmental crime would not be justice for environment, environmental compliances of corporation has to be supplemented more accountability criminally. In India some of the environmental laws, like Air act<sup>20</sup> and Water Act<sup>21</sup> and Environmental Protection Acts<sup>22</sup> deals with the corporate criminal responsibility for such act which violate respective laws. Though environmental criminal laws or criminal jurisprudence making corporations liability on their crimes, it has been seen 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.

There should be a distinct part of the IPC expressly conveying corporations. The main object of corporate criminal liability is to ensure the firms improve their work practices with the minimizing of destruction to the environment and for any matter if corporation destructs the natural environment should be prosecuted otherwise the harmful practices would be continuing unbeaten. At the same time the corporate shall be prosecuted and convicted by bringing the doctrine of attribution into the Indian legal system and make individuals whoever influential or responsible for such corporate environmental crime.

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<sup>20</sup> As per 2016 NCRB Report only 22 cases have been registered but Zero conviction

<sup>21</sup> As per 2016 NCRB Report only 11 cases have been registered but 3 were convicted

<sup>22</sup> Section 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.