3-5 RMLNLUJ (2011-2013) 98

Corporate Environmental Criminal Liability in India: Reality or Myth

by
—Prof. C.M. Jariwala[*]

I. INTRODUCTION

The subject of corporate environmental criminal liability has yet to get its due position in the Indian environmental jurisprudence and, therefore, the academics must exploit the unexplored region. If one opens the Reports of the Department of Environment and Forest, the Pollution Boards, the Supreme Court, and High Courts judgments, and the publication of the research works in the area of industries and environment, he will find that the industrial corporations, are mainly responsible to have brought the present sad state of environment. The civil remedy has yet to mend the behaviour of the corporation who believes in profitisation and pay and pollute. In this scenario the question is: how far the criminal proceeding will do justice? This makes it necessary to research in this region.

There are theories in favour and against whether to use or not to use the criminal sanction. An attempt is made in this paper to find out which is the most suitable or a pluralist approach as per the need of the present time. Many countries have started prescribing criminal treatment against the corporate environmental crimes, and the international community is also not lagging far behind. The experiences of comparative and international scenario may throw some light as to what may or may not be adopted so as to make the Indian corporate environmental criminal liability to be more functional and effective.

In the modern times, the corporate houses live in an illusion that they are really contributing to national development. Their first priority has

become, to increase the capital, and distribute lucrative returns wherein the environmental concern remained the last or lost agenda. On the contrary, today some of the nations, individually or jointly, are recognizing the importance of the corporate environmental ethics and culture. Some are even trying to evolve a corporate environmental code of conduct, and fortunately some have imbibed them in their practice and others have even adopted legislative measures in this direction. Where India stands in these developments, needs a detailed examination.

Coming to India, it has joined a mad race to gain the status of a developed nation, 'the world power'. Further, many multinationals have joined the Indian market and many more await the government's green signal. How will the environmental criminal jurisprudence tackle such complex problems, is a matter for discussion. Since 1860 the Indian environment law, under its different heads and Rules, has brought in a large number of anti-environmental activities within the definition of environment offence. Are these enough or something has been left out, are the issues for examination in the present work. The study will also try to identify as to who are the environmental criminals. The next issue for consideration is: corporation has a distinct legal personality than those who manage and operate its business and also its shareholders. Whose responsibility is in the dual personality of the corporate life? Further more, an offence may be committed by one corporation, big or small, a group

of corporations, a subsidiary of corporation or multinationals, multinational or group of multinationals or it may be an organized crime or an act of environmental terrorism. Has the Indian environmental law any potential to regulate all the above activities?

The last stage of examination will be, the criminal remedies. The issues involved therein are: Is the present solution a happy solution? If not, what else we need? Can one measure of criminal sanction be appropriate to solve different complex problems? Is the criminal sanction need reform to focuss attention towards the victims, their dependents, and the last but not the least, the depleted and badly assaulted environment. During the last four decades, the dimension of criminal sanctions has changed each time. Has it made any different? These are the questions whose answer have been tried to be given in the following pages. At the close of the entire discussions comes the question: what finally comes out and what we need now?

II. Corporate Criminal Liability: An Overview

There are different views on the question of corporate criminal responsibility. The traditional view was that a corporation had no physical mind or body to form *mens rea* as such, being not in a position to commit crime, it

could not be criminally charged. Even some of the European countries, like Germany Greece, Hungary Mexico, Swedon, etc, have voted in favour of the traditional stand.[1] Some of the academics have also supported the above view on the logistic ground.[2] Their main difficulty is that a corporation has no physical existence and even if it commits a crime, the punishment of imprisonment will be meaningless in such a case. Even Cofee has gone to the extend to term it 'an unscandalised inquiry.'[3]

There are large number of scholars, on the other hand, who have favoured the criminal liability of the corporate bodies.[4] Even in this, some of the scholars have gone to the extent of saying that the concept 'has been widely accepted'.[5] Michael Faure and Gunter Heines' in their work[6] in Annexure 2 in the *Country Reports*, have pointed out that European countries, for example, Denmark, France, Finland, Netherland, Belgium, United Kingdom, have legislations favouring corporate criminal liability. In the USA it has become a 'national priority'.[7] It is reported that in 1990, 70 per cent of the American population advocated for criminal sanction in case of violation environmental law and for this, the corporation and its officials be held personally liable.[8] In all these developments, it is said, Australia has the most sophisticated model of corporate criminal responsibility in the world.[9] The English and American Courts also have enforced criminal liability against a corporate body.[10] It has even been proposed that in the modern time the corporate criminal responsibility must find a place even in the

international law.[11] The International Environment Law even imposes mandatory obligation on all the Members to the Convention to frame domestic law imposing criminal sanction on the erring corporations.[12] But this international mandatory duty is badly diluted by Article 9(3) which gives freedom to the Member States to make reservation in that regard or not to adopt it. Such a luke-warm approach has done injustice to environment.

There is also a third theory of mediatory approach where the researchers have suggested that the criminal liability should be adopted as the last resort. In case the other remedies or measures of prevention do not 'deter the offender' only then a recourse may be taken to punitive remedies.[13] The above discussions bring out a confused state of affairs, putting a question mark on the adoption of the concept of corporate criminal liability. But the fact remains as to why should a corporate agency be not treated alike? If this is not done, persons will form association and go scot free from the criminal sanction.

III. YESTER CENTURY'S SCENARIO

Coming to the initial position, under the Indian Penal Code, 1860 Sections 277 and 278, specifically provide for environmental offences. Section 277 takes care of water, and makes fouling the water of any public spring or reservoir an offence if it is made unfit for the purpose for which it is ordinarily used. This section has a limited vision, and does not include the entire water bodies. Secondly, it concentrates only on the use of water and not the consequences of the consumption of such fouled water. Thirdly, Section 277 requires only voluntary act and not act committed without any intention. And finally, the tragedy of this provision was that the people, being ignorant of water pollution and its consequence, used this section to

settle the caste politics but fortunately the courts have not allowed the operation of Section 277 in such litigations.[14]

The second offence is provided in Section 278 wherein vitiating atmosphere, making it noxious to public health, is made an offence. The air pollution has larger parameters and wider consumers than only the public health. The consequences of such pollution are left out of the purview of Section 278. Further more, this section, like Section 277, also was not used to prevent vitiation of atmosphere but was made a battle field to solve the personal rivalries which the courts did not allow.[15] One thing is common in both the above sections that they remain almost dead letters in the Code.

The exceptions prescribed under Chapter IV of the Code provide that any act, coming within the provisions of the exceptions, will not attract the label of an offence. In the present context, the following exceptions are specifically relevant which include, the act done by an accident or misfortune; but if such act is caused due to negligence or recklessness then the exceptional clause in Section 95 will not apply in such a case[16]. Section 95 exempts an act causing slight harm from the definition of offence. But in pollution cases even a slight harm may cause serious consequences. In spite of the demerits of the code it must be appreciated that since 1860 India showed concern against pollution.

IV. ENVIRONMENTAL CRIMES: *SURAJ* OR *ASURARAJ*

Environmental crimes are those acts or omissions which are prohibited or restricted under the concerned environmental law.[17] Generally, if one looks to the journey of the Indian environmental law[18] and its enforcement, he will find that the provisions of environmental crimes generally point towards the industrial corporate houses and the case law in this regard also support the above stand.[19] Taking the stock of the different environment

laws, starting in the ascending order, the *Water* Act comes first and the Air Act follows *prototype* provisions. This legislation makes pollution of water[20] an offence which includes contamination of water, or alteration of its physical, chemical or biological properties or discharge into water any sewage or trade effluent or any other liquid, gaseous or solid substance. Even the acts done directly or even indirectly making water harmful or injurious to public health are also made offence. It may be even an offence if the pollution is beyond the limit of the prescribed standard. Section 41 of the Act makes it an offence if a person does not provide the required information[21]; if any direction issued by the court is not complied with or non-compliance of any direction issued by the Board.[22] An industry may commit an offence, if it, without the consent of the State Pollution Board, is involved in industrial operation, process or any treatment and disposal system.

The next important legislation in the series is the *Environment* Act. The Statement of Objects and Reasons clause of the Act envisages to impose deterrent punishment to protect the environment. A same line of thinking was seen in both the Houses of Parliament during the debates on the Bill. The offence of environmental pollution is defined to mean the presence in the environment of any solid, liquid, gaseous substance or hazardous substance in such concentration as may be or tend to be, injurious to environment. Section 7 of the Act makes it an offence to discharge or emit any environmental pollutant in excess of the prescribed standard. There may be a case where the trade effluent of an individual industry may be within the prescribed standards but the collective trade effluents of different industries joining one stream may be much higher than the prescribed standards. Should the individuals be allowed to go scot free or be held liable jointly? The existing law has no answer.

Further more, failure to give information to the authorities about an accident or other unforeseen act or non-cooperation in such matter when called for; or non-cooperation in case of entry and inspection of the authorised persons or taking sample of any substance from the industrial establishment, have been made an offence under the Act.[23] Section 15 provides a residuary offence clause which makes all acts or omission as an offence where there is a failure to comply with or any contravention of the provisions of this Act or rules, order or directions issued thereunder. This general clause, it may be pointed out, no doubt leaves least scope to flout any condition so laid down, but, it leaves a vagueness in identifying specific activities which shall or shall not form part of environmental crime. It is time that

such short cut legislative approach in the penal sanction be discouraged and be set at right.

Some of the Rules framed under the *Environment* Act, also make certain activities as an offence. For example, the Environment (Protection) Rules, 1986 in Rules 5 and 13 make it an offence to establish any industry and also handling of hazardous substance in the prohibited areas. Further 102 industries are identified and different parameters and standards are prescribed, failing which they shall be subject to penal sanction. The Manufacture, Storage and Impart of Hazardous Chemical Rules, 1989 declare 684 chemicals as hazardous chemicals, whose occupier is required to have a license to start the industrial activity in the approved and notified sites. It is further required to submit with the appropriate authority, a safety report and safe audit report; and to provide from time to time information so required, otherwise, any non-compliance of the above conditions would attract the penalty.[24] The Ozone Depleting

Substances (Regulation and Control) Rules, 2000 make certain acts as an offence which include, no person, who is not registered with the appropriate authority, shall produce any such substances nor produce in excess of the calculated base level, or export or import, sale or purchase, use, reclaim or destroy, or make new investments in the production of any ozone depleting substance.[25] The Hazardous Waste (Management, Handling and Transboundary) Rules, 2008 prescribe certain conditions to be followed in handling, storage, recycling, export and impart, disposal, packaging, labelling and transport of hazardous waste. And the last but not the least, comes the National Green Tribunal Act, 2010 which in Section 26, declares it an offence if anybody fails to comply with any order, award or decision of the Tribunal. Thus in order to protect the environment large number of activities, which otherwise affect the environment, are put in the category of offence which expects to bring environmental *suraj* by controlling activities of a *suraj* (*raksha shes*).

V. Whose Responsibility?

The Indian environmental law makes provision for making any person whether natural or artificial to be liable for the commission of any crime. Apart from an individual person, even any corporate body itself will be subject to liability. However, there may be cases where the company had adopted eco-friendly policies and decisions but its officials might have committed the offence in such cases, it would be unjust to punish such company for the act of its officers.[26] Those who were in charge of and were

responsible to the company for the conduct of the business of the corporation, shall also be responsible. Further, if it is proved that the offence was 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 corporate body, such person, the law provides, shall also be deemed to be guilty of the offence. However such person shall not be held liable if he proves that the offence was committed without his knowledge or they exercised all due diligence to prevent the commission of the offence.[27] These sections[28] start with a *non-obstante* clause which means that they have the overriding effect over the principal clause.[29] These exceptions raise a question: if these authorities of the company or corporation are exempted from any criminal liability then who shall be held liable for the pollution so caused? Moreover these are nothing but lame excuses which may be used to continue to degrade the environment and also linger on the judicial proceedings further.[30] It is time to allow the absolute liability to operate fully in the environmental litigations.

In this regard the lessons of *Oleum leak case*[31] deserve a special attention. Even though it is a case on tortuous liability but its inferences may help in the development of criminal responsibility. In one of the units of Sriram Food and Fertilizer Industries, there was a major leakage of oleum gas, resulting in harm to the workers of the industry and people around the factory premises. It was further alleged that the leakage caused even death of an advocate. The Supreme Court in its First Order imposed personal and individual responsibility on the chairman and Managing Director and other officers alongwith the operator and head of the concerned plant.[32] And also required an undertaking from the Chairman and Managing Director as also from the officers who actually managed the plant to the effect that they shall be personally responsible for the payment of compensation to the victims of any further leakage. In its subsequent modified orders the Court started listing out officers and workers from the liability because the Court conceded that if an 'absolute unlimited liability' was

imposed, then 'many competent persons would shy away from accepting employment'. The Court, therefore, further modified its previous Order, though continuing their responsibility but subject to two conditions: first, the liability shall be to the extent of their annual salary with allowance; and second,

the officers concerned shall be entitled to be indemnified by Sriram provided that they were able to prove that the leakage was as a result of an act of God; *vis major*, or sabotage or they had exercised all due diligence. It may be pointed out that the Courts have, time and again, treated such officers as the mind, body and soul of the corporate body,[33] and as such the Supreme Court of India has also followed the doctrine of vicarious liability in the environmental crimes[34] and, therefore, their cases need serious reconsideration.

Coming to the personal responsibility of the Chairman and the Managing Director of the company, the owner of several units, Sriram urged to modify the Order relieving them from such responsibility on the ground that the day to day functioning and management of the Units was done by the competent and professionally qualified persons and not by the above persons. The Court in its next Order, though continued their personal liability, however, it provided that they could be exempted from such liability if they could prove that the escape of chlorine gas was due to an Act of God or *vis major* or sabotage. Thus in their cases also the principal of absolute liability would not apply, a sad out come of the Order.[35] So, what comes out of the *Mehta case*? The judicial process and its long zig zag journey 'on trepidations' has, it is submitted, exposed the judiciary with changing its stand in fixing up the environmental responsibility[36], a lack of judicial comprehension. However, one thing comes out that *Mehta* provides a basic foundation for the corporate environmental criminal responsibility jurisprudence.

The *Dwarka Cement Works case*,[37] is one of the cases where the corporations took lame excuses to get rid of their responsibility. In this case the interesting point to be noted was that, the Chairman, Director and the General Manager of the industries who were involved in environmental crime took the stand that there was nothing in the complaint that they were concerned with the management of the industry, and, therefore, they could not be personally liable for the harm that had been caused. The court did not allow their shameless plea as they had 'suppressed some material facts or stated half truth or by lying', 'a trickeries of game' to escape the personal liability.

Coming to the *Union Carbide case*, the Court initially puts the clock at rest. In its initial judgement, the Court in its overactivism, exempted the UCC and those who were responsible for MIC leak from all the other responsibilities, including even criminal sanction.[38] Is the present case not a retreat from the settled judicial stand? However, the total exemption of criminal liability of the UCC[39] was once again taken to the Supreme Court. In this case it was urged that the pending criminal prosecution was a separate and distinct proceeding unconnected with the suit from interlocutory order. As such, the Court had no power to withdraw to itself those criminal proceedings and therefore, it was urged to quash the order. The order of February

15th, 1989 provided:

(A)ll such criminal proceedings including contempt proceedings stand quashed and accused deemed to be acquitted.

On the count of lack of jurisdiction, the court, denying the pleas, and taking the help of Articles 136 and 141, took a clear stand that the court had jurisdiction in the present case and on that ground there was no question of any nullity in exempting the criminal liability of the accused. It may be pointed out the apex court did not endorse the stand of the precedent which laid down 'a non-compoundable offence cannot be made compoundable', or making 'legal which the law condemns'. Moreover, the society cannot permit to exempt the offender from punishment rather it has a right' to resist the withdrawal of such prosecution'.[40] Is not the court's approach reflect an arrogance of the inherent power, the king of the Kingdom. However, the apex, taking the help of the *Sankarayarayanan Nair case*[41] where the court required valid grounds for such exercise of power, took the stand that in the present case there was no specific ground or grounds for the withdrawal of the prosecutions having been set out at that stage, the order, according to the court, in that regard, be set aside.[42] Thus the operation of criminal prosecution which was dead buried in 1989 was allowed to breath fresh air. But the sad part is that almost two decades have passed of the reversal order but the criminal process still remains in hibernation. This is a serious matter which the Supreme Court, as the constitutional guardian to protect the fundamental right to life, can not follow hands off approach but it must take its *suo motu* cognizance.

It may be pointed out that there are case of organized environmental crime[43] but the Indian environmental law no where talks about such a serious crime with a separate penalty. It is time that Parliament must include such crime in the environmental law to give a separate but specific treatment. In India either multinationals or their subsidiaries operate. In such a case the question is: who shall be responsible? The *Union Carbide*[44] case has made it clear that the subsidiary is mainly answerable for any environmental crime. This, it may be pointed out, will allow the parent corporation to play with Indian environment through such tool and go itself scot free. However if a parent corporation created a subsidiary to achieve illegal purpose, then the parent corporation should also held liable. On the whole in the *Bhoposhima*, the judiciary missed an important opportunity to expand the multinational environmental criminal liability jurisprudence which may be applied in any case of disaster in future.

VI. Liability of the Government

The Indian Criminal Law also attracts action of the government, public servants, and officers of the three wings of the Forces. Further, the Indian Penal Code under Chapters VII and IX make it clear that the aforesaid government agencies and officers may be held liable under the Code.[45] However, the offences related to them does not talks about any thing related to environmental crime, and, therefore, in this regard the Code is environmentally blind.

The *Water* Act in Section 48 for the first time provides that if any offence prescribed under the Act has been committed by any Department of Government and it is so proved, then the Head of the concerned Department shall be liable to be proceeded against and punished accordingly. A similar provisions also exist in the *Air* and

Environment Acts. But this liability has been badly diluted by the proviso to the section[46] which exempts the concerned Head from the penal sanction in two situations: one, if the offence was committed without his knowledge; and the second, if all due diligence to prevent the commission of such crime was adopted. In the

technologically advanced world, it may be pointed, it will not be difficult for the Head to succeed in these pleas and go scot free. Will it not be a mockery of the legal control? The examples of the *Bhopal Mass Disaster* and the *Oleum Leak* prove the above apprehension wherein, the concerned governments had granted permission to the factories to be established and become functional in the very heart of the city. The concerned Pollution Boards and regulatory authorities also failed to supervise and oversee their functioning.[47] Should the Heads of the concerned government, and government agencies be not subjected to penal proceedings under the environmental law for their role in the disaster management? It is surprising that the apex legislative authority of India[48] and particularly the apex court[49], allowed, the Government of India to represent the victims under the umbrella of *parens patriae*, in the environmental litigation. On this issue, the court was divided, the majority made the Government of India, as the welfare State', liable to compensate the uncompensated victims; whereas the minority took the stand that when the Government was in no way involved in the leakage, the tax payers must not be burdened with the liability.[50]

The 1981 law and also the Environment Protection Act make 'any officer' liable, if he, with the consent or connivance, committed any offence with neglect. This is a welcome approach but the questions is: how low in the official rank the courts can go to impose penalty? The answer given by the Supreme Court is: 'it will apply to every officer however small he may be'.[51] Will not it saddle such the responsibility on a workman if so, it will further delay the prosecution? It would have been better had the sub-section provided for an officer-in-charge of any concerned section along with the Head of Department to be held liable. There are large number of cases which exposed the government and its authorities for their misactions, overactions and inactions.[52] But the pity is that generally no criminal sanction was imposed in such cases, thus making the above sections atmost ineffective and redundant.

VII. Criminal Sanction

When any person corporation, company or government department benefits from its criminal act, it is natural that it must be punished for such an

act and pay for the harm so caused. Some of the countries[53] like Finland, Germany, Belgium, Denmark, etc. have the provision of imposition of fine against commission of environmental crime. These countries also provide confiscation of illegal profit earned through such offence. The Italian law talks of suspension of industrial process which had caused harm. Spain goes further to the extent of disqualifying from any professional activities of those who are involved in commission of environmental crime. Last but not the least, Netherlands law makes provision for the publication of names of those guilty of such offence. In England and America the environmental law and courts, in few cases, have made corporation and also those who are in actual control of business or handling day to day business of the company or corporation, liable for the

commission of environmental crime.[54] But the question is: how far these criminal sanctions are actually put into operation? The data collected by Michael and Gunter of eleven European Countries, show that the criminal sanction is rarely applied.[55] Coming to India, one of the authors has pointed out that since the commencement of the corporate environmental criminal sanction, some '20 industrial houses officials have been sent to jail'.[56] If this data is taken as a genuine figure, it is too small in the explosion of industrial environment crimes in India.

Generally for such crimes the Indian law provides punishment of either imprisonment and fine or imprisonment or fine. Such punishments raise a question: can a corporate body be subjected to such conjoint punishments? So far as the first punishment is concerned, its imposition is ruled out because a corporate body has no physical existence like human beings.[57] In some cases a conjoint punishment is imposed, making it mandatory to impose both imprisonment and fine. In view of the word 'shall', can the court cut the cord? At first the courts were clear that the court may award only fine.[58] However, subsequently the Supreme Court of India did not come

out with a clear unanimous vision in this regard.[59] The Law Commission of India, when confronted with such issues, repeatedly recommended that such existing punishment requires an amendment so that the corporate body does not go scot free.[60] It is time that Parliament[61] must amend the penalty provision and substitute the word 'and' with 'or' wherever so required. However, till such time, the judiciary, in its activist role[62], must read the existing punishment in a disconjoint manner.[63] It may be pointed out there may be cases where the gravity of pollution may even result in death of large number of human beings.[64] In such cases, should the main perpetrator, offender of man-slaughter, be allowed to go scot free under the umbrella of corporate veil? It is time in the technologically advanced world that the criminal law, including the environmental law, in particular, must be amended and a *prorata* punishment, closure of industry for the corporation and death penalty or life imprisonment for the perpetrators of the manslaughter, must also find a place the penalty clause.

Coming to the sanction process, a court, not inferior to that of Metropolitan Magistrate or Judicial Magistrate of the first class, shall take cognizance of the environmental offence. For this a complaint has to be made by either the Pollution Board or any authorised officer or any person. However, in case of a citizen's suit, the requirement is that he has to give notice to the Board of not less than *sixty days* of the alleged offence of his intention to make a complaint.[65] The Academics had, way back in 1987[66], recommended to delete such provision but Parliament remains in slumber on this issue. Will not such a long delay aggravate more pollution? Will such time schedule serve any purpose for the prevention and control of pollution for which the environmental legislations were passed?

In order to see the changing dimension or graph of the criminal sanction, a start may be made with the Code of 1860 wherein Section 277 imposes punishment of

imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both. On the other hand, the penalty prescribed under Section 278 is most liberal and the punishment prescribed is only fine which may extend to five hundred rupees. In the present techno-science advancements, the aforesaid punishment nowhere stand as a sanction to deter the criminals. So the scenario of the first phase is a most tolerable criminal-friendly penalty which unfortunately did not open its account.

It is interesting to note that the tone of the Criminal Procedure Code has brought in important changes in the Code of 1898 and also in the criminal law jurisprudence. Some of them include: a new Chapter, XXIA has been added which deals with 'Plea Bargaining'[67], but in case of environmental offence this provision does not apply it is submitted that there cannot be any plea bargaining at the cost of environment. Moreover, the bargaining in the *Bhopal Mass Disaster* left many victims, including the environment, in general, uncompensated. The other development in Section 357 is that it talks about the award of compensation for any loss or injury caused to the victims by the accused further it extends to the dependents of the victim if they have also suffered loss or injury and require rehabilitation.[68] This section is more victim-friendly because the victim and his dependent have not to wait for the conclusion of trial. Even if a trial has not taken place, they may make application for the award of compensation to the District or State legal Services Authority. In such cases, the Authority, in the meanwhile, if satisfied, may award, appropriate compensation.[69] Further, the Code of Criminal Procedure (Amendment) Act, 2009 brings a new provision in Section 357-A, the establishment of 'Victim Compensation Fund' to pay compensation to the victims or their dependents. This provision is an important improvement over the punishment of fine where the money is simply deposited in the public exchequer. It is submitted that the environmental law must also bring such provisions within the fold of the environmental criminal liability. One finds a shift of criminal law from the criminals to the victims. Once it is implemented and put into action, it is submitted, it will go a long way in helping not only the victims and their dependents but also the environment in general. It is a welcome approach in the field of victimology as justice will be not only be seen but done in both the cases: the criminal will get punishment, and environment and the victims will be rehabilitated. To make the process speedy, Section 357-A(5) of the Criminal Procedure Code provides a time schedule of two months for the completion of process. The environmental law remedies should also be

time bound. The question is: will the speedy justice be available within this time schedule? How much and when will the compensation money reach to the victim? Should not a separate schedule be added to the Act to define 'appropriate' or 'adequate' quantum of compensation by specifying separate heads of loss or injury? This will restrict a large discretionary power to the judiciary and bring a common reasonable treatment in the matter.

Coming to the present environmental legislations and the wave length of penal sanctions, the penalty prescribed in the Water Act, 1974[70] is imprisonment from one year and six months extending to seven years and an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.[71] Furthermore if such failure continues beyond a period of one year after the date of conviction, in such a case the imprisonment shall not be less than two years, which may extend to seven years;[72] however in such case,

the section is silent about the fine which should have provided to a larger extent. The *Water* Act also tries to expose the offender by way of publication of the offender's name by the court.[73] Whatever expenditure is incurred in this process, it shall be recoverable from the offender in the same manner as fine. For the corporations and companies this mode of punishment will particularly be much more effective and purposive than the traditional punishment. Though this provision deserves appreciation yet the reality is that it remains in slumber and has now been dead buried by the subsequent legislations - the Air Act and *Environment* Act, an eco-unfriendly approach, for which the courts and Legislature have to be blamed.

Coming to the *Environment* Act, it covers the entire penal sanction under one section i.e. Section 15, thus providing one medicine for all the environmental offences. The punishment for the offence mentioned under Section 15 is imprisonment for a term which may extend to five year or with fine extending to one lakh rupees or with both. However, if the failures or contravenes, continues beyond a period of one year then Section 15(2) imposes much harder penalty of imprisonment for a period extending to seven years and fine of Rs. 5000 per day till such act continues. The environmental litigations involve techno-science issues which the courts find a little difficult to understand; and over and above this, the court is left with a widest discretion to impose penalty out of the maximum so prescribed. It would have been better, it is suggested, had the Act provided for different penal treatments as per the nature and requirement of each offence.

The graph of the environmental criminal sanction reaches to the highest peak when Section 26 of the National Green Tribunal Act, 2010 prescribes imprisonment for a term which may extend to three years, comparatively a lesser punishment, but the fine extend to ten crore rupees, a heaviest financial punishment. In case the failure or non-compliance still continues, the fine shall be twenty five thousand rupees for every day for its continuance. Further, proviso to Section 26 makes a separate punishment for a guilty company which includes fine extending to twenty-five crore rupees, and in case the non-compliance continues after conviction, the fine is further enhanced to rupees one lakh for every day for such continuance. It is here that one finds the highest quantum of fine is imposed against the environmental offence. This high frequency of fine, it is submitted, fits in the principle laid down in the *M.C. Mehta case*[74] wherein the court ruled that, '(T)he larger and more prosperous the enterprise the greater must be the amount of compensation'. In this high waves the question is: will not a company or corporation, having a limited capital, go out of the market? Further, Section 26(1) uses the word 'whoever', the question is: will any person, other than a company or corporation, be in a position to bear such heavy financial penalty? Will not such an approach be anti-development at the cost of environment? Another question which comes is: can the imposition of such heaviest fine, which goes to government exchequer, do justice with the environment and victims? The answer to the above questions can not be positive. It would have been better had the legislation specifically provided for crediting the fine to the environment fund to compensate not only the victims but also the degraded environment.

Coming to the select cases dealing with criminal sanction in the environmental litigations, the year 2003 opens with use of criminal sanction. Mr. M.C. Mehta, a green lawyer, who wanted an attempt to unviel the criminal sanction in large number of cases but the court mostly confined its attention to the tortuous liability. However he

succeeds in 2003 in the *M.C. Mehta case*.[75] In this case the apex court had ordered the respondent to close down the hot mix plant unit and if he still operates then the Delhi Pollution Control Board shall take appropriate step, if necessary, the help of Delhi police. Meanwhile, the forest raper took the matter to the Delhi High Court and the respondent took shamelessly the stand that the high court allowed his activities. The Supreme Court was surprised on the approach of the high court how can it entertain a petition as the matter was in seizing of the apex court which had passed orders. In such a matter, can a common man not think about something some where going on under the carpet at the behest of the forest mafia. When a show cause notice for contempt was served on him, he then bounced back upon the apex court which, accordingly to the respondent, was passed orders at the 'instance of interested persons and at

the behest of DPCC' which was itself contumacious. In view of the gravamen of contemptuous acts 'of superlative dimensions', causing risk of deleterious effects of air pollution on the health of the society, it was, according to the court, necessary 'to give a strong signal to the respondent so that like-minded people do not repeat the same and such recurrence is thwarted in future'.

So the final result was that Mr. Ashok Kumar Chhabra, the respondent, who was guilty of contempt of the court, was punished with 'one week simple imprisonment' and also payment of the cost of Rs. One Lakh, out of which 50 per cent will go the Delhi Pollution Control Board and the rest to Mr. Ranjit Kumar, *Amicus curiae*. It may be pointed out though the criminal sanction was imposed in the environmental litigation, yet it was on the soft side. Looking to the respondent's repeated intentional dogging activities, mudslinging on the apex court of the country and its consequences on environment since 1985[76], it is submitted, one week simple imprisonment was not a serious lesson to be taught to him and others. Should not the Court also use the statutory sanction of black listing such enemy of Bharat's environment? Another question is: the, Pollution Board was required to take 'appropriate step' which it failed to take in this case, can such inactive body be rewarded with the cost? Should not it be credited to the environment fund? Anyway, a start, though soft, is made of using criminal sanction as one of the remedy in the environmental litigation.

In this connection the year 2006 opens with a important note on the environmental criminal jurisprudence. In the *Godvarman case*[77], the Principal Secretary, Department of Forest and a Minister Incharge of Department of Forest of the State Government played a dirty game to bypass the court's order imposing ban on non-forest activities in the forest zone. The changes in the file notes, some written with hands and some typed in Marathi and English with no date therein is an open testimony of corruption jurisprudence entering in the government secretariat, and in turn wherein the public interest wither away. They even shamelessly assisted in breaking the seal put under the orders of the court, so that the illegal activities may be continued. One finds in the Indian democracy, the bureaucrats, assuming themselves as the king who were illegally operating freely without any fear in their kingdom. Thus the *rakshaks* (protectors) are becoming *bhakshaks* (killers). But all these nefarious and destructive activities finally resulted in a very strong note of the court - one month's simple imprisonment, a positive contribution of the Court and a lesson for others to learn. It may be pointed out that the maneuvering activities of the very high officials with the colour of corruption had allowed illegal activities in the forest region causing damage. But in its hurry to impose criminal sanction, the

court unfortunately forgot to compensate the depleted forest. Should not the apex court in its hard stand require that all the nefarious role players to also pay compensation in this regard and further they may be black listed?

The above select cases though started using criminal sanction as one of the remedies in environmental litigations but looking to the high legislative sanction, the punishment imposed by the Court is too meager and thus it frustrates the intention of Parliament requiring heavy punishment. The punishment imposed by the apex court in the above cases surprisingly was much more less than the lowest prescribed a century ago in 1860. The criminal sanction having no ism must not attract partitioned approach.

VIII. What Comes Out?

The review of the above literature shows that the time is ripe to initiate further research in this fertile but unexplored field. The basic premise starts with a rethinking in the concept of corporate responsibility: the purpose of corporate business and priority to protect the environment. A corporation is now a part of the welfare State, attracting constitutional 'fundamental' obligation and the fundamental right of every person to live in clean environment. In this changed scenario, a new business culture and ethics have to be not only developed but also internalized in the corporate behaviour or else it will wither away. So what is the basic requirement? The budding managers of the corporations have to be effectively trained to take decisions and handle industrial processes so that the *lakahaman rekha* of environmental crimes, is not crossed. A code of corporate environment-friendly conduct be developed by the corporates themselves which will generate more trust and confidence of the share holders, stake holders, environmental regulatory authorities and the public at large.

The fact remains that the victims, have preferred civil remedies. But no one can deny that a criminal has to face the criminal sanction. The Indian corporate environmental criminal responsibility has, over the years, seen an increasing graph which must be activised by all the environmental protection stake holders. The legislature must come out to plug the sidelanes and bylanes to get away from criminal liability. In all these the peoples' participation can play an important role. Further, the judiciary must not allow the criminals to come out scot free. If the crime results in death of large number of human beings, then the court may even think of imposition of death penalty or sufficiently a large term of imprisonment.

A one medicine concept, can not be effective and adequate treatment in case of different kinds of environmental crimes. It is time to infuse new blood in the old bottle by introducing new remedies like restitution,

reparation, restoration rehabilitation denunciation, naming and shaming, of the corporate criminals, disqualifying from holding any position in the corporate houses, confiscation of illegal gains made by the criminals, must find a place in the Indian environmental criminal jurisprudence.

IX. What We Need Now?

A corporation cannot remain simply a profit sucking monster, they must now

develop a corporate common code of environment-friendly culture, ethic and practice. The criminal remedies in their reformed *avatar* must be effectively used to bring not only the environmental corporate discipline but also repose a faith in the judiciary. A fast track criminal court, is the demand of the fundamental right to speedy justice. It is time that the share holders, stake holder and the public at large must become more responsive to see that the corporate criminals do not remain under the real carpet. And finally, the corporates must follow the environmental *Dharma* of *ahinsha* or else one day they shall be dismembered or thrown out. So what was initially picturized, 'a barking dog that never bites', or 'a cobra (that) has no venom' is not correct because now criminal sanction is finding slowly a place in court's judgment/orders and thus it does not remain now myth.

———

* LL.M. Ph.D. (London), Prof. & Dean (Academics), Dr. R.M.L. National Law University, Lucknow; Formerly Head & \Dean, Law School, BHU, Varanasi; Member, Environmental Law Commission, Switzerland and International Council of Environmental Law, Germany.

[1] *See*, Edis Michael Faure *et al*, Criminal Enforcement of Environmental Law in European Union, 59(4) *Georg Wash Law Rev.*, 103-165, 2005; Cohen M., Criminal Penalties, in *Innovation in Environmental Policy: Economic and Legal Aspects of Recent Development in Environmental Enforcement and Liability*, 75-108, 1992, V.S. Khanna, Corporate Criminal Liability: What purpose Does It Serve? 59 Har. LR 1479 (1996).

[2] *Ibid*. *See* also Dine J & Gobert J, *Cases and Materials on Criminal Law*, 230, 1993; Lederman E, Models for Imposing Corporate Criminal Liability; From Adaptation and Imitation Towards Aggregation and the Search for Self -identity, *Butt Cri. L. Rev*. 645, 2000.

[3] J.C. Cofee, It is an unscandalised Inquiry - No soul to damn No body to kick, 79 *Mich. L. Rev*. 368, 383.

[4] *See* G.W. Poter (Ed.) *Controversies in White Colour Crime*, 58, 2002.

[5] Wiedel R.A., *et al*, The Erosion of *Mens rea* in Environmental Criminal Prosecutor, 21 *Selton Hall Univ. School of Law*, 1121-24, 1981. *See* also J.D. Wilson, Rethinking Penalties for Corporation Environmental Offenders: A View of the Law Commission of Canada Sentencing in Environmental Cases, 30 McGill LJ 1986, 315.

[6] Michael Faure and Gunter Heine (Eds.), *Criminal Enforcement of Environmental Law in the European Union*, 103 -170, 2005.

[7] Thorunburgh D. Criminal Enforcement of Environmental Law: A National Priority 59(4) 7 *Geog. Washington Law Rev*, 775-780, 1991. *See* also Strock J., Environmental Criminal Enforcement Priorities for the 1990s, 59(4) 7 *Geog. Washington Law Rev*, 916-925, 1991.

[8] E. Ladd & K. Browman, *Attitude Towards the Environment Twenty-five years after the Earth Day*, 1995.

[9] Carmel Muthem, *The Prosecution of Corporation*, 138, 2002.

[10] *Alphacell Ltd.* v. *Woodword*, 1972 AC 824 (HL); *Tesco Supermarkets Ltd.* v. *Nattrass*, (1971) 2 All ER 127 (HL); *Pearks, Gunston & Tee Ltd.* v. *Ward*, (1902) 2 KB 1; *R.* v. *Birmingham & Gloucestar Rly Co.*, (1842) 3 QB 223.

[11] Convention on the protection of Environment Through Criminal Law, 1998. *See* also *The Responsibility of Legal person, in The OCED Convention on Briberry: A Commentary*, Eds., Marck Peith, et al 21, 2006. For a detailed treatment, *see* Elisa Morgera, *Corporate Accountability in International Law*, 2009, wherein Elisa has, after detailed research, brought out six sets, of standards which have not only achieved significant acceptance but also effectively translated inter-state obligations, being benchmarks directly applicable to private companies, *id* at 269; *See* also Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility Limitation and Opportunities in International Law*, 2006.

[12] *Id* at Art. 9. *See* also the Resolutions of the XVth International Congress on Penal Law, (Rio) Res. 12, 14 and 20, 1994.

[13] Kenneth Mann, Punitive Civil Sanctions: The Middleground, 101 *Yale L. Jour*, 1863, 1992; See also Richard A. Booth, What is a Business Crime? *in Corporate Criminal Liability: Some Insights*, Ed. P.L. Jayanthi Reddy, 11-12, 2008. Even the Experts on Environmental Crime in its Meeting in Holland under its recommendation number 11 suggested this approach - *Resolution of XVth International Congress on Penal Law* (Rio) 1994.

[14] *Muttumira* v. *Queen Empress*, ILR (1883) 7 Mad. 590; *Empress* v. *Padia Mathor*, (1900) 13 CPLR 92; *Queen*

Empress v. *Bhagi Kom Nathuba*, (1900) 2 Bom LR 1078; *Queen Empress* v. *Byramji Edalji*, ILR (1888) 12 Bom. 437.

[15] *See*, for example, *Suwalal* v. *State*, AIR 1953 Ajm 4; *Rahim Mian* v. *Emperor*, AIR 1929 Pat 113; *R.* v. *Formosa*, (1990) 3 WLR 1179 (CA).

[16] Section 80.

[17] The Environmental Laws include, the Water (Prevention and Control of Pollution) Act, 1974 (the *Water Act*); the Air (Prevention and Control of Pollution) Act, 1981 (the *Air Act*); the Environment (Protection) Act, 1986 (the *Environment Act*); the National Environment Tribunal Act, 1995 (the *NETA*); and the National Green Tribunal Act, 2010 (the *NGTA*).

[18] *See* for a detailed account, C.M. Jariwala, Changing Dimensions of Indian Environmental Law, in *Law and Environment*, (Ed) P. Leelakrishnan, 1-25, 1992.

[19] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : AIR 1987 SC 965; *U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : AIR 1988 SC 1128; *Union Carbide Corporation* v. *Union of India*, (1989) 3 SCC 38 : AIR 1990 SC 273; *Indian Council for Enviro Legal Action* v. *Union of India*, (1996) 3 SCC 212 : AIR 1996 SC 1446.

[20] Section 2(e)

[21] Section 32(1)(C). See also Section 24(1)(a) - see also the exception in Section 24(2).

[22] Section 33-A.

[23] Sections 9, 10 and 11 respectively.

[24] Rules 7, 8, 10, 11, 12, 15, 16 and 17.

[25] *See*, for example, Rules 4-12.

[26] David O. Friedrichs, State-corporate Crime in a Global World: Myth or Major Challenge, in *Corporate Crime*, Hazel Croall (Ed.) Vol. 1, 40, 2009, *See* also Gobert J., Corporate Criminality: New Crimes for the Times [1994] *Crim L.R.* 722.

[27] *See* the Proviso to sec 16(1); Section 40(1) and Section 47(1) of the respective legislations.

[28] *See* Section 16(2); Section 40(2) and Section 47(2).

[29] *Municipal Corporation* v. *Dev Raj*, 1985 FAJ 156 (Del) (DB); *Rashid Khan* v. *State*, (1994) 3 Crimes 313 (Raj).

[30] *See*, for example, *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : AIR 1987 SC 965; *Union Carbide Corporation* v. *Union of India*, (1989) 3 SCC 38 : AIR 1990 SC 273; *U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : AIR 1988 SC 1128; *J.S. Huja* v. *State*, 1989 Cri LJ 1334 (All); *K.K. Nandi* v. *Amitabha Banerjee*, 1983 CriLJ 1479 (Cal).

[31] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176, 191 : AIR 1987 SC 965.

[32] *Id* at 975.

[33] See, Lord Denning in *H.L. Botton (Engg.) Co. Ltd.* v. *T.J. Graham & Sons*, (1957) 1 QB 159, 172. See also *Moore* v. *Brester*, (1944) 2 All ER 515; *Tesco Supermarket Ltd.* v. *Nattrass*, 1972 AC 153; *Environment Agency (Formerly National Rivers Authority)* v. *Empress Car Co. (Abertillery) Ltd.*, (1999) 2 AC 22.

[34] *U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : AIR 1988 SC 1128; *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 325 : AIR 1987 SC 982; *Indian Council for Enviro Legal Action* v. *Union of India*, (1996) 3 SCC 212 : AIR 1996 SC 1446.

[35] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 325, 330 : AIR 1987 SC 982.

[36] For a detailed exposure *see*, C.M. Jariwala, *Environment and Justice*, 64-72, 2004.

[37] *Dwarka Cement Works* v. *State of Gujarat*, (1992) 1 Guj L Her 9. *See* also *Mahmud Ali* v. *State of Bihar.*, AIR 1986 Pat 133; *J.S. Huja* v. *State*, 1989 Cri LJ 1334 (All).

[38] *Union Carbide Corporation* v. *Union of India*, (1989) 3 SCC 38; *Union Carbide Corporation (2)* v. *Union of India*, (1989) 2 SCC 540.

[39] *Union Carbide Corporation* v. *Union of India*, (1991) 4 SCC 584 : AIR 1992 SC 248.

[40] *See* for example, *A.R. Antulay* v. *R.S. Nayak*, (1984) 2 SCC 500 : AIR 1984 SC 718; *Sheonandan* v. *State of Bihar.*, (1987) 1 SCC 288 : AIR 1987 SC 877; *Biswabhan* v. *Gopal Chandra*, AIR 1967 SC 895; *Sankar Rangayya* v. *Sankar Ramayya*, AIR 1916 Mad. 483.

[41] *M.N. Sankarayarayanan Nair* v. *P.V. Balakrishnan*, (1972) 1 SCC 318, 321 : AIR 1972 SC 496, 499. *See* also *State of Punjab* v. *Union of India*, (1986) 4 SCC 335 : AIR 1987 SC 188 - withdrawal must be permitted on broad end of justice - social, economic and political purposes'.

[42] *Union Carbide Corporation* v. *Union of India*, AIR 1992 SC 248, 281.

[43] *See*, *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, (1985) 2 SCC 431 : AIR 1985 SC 652; *Indian Council For Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212 : AIR 1996 SC 1446 (Chemical Industries Polluting Environment); *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647 : AIR 1996 SC 2715 (500 Pollutants) *M.C. Mehta* v. *Union of India*, (1987) 4 SCC 463 : AIR 1988 SC 1037 (Tanneries Polluting Ganga).

[44] *Union of India* v. *Union Carbide Corporation Ltd.*, (1986) 2 Comp LJ 169 (US). *See* for detailed account of District Court and High Court, Amin Rossencranz, *Environmental Law and Policy*, 359 (1991). See also the *OECD Gideline, Responsibility of parent Companies for their Subsidiaries*, 1980.

[45] See, *Supt. and Remembrancer of Legal Affairs* v. *Corporation of Cacutta.*, AIR 1967 SC 997.

[46] *See* sec's 41 and 17 of *Air* Act and *Environment* Act respectively.

[47] *Bhavani River* v. *Shakti Sugar Ltd., Re*, (1998) 6 SCC 335 : AIR 1998 SC 2578; *Narula Dyeing and Printing Works* v. *Union of India*, AIR 1995 Guj 185; *V. Satyam Reddy* v. *Union of India*, AIR 1996 AP 175. See, for a detailed treatment, C.M. Jariwala, *Environment and Justice*, 57-62, 2004.

[48] *See* the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

[49] *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613 : AIR 1990 SC 1480.

[50] *Union Carbide Corporation* v. *Union of India*, (1991) 4 SCC 584, 682.

[51] *U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : AIR 1988 SC 1128.

[52] C.M. Jariwala, *Environment and Justice*, See particularly General Exposure: Government, 45-57, 2004.

[53] Michael Faure & Gunter Heine (Eds), *Criminal Enforcement of Environmental Law in the European Union*, 13-16, 2005. For a detailed treatment *see* S. Eraman (Edi) *European Environmental Law Legal and Economic Appraisal*, 1977.

[54] Stuart Bell & Donald McGillivray, *Environmental Law The Law and Policy Relating to the Protection of the Environment* (Fifth Edi) 24, 2001, *See* also Celia Campbell - Mohn, *et al Environmental Law from Resources to Recover* 9.2, 1993.

[55] *Id* at 14-16. *See* also Gunter Heine, Environmental Criminality and its Control, in *Old Ways and New Needs in Criminal Legislation*, Easer A & Thormundsson J. (Eds) 255 (1989). See further the *Report on 'Corporate Culture' as a basis of the Criminal Liability of Corporations*, Prep by Allen Arthur Robinson, 30, 2008.

[56] D.S. Sengar, *Environmental Law*, 102, 2009. Unfortunately the learned author has not given the source of such information.

[57] *R.* v. *Syndicate Transport Co.*, (1963) 66 Bom LR 197; *Ananth Bhandhu* v. *Corporation of Calcutta*, ILR (1954) 1 Cal. 403.

[58] *Aligarh Municipal. Board* v. *Ekka Tonga Mazdoor Union*, (1970) 3 SCC 98 : AIR 1970 SC 1767; *Municipal. Corporation of Delhi* v. *J.B. Bottling Co. (P) Ltd.*, 1975 Cri LJ 1148 (Del) (FB).

[59] *Asstt. Commr.* v. *Velliappa Textiles Ltd.*, (2003) 11 SCC 405 : AIR 2004 SC 86; *Standard Chartered Bank* v. *Union of India*, (2005) 4 SCC 530 : AIR 2005 SC 2622. *See particularly* the dissenting opinion in this case of Hon'ble Justice B.N. Srikrishna (for himself and for Hon'ble Justice Santosh Hedge) who took a rigid stand that there was 'no option left to the Court' except to read the punishment conjointly. In such helpness of the Court, the established charges of corruption would go unpunished in case of a corporate body.

[60] *The Report of the Law Commission of India* (Forty-first) 1969; and *The Report of the Law Commission of India* (Forty-seventh) 1972.

[61] An attempt was made in the Indian Penal Code (Amendment) Bill, 1972 but it could not see the light of the day.

[62] See C.M. Jariwala, Environmental Justice: A Journey from *Ratlam Municipality* to *M.C. Mehta* in *Environmental Law Policy and Perspectives*, P. Nagabooshanam (Ed) 32-51 (1995).

[63] One can see disjoint reading of 'Life and Personal Liberty' in the *Gopalan case* (*A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27) but the *Maneka case* (*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248 : AIR 1978 SC 597) court read it in an conjoint manner.

[64] *See*, *Union Carbide Corporation* v. *Union of India*, (1989) 3 SCC 38 : AIR 1990 SC 273; *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : AIR 1987 SC 965.

[65] Section 49(b). See also Section 19(b), the *Environment* Act and Section 43(b), the *Air* Act. (Emphasis supplied).

[66] *Environment Protection Act: An Agenda for Implementation*, Prep. By Upndra Baxi, 39-40 (1987).

[67] Inserted by the Criminal Law (Amendment) Act, 2005.

[68] Section 357-A(1).

[69] Section 357-A(4).

[70] *See* for a detailed survey, C.M. Jariwala, Changing Dimension of Indian Environmental Law, in *Law and Environment* (Ed) P. Leelakrishna, 19-21, 1992.

[71] Section 41(2).

[72] Section 41(3) and 45.

[73] Section 46.

[74] *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 : AIR 1987 SC 1086.

[75] *M.C. Mehta* v. *Union of India*, (2003) 5 SCC 376.

[76] The petition was initially filed in 1985.

[77] *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1 : AIR 2006 SC 2007.