

HANDCUFFS ON COMPANIES FOR A GREENER FUTURE

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INTRODUCTION

“At the advent of steam and electricity the muse of history holds her nose and shuts her eyes.” – H.G. Wells, 1918¹

History is witness to the fascinating evolution of humans from mere cave dwellers to modern suit wearing men. With rapid developments in various fields, the world continues to grow into a complex amalgamation of people and their interests. None of it would have been possible were we not blessed with a planet with habitable conditions. The Earth is at just the right distance from the Sun to provide the most apt conditions for life to thrive. The probability of such an event occurring in a universe, so vast that the human mind is yet to comprehend the expanse of, is an extremely rare occurrence. Given the near improbable circumstances on which our existences were conceived, we should be grateful of the resources that enable us to lead lives of tranquillity, luxury, and comfort. Instead, we squander and lay waste to the very land we build our abodes on and the very elixir of life that we consume.

Large multinational companies exploit and damage the environment. The wastes generated by industries are poorly managed and released into the ecosystem potentially harming the water, the land, and the air in their vicinity. A 2017 study by the CDP and the Climate Accountability Institute (CAI) listed out 100 companies that were responsible for 71% of greenhouse emissions.² The study segregates the emissions into two parts – Scope 1, which is the resultant of direct operational emissions; and Scope 3, which is the emission from the use of sold products. The increased extraction of fossil fuels by the companies is at the core of the disastrous statistics.³ After the establishment of the International Panel on Climate Change in

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¹ H.G. WELLS, IN THE FOURTH YEAR: ANTICIPATION OF A WORLD PEACE (1918).

² Tess Riley, *Just 100 companies responsible for 71% of global emissions, study says* (July 10, 2017), Available at: <https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change> (Accessed on: 30th October, 2019).

³ PAUL GRIFFIN, DR., *Carbon Majors Database* (July, 2017), Available at: <https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf> (Accessed on: 30th October, 2019).

1988, it has been found that the burning of coal and other fossil fuels has contributed to global warming doubly so.⁴ The study revealed ExxonMobil, Shell, BP, Chevron, Peabody, Total and BHP Billiton to be the highest emitting investor-owned companies, and Saudi Aramco, National Iranian Oil, Coal India, Permex, and PetroChina to be the highest emitting state-owned companies.⁵

The Centre for Public Integrity published a report in 2017 on how industrial waste was responsible for the contamination of drinking water in the USA. In the 1960s and the 1970s, Ford Motor Co. dumped over 350,000 tonnes of toxic sludge in Ringwood, New Jersey contaminating their groundwater with arsenic, lead, and other harmful chemicals. Traces of these contaminants are still found after four long decades. Companies like Anaconda Aluminium (Montana), Gulf State Utilities (Louisiana), and Conklin Dumps (New York) have contaminated water with lead, chromium, benzene, and other volatile organic chemicals.⁶

Corporate giants like Coca-Cola, Nestle, PepsiCo, and Mondelez in the food production industry are the most plastic polluting companies in the world. Coca-Cola was named the top global polluter twice in a row in the global audit of Break Free from Plastic Movement.⁷

In India, Mumbai's river Mithi was a victim of unprecedented effluents released by industries, clashing governments and poor enforcement by pollution control agencies.⁸ A study by SRM University revealed that India had twice the amount of global average of polychlorinated biphenyls (PCBs). PCBs are synthetic organic chemicals found in electrical equipment, paints, adhesives, etc.⁹

A team from the Indian Institute of Soil has revealed that small-scale industries proved to be

⁴ *Ibid.*

⁵ *Supra* note 3.

⁶ Clair Caulfield, Bryan Anderson, *Industrial Waste Pollutes America's Drinking Water* (August 17, 2017), Available at: <https://publicintegrity.org/environment/industrial-waste-pollutes-americas-drinking-water/> (Accessed on: 30th October, 2019)

⁷ Sally Ho, *Coca-Cola Named Most Polluting Brand on Earth for Second Year in a Row* (October 29, 2019), Available at: <https://www.greenqueen.com.hk/coca-cola-most-polluting-brand-on-earth-for-second-year-in-a-row/> (Accessed on: 30th October, 2019)

⁸ Vaishnavi Chandrashekhar, *Dying Waters: India Struggles to Clean Up its Polluted Urban Rivers* (February 15, 2018), Available at: <https://e360.yale.edu/features/dying-waters-india-struggles-to-clean-up-its-polluted-urban-rivers> (Accessed on: 30th October, 2019)

⁹ Subhojit Goswami, *Chennai's soil, Delhi's air most contaminated due to high PCB concentration: Study* (February 26, 2017), Available at: <https://www.downtoearth.org.in/news/environment/chennai-s-soil-and-delhi-s-air-most-contaminated-due-to-pcb-concentration-study-57217> (Accessed on: 30th October, 2019).

more hazardous than big industries as they made no efforts to install effluent treatment plants.¹⁰ Nagda, a town in Madhya Pradesh is home to several textile industries. The industries generate huge amounts of wastewater, which percolates to the river Chambal. The water utilised for irrigation of agricultural crops is severely polluted with sodium, chlorine, and sulphates. Prolonged application resulted in the increase of salinity in the soil and was responsible for accumulation of salts in the root zone level.¹¹

Companies repeatedly avoid complying with environmental regulations. One such example is of the Benma Beer Factory located in Tianshui, Gansu province of China, in association with Carlsberg Beer Company of Denmark, failed to construct a waste-water treatment facility and discharged industrial waste across the water source area of the eastern city for ten years. This severely contaminated the water meant for consumption. Despite several governmental interventions, Benma found a way to work around this inconvenience by paying a fine of 5000 Yuan twice a year than to construct a treatment plant, which would cost it 3.9 million Yuan.¹² As Mr. Robert White remarked, it is easier and cheaper to pollute than to do the right thing.

CRIME AND LIABILITY

Attempts at defining crime have not been so fruitful because of the changing notions. It has to factor in parameters like the values of a particular group and society, its ideals, faith, religious attitudes, customs, traditions and taboos, the form of government, political and economic fabric of the society, and others.¹³ Blackstone said, 'a crime is a violation of public rights and duties due to the whole community, considered as a community.'¹⁴ The criminologist Edwin Sutherland enumerated the characteristics of a crime, rather than defining the term. He postulated that crime is a violation of the criminal law, that it gets a political and penal sanction.¹⁵

The concept of crime emerged back in the days when communities were small and an

¹⁰ J.K. SAHA ET AL., *Soil Pollution – An Emerging Threat to Agriculture*, ENVIRONMENTAL CHEMISTRY FOR A SUSTAINABLE WORLD 10, DOI 10.1007/978-981-10-4274-4_11271.

¹¹ *Ibid*, at p. 281

¹² WACHHOLZ, SANDRA. (2012). *Global Environmental Harm. Criminological Perspectives* EDITED BY ROB WHITE 2010. *Environmental Conservation*. 39. 95-96. 10.1017/S0376892911000348.

¹³ K.D. GAUR, CRIMINAL LAW: CASES AND MATERIALS 33 (2009), ISBN: 978-81-8038-584-1.

¹⁴ 4 B1 Comm 5.

¹⁵ EDWIN H SUTHERLAND, PRINCIPLES OF CRIMINOLOGY 4 (1965).

individual did something unforgivable. In communities where religion and duty mingled with each other, a wrong would both be a crime and apostasy. The punishment was severe as the intention was to induce deterrence towards such acts, like banishment, lashes, public hanging, beheading etc. In the Anglo-Saxon period, a tariff known as wite was introduced which was paid for the infringement of the king's peace. This was reportedly the first time a wrong was not simply the affair of the injured individual.¹⁶ It brought in the responsibility of the State. The money was paid to the victim or his family, evidence that strict or absolute liability had existed then.

CRIMES AGAINST THE ENVIRONMENT

Environmental crime is a new threat that is dredging the world of its resources that we rely on for our livelihoods.¹⁷ It is the criminal exploitation of the world's natural resources¹⁸, constituting acts or activities in violation of environmental legislations, which cause significant harm to the environment and human health.¹⁹ The definition largely remains ambiguous, posing further problems for law enforcement.

The monetary value of revenue generated by environmental crime estimated at USD 91-259 billion annually.²⁰ It is considered as one of the most profitable areas of international crime. A combined study by the UNEP and the INTERPOL found that it is the fourth largest sector of crime.²¹ The comprehensive study by the UNEP – 'The State of Knowledge of Crimes that have Serious Impacts on the Environment'²² revealed that the benefits arising out of the crime and the regulatory lapses are highly responsible for the persisting problem.²³

Individuals, companies, governments, and informal criminal networks may commit the offences.²⁴ The UN Environment Organisation in their study listed five types of environmental crime – a) Wildlife Crime, b) Illegal Logging, c) Illegal Fishing, d) Pollution Crime, and e) Illegal Mining. For the purposes of this research paper, the study pertains to

¹⁶ WILLIAM HOLDSWORTH, HISTORY OF ENGLISH LAW (1936).

¹⁷ NELLEMAN ET AL., *The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development and Security. A UNEP-INTERPOL Rapid Response Assessment* (2016), ISBN 978-82-690434-1-9.

¹⁸ *Ibid.*

¹⁹ *Environmental Crime*, Available at: <http://www.grida.no/activities/9> (Accessed on: 30th October, 2019)

²⁰ NELLEMAN ET AL., *The State of Knowledge of Crimes that have Serious Impact on the Environment* 1 (2018).

²¹ *Supra* note 17.

²² *Supra* note 20.

²³ *Supra* note 20, at p. 1.

²⁴ *Supra* note 20.

pollution crime.

Pollution crime is the “illegal introduction by man into the environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological systems, damage to structures or amenity, or interference with legitimate uses of the environment”, by M.W. Holdgate.²⁵ The types are classified into air, land, and water, which is a resultant of other connected illegal activities like emission of pollutants, illegal dumping and trade of wastes. They threaten not only human health but also local ecosystems, thereby affecting defenceless animals and plants.²⁶ Companies, be it small or large, are responsible for environmental pollution because of mis-compliance of laws and regulations that govern them.

One of the major difficulties with environmental crime is the general lack of awareness among people. The UNEP attributed the lack of data, the limited use of legislations, lack of institutional will and governance, lack of enforceability, lack of national and international cooperation and information, contributing to the addition of complications.²⁷

EFFECTS OF ENVIRONMENTAL CRIME

On the environment: Accelerated degradation of natural resources, continued pollution and habitat loss are rampant. Ecological consequences include degradation of soil, water, and air quality, and disruption of local climate systems.²⁸ The illegal and uncontrolled production of chlorofluorocarbons (CFCs), hydro-chlorofluorocarbons (HCFCs) contribute to ozone depletion, which in turn weakens animal immune systems and reduces productivity in plants and phytoplanktons.²⁹

On the human health: Pollution results in death and extreme disability in the poorest of countries.³⁰ Prolonged consumption of CFCs, HCFCs and other ozone depleting substances has led to skin cancers, photo aging of skin, cataracts and has weakened the human immune

²⁵ M.W. HOLDGATE, A PERSPECTIVE OF ENVIRONMENTAL POLLUTION (1980).

²⁶ Allan Meso, *Environmental Crimes are on the rise, so are efforts to prevent them* (September 21, 2018), Available at: <https://www.unenvironment.org/news-and-stories/story/environmental-crimes-are-rise-so-are-efforts-prevent-them> (Accessed on: 30th October, 2019).

²⁷ *Ibid.*

²⁸ *Supra* note 20, at p. 4.

²⁹ L. ELLIOTT, W.H. SCHAEDELA, HANDBOOK OF TRANSNATIONAL ENVIRONMENTAL CRIME 6 (2016), ISBN 978-17-8347-623-7.

³⁰ *Supra* note 20, at p. 5.

system.³¹

Socio-economic development: Poverty-ridden parts of the world have higher number of environmental crimes. They erode legal markets by undermining industries and threatening the employment of people across multiple sectors.³² They are known to promote tax evasion, which directly creates a deficit in the collection of tax revenue. Loss of tax revenue by the government was estimated atleast at USD 9-26 billion annually.³³ To add to the woes, it also brings in money laundering and fraud, furthering stressing the flimsy fabric of economies of poor countries.

LIABILITY OF COMPANIES

The term corporation is a body of human beings united for forwarding certain of their interests and must have an organ through which it acts.³⁴ The attachment of a juristic personality to a company may be traced back to the Roman law. English Common law did not recognise this until the fifteenth century.³⁵ The existence of liability of companies was a matter of doubt due to technical difficulties of procedure and the theoretical difficulty of imputing wrongful acts or intentions to fictitious persons.³⁶ One of the grounds was the lack of logic to prove intent as a “corporation has no mind”.³⁷ This dilemma was put to rest by the alter ego doctrine that attributed to the corporation the mind and will of the natural person or persons who have management and control of the actions of the corporation in relation to the act or omission in point.³⁸

TORTIOUS LIABILITY

The liability of companies on torts is based on the doctrine of vicarious liability for the acts of the employees or agents. The company is liable when the employees or the officers commit the torts within the scope of their employment. The extent is the same as a principal is liable for the torts of his agent or a master for the torts of his servant.³⁹ A company may

³¹ *Supra* note 29.

³² *Supra* note 20, at p. 5.

³³ *Supra* note 17, at p. 7.

³⁴ R.C. NIGAM, LAW OF CRIMES IN INDIA (1964).

³⁵ GOWER, PRINCIPLES OF MODERN COMPANY LAW 948 (1992).

³⁶ *Abrath v. North Eastern Railway Co.*, (1883) 11 App. Cas 247.

³⁷ *Stevens v. Midland Counties Ry. Co.*, (1854) 10 Ex. 352.

³⁸ *Lennard's Carrying Co. Ltd. V. Asiatic Petroleum Co. Ltd.*, (1915) AC 705, at 713.

³⁹ RATANLAL & DHIRAJLAL, LAW OF TORTS 37 (2016).

thus be liable for assault, false imprisonment, trespass, conversion, libel or negligence. The Judicial Committee of the Privy Council in *Meridian Global Funds Management Asia Ltd. v. Securities Commission*⁴⁰ held that the company is responsible in tort and under a system of government regulation for the acts of the employee in performing that function, those acts are later repudiated or reversed by a director of the company.

CRIMINAL LIABILITY

It determines the criminal liability of corporate bodies and the criminal acts of its employees under such a capacity. The US Department of Justice Guidance laid down that corporations be treated no differently because of their artificial nature. Certain crimes carry a substantial risk of great public harm, like environmental crimes; hence, there may be a federal interest in the indictment of such a company.⁴¹ Some factors must be considered to reach a decision:

- The nature and the seriousness of the offence, including the risk of harm to the public and applicable policies and priorities;
- The pervasiveness of wrongdoings within the corporation;
- The company's history of similar conduct in prior civil, criminal, and regulatory enforcement actions against it;⁴²

The liability of companies arises from the principle of *respondeat superior*, which establishes that the principal is responsible for the acts of its agents. The essentials of establishing such a liability include –

Act must be within the scope of employment: The common law structure and the civil law structure have slightly different standings here. The common law system mandates that the company be held liable for the acts of its employees. The civil law system in the US states that an illegal act must be “authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment.”⁴³ However, in the case of *The*

⁴⁰ [1995] AC 423, at 427

⁴¹ U.S. Department of Justice Guidance, Federal Prosecution of Corporations (June 16, 1999).

⁴² *Ibid.*

⁴³ MPC § 2.07 (1) (c).

*President Coolidge*⁴⁴, the court upheld the criminal liability of a steamship company for polluting the waters even though the employee dumping refuse overboard was a mere kitchen worker.

Act must have been done for the benefit of the corporation: It is pertinent that the behaviour of the agent be beneficial to the corporation. However, it has also been established that the company may not directly benefit or not everybody in the company may receive the benefits of the act but it is enough that the illegal act is not against the corporate interests of the body.⁴⁵

In addition to this, the Doctrine of Wilful Blindness and the Doctrine of Collective Blindness are also utilised to establish criminal liability. The Doctrine of Wilful Blindness states that companies shall be criminally liable if they knowingly ignore the ongoing criminal activities.⁴⁶ The Doctrine of Collective Blindness is applicable when it is not the fault of a single employee but several others too. The sum of knowledge of the employees is also taken into consideration.⁴⁷

Sweden, in the 1960s, was a pioneer in using criminal law to develop the controlled potentiality in environmental law. Empirical findings showed that the risk of criminal responsibility for environmental crimes and pollutions on an industrial level did not exist in many countries.⁴⁸ Legislators, as a result, lowered the prerequisites for individual responsibility and the standards of mens rea while dealing with industrial perpetration.

THE STOCKHOLM DECLARATION, 1972

The Stockholm Declaration brought out environmental issues out before the international community. It enlightened the world about the essentiality of preservation of the environment and implored the countries to establish social and legal frameworks ensuring the protection of the environment from mindless exploitation. It perpetuated that the natural resources must be safeguarded for the present and future generations. Principle 6 of the Declaration propagated

⁴⁴ 101 F.2d 638 (9th Cir. 101).

⁴⁵ AKHIL MAHESH, CORPORATE CRIMINAL LIABILITY (February 4, 2015), Available at: <https://www.lawctopus.com/academike/corporate-criminal-liability/ISSN-2349-9796> (Accessed on: 30th October, 2019)

⁴⁶ *Ibid.*

⁴⁷ *Supra* note 45.

⁴⁸ INDRAJIT DUBE, ENVIRONMENTAL JURISPRUDENCE – POLLUTER’S LIABILITY 45 (2007) ISBN 978-81-8038-152-2.

that “the discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems.”

THE RIO DECLARATION, 1992

The Earth Summit reaffirmed its predecessor while adding its own elements to the treaty. It was declared as per Principle 11 that States shall effect environmental legislation in such a manner that it should reflect the developmental standards they wish to see. It also vested the States with the duty to enact a national law establishing liability and compensation for victims of pollution and environmental damage. Further, it also encouraged the States to engage International law to develop liability and compensation for environmental damage. It stated that the principle of the polluter bearing the cost of pollution must be followed.

OTHER TREATIES

The Vienna Convention dealt with steps to curb ozone depletion. Additionally, the Rotterdam Convention and the Basel Convention deal with consent procedure for international trade of pesticides and hazardous, and transboundary movements of hazardous wastes and their disposal respectively chemicals. Despite numerous conventions and covenants on the international scale for the protection of the environment and prevention of pollution, there are next to none for holding companies accountable for crimes against the environment.

INDIAN LAWS

The Indian environmental jurisprudence heavily draws from the Article 21 of the Constitution of India, 1950, where the right to life and personal liberty were upheld by several landmark judgments. Indian environmental legislation took its tangible form after India was signatory to the Stockholm Declaration. India has nearly 200 legislations that deal directly or indirectly with environmental pollution and degradation, which can be segregated into two broad categories – supportive legislation and environmental *Lex specialis*.

THE INDIAN PENAL CODE, 1860

Provisions under the Code may be classified under supportive legislation. Section 11 of the Code includes a company within the purview of the word ‘person’. Crimes against the

environment may be classified as offences of public nuisance, which may be any act which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.⁴⁹ Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, to render it less fit for the purpose for which it is ordinarily used, shall be punished with 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.⁵⁰ Whoever voluntarily vitiates the atmosphere in any place to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine, which may extend to five hundred rupees.⁵¹

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974,

The Water Act was passed post the recommendations of the 1962 Committee to arrest the problem of pollution of river and streams due to massive industrialization and urbanization. The objective discouraged the discharge of untreated industrial effluents. It deals with offences by companies. It states that every person in charge for the conduct and business of the company shall be deemed to be guilty of the offence provided he proves that all due diligence was undertaken to prevent the offence.⁵² If it is brought to light that the offence was given due consent, or was a result of negligence on the part of any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.⁵³ The Act also elaborates on the cognizance of the offences. Section 49 empowers only complaints from the State Pollution Control Board or the Central Pollution Control Board submitted to the Metropolitan or the Judicial Magistrate. The severest of penalties under this Act does not exceed a fine of Rs. 10,000/- and an imprisonment period upto seven years.

THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

This enactment provides for the prevention, control and abatement of air pollution and the

⁴⁹ § 268, The Indian Penal Code, 1860.

⁵⁰ § 277, The Indian Penal Code, 1860.

⁵¹ § 278, the Indian Penal Code, 1860.

⁵² § 47(1), the Water (Prevention and Control of Pollution) Act, 1971.

⁵³ § 47(2), the Water (Prevention and Control of Pollution) Act, 1971.

preservation of the quality of air. The provision for offences by companies⁵⁴ and the cognizance of offences⁵⁵ is very similar to that of the Water Act. The penalties levied are fines that do not exceed Rs. 10,000/- the first time of non-compliance and do not exceed more than Rs. 5000/- of fine levied each day in case of continuance of the offence. Despite the efforts, further non-compliance attracts two to seven years of imprisonment.

THE ENVIRONMENT (PROTECTION) ACT, 1986

The objective was to achieve effective combat against environmental degradation. The Act provides for improvement and protection of the environment. It prohibits emission or discharge of effluents from industries.⁵⁶ Contravention of statutory regulations attracts a fine extending upto Rs. 1 lakh, an imprisonment period of five years, or with both. On the continuation of failure to comply, an additional fine of upto Rs. 5000/- is levied each day. Even in such a scenario, if the contraventions are not rectified until the completion of one year, the offender shall be punishable upto seven years of imprisonment. The liability of offences by companies⁵⁷ and their cognizance⁵⁸ is set up similar to the aforementioned enactments.

CRIMINAL PROSECUTION IN THE FOUR MOST POLLUTING AREAS

U.S.A.

The major regulatory environmental enactments include the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Toxic Substances Control Act.⁵⁹ All of these enactments contain criminal penalties. Criminal prosecution of environmental crimes began in the USA in the early 1980s. *United States v. Frezzo Brothers, Inc.*⁶⁰ was the first instance where the Federal Water Pollution Control Act were applied against a corporate offender and its officers were charged with crimes, where the defendants had been discharging pollutants without having obtained a permit from the Government.

⁵⁴ §40, the Air(Prevention and Control of Pollution) Act, 1981.

⁵⁵ §43, the Air (Prevention and Control of Pollution) Act, 1981.

⁵⁶ §7, the Environment (Protection) Act, 1986.

⁵⁷ §16, the Environment (Protection) Act, 1986.

⁵⁸ §19, the Environment (Protection) Act, 1986.

⁵⁹ BRICKEY, CORPORATE AND WHITE COLLAR CRIME603 (2010) ISBN 978-81-8473-375-4.

⁶⁰ 602 F.2d 1123 (3d Cir. 1979).

RUSSIA

A 2018 study showed that Russia is the largest polluting industry in the world with the presence of its natural gas and oil mining industries. At present, Russia does not incorporate the principles of corporate criminal liability for crimes against the environment. However, it has its own branch of environmental law, which is closely similar to ecological law. The Russian Code of Law, 1016 was one of its earliest documents for the protection of nature. In the 1960s, the Soviet regime promulgated its first systematic and specific enactment - the Law on the Protection of Nature of the Socialistic Republic of the Russian Soviet Federation.⁶¹

EUROPE

In the UK, especially England and Wales and Northern Ireland, there exist no special courts for the adjudication of environmental crimes. The proceedings begin at the magistrate's courts, where there is only the magistrate and no jury. Serious offences are tried by the Crown Court, where there is the presence of a judge and a jury.⁶² In Scotland, the Crown Office and Procurator Fiscal Service (COPFS) bring the prosecution.⁶³ Jurisprudentially, the UK follows the principle of strict liability, where the proof of mens rea need not to be established. There is substantive criminal liability brought in by environmental legislation, which are found in the Environmental Protection Act, 1990, Water Industry Act, 1991, Clean Air Act, 1991, the Water Resources Act, 1991, the Merchant Shipping (Prevention of Oil Pollution) Regulations, 1996, and the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations, 1996.

CHINA

The People's Republic of China follows a model where there corporate criminal liability in terms of violation of environmental regulations would at most amount to levy of fines. The directors or the managers do not have explicit liability as per the law; however, the discretion of the judge may impose criminal liability in cases of intentional or negligent omission of

⁶¹ L.N. FA, *Environmental Legislation of Criminal Responsibility of International Comparison and Reference – Based on the Perspective of Law and Economic*, IOP Conference Series: Earth and Environmental Science 188 (2018).

⁶² V. MITSILEGAS ET AL., *Fighting Environmental Crime in the UK: A Country Report. Study in the framework of the EFFACE research project*, London 60 (2015).

⁶³ *Supra* note 63, at p. 62.

preventive measures.⁶⁴

The 2002 Johannesburg Principles on the Role of Law and Sustainable Development agreed towards a full commitment to contributing towards the realization of the goals of sustainable development through judicial mandate to implement, develop and enforce the law, and to uphold the Rule of Law. It was recognized that there was an urgent need for concerted and sustained programme of work in the field of environmental law. It was proposed that there must be made improvements in implementation, development, and enforcement of environmental law through judges, prosecutors, legislators and others. The UNEP-INTERPOL study recommended that the environmental rule of law must be strengthened to combat environmental crimes. It also recommended that countries must take active part in fulfilling leadership roles. They must facilitate coordination and cross-national plans.⁶⁵ The prosecution must take on a strong forefront as it follows investigation. The prosecutors must have deep knowledge about environmental crime and must be willing to see the matters reach their justified end.⁶⁶

ENVIRONMENTALLY CONSCIOUS COUNTRIES

Germany has the most severe punishment for environmental crimes. The country woke up as long ago as 1871 and established herself as the first environmental criminal responsible State. The legislation is highly systematic and scientific.⁶⁷ It is a leading contemporary international society. Germany has taken active efforts into amending its environmental legislation every couple of years.⁶⁸ Germany was one of the first to volunteer to shut down 84 of its coal-fired power plants by 2038 and to switch to renewable energy.⁶⁹ Ireland was the first country to have declared a climate emergency. In 2018, it also became the first country to have divested from fossil fuels.⁷⁰

⁶⁴ Vivian Wu, Simon Hui, *Corporate Liability in China*, Available at: <https://globalcompliance.com/white-collar-crime/corporate-liability-in-china/> (Accessed on: 30th October, 2019).

⁶⁵ *Supra* note 17, at p. 93.

⁶⁶ *Supra* note 20, at p. 25.

⁶⁷ *Supra* note 62, at p. 1.

⁶⁸ *Supra* note 62, at p. 2.

⁶⁹ Erik Kirschbaum, *Germany to close all 84 of its coal-fired power plants*, will rely primarily on renewable energy (January 26, 2019), Available at: <https://www.latimes.com/world/europe/la-fg-germany-coal-power-20190126-story.html> (Accessed on: 30th October, 2019).

⁷⁰ Zhang Hua Qiang, *The World's Most Environmentally Friendly Countries in 2019* (July 10, 2019), Available at: <https://healthyhumanlife.com/blogs/news/most-environmentally-friendly-countries> (Accessed on: 30th October, 2019)

ENVIRONMENTALLY CONSCIOUS COMPANIES

Ikea, the Swedish origin furniture making company, invested heavily in sustainability. The manufacture of its products are mandated by reduced usage of water, energy, chemical fertilizers and pesticides. Unilever is also committed at increased sustainability. Three fourths of their non-hazardous waste are not dumped at landfills. Nike has taken considerable amounts of steps to manufacture sustainable products. They redesigned and reduced their packaging, eliminated their chemical discharges, and became energy efficient at their factories.⁷¹

CONCLUSION

Although there are laws within a nation's jurisdiction to ensure corporate compensatory liability for environmental harm, they are not optimally effective. They lack the international recognition and consensus, and hence the gravitas of the matter becomes bleak. The recognition of environmental crime must begin with enumerating what constitutes an environmental crime.⁷² The lack of international legislation proves to be an impediment in achieving better results at instituting corporate criminal liability in this aspect. Hefty fines and severe punishments are necessary to increase accountability of companies.

⁷¹ 10 Global Companies that are Environmentally Friendly (June 2, 2016), Available at: <https://www.virgin.com/virgin-unite/10-global-companies-are-environmentally-friendly> (Accessed on October 30th, 2019).

⁷² *Supra* note 17.