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Research Article

Beyond Compliance: Corporate Environmental Crimes and the Quest for Environmental Justice in India

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Abstract: Globalization and industrialization have no doubt assisted in improving the standard of living of the people. At the same time, it has also assisted corporations and business entities to expand their business operations, who were running their business at small scale and limited to a particular market of customers. This has made these entities to earn more revenue and wealth by supplying their products and services across the boundaries of the nation. However, for becoming a successful business entity in a globalized world, companies have started exploiting the ecological resources at an enormous rate. Natural resources like forest and rivers are being degraded at the whims of these corporations. Not afraid by the environmental laws and legal framework, these corporations become actively involved in venturing into environmental crimes in India like poaching of endangered wildlife, illegal trade of forest resources, illegal logging and polluting water resources. The minting of revenue from such crimes often leads to environmental injustice to forest dwellers and other individuals whose environment is being encroached upon. The present paper explores the corporate environmental crimes being committed in India, the impact of such crimes on the environment and the lives of the people. It also explores the existing Indian legal structure in preventing such crime, challenges being faced and possible remedies for preventing such crimes.

Keywords: Corporates, Corporate Environmental Crime, Environment, Environmental Justice and Law

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INTRODUCTION

Globalization and industrialization in recent years have radically changed the economic structure of nations like India. It has no doubt assisted many Indian companies in becoming a global giant like TATA etc. along with allowing Indian customers better and more choices of goods and services. Many foreign companies established their regional offices and started carrying out their business operations in India which have assisted in enhancing the livelihood opportunities for people living in India. However, while glorifying the benefits of globalization and urbanization in India we often ignore the ecological harm being caused by it in the nation.

The companies who are being benefitted from such globalization, often exploit natural resources available in the nation at their own whims and fancies. In fact, ecological degradation has become a chronic issue and concern, post liberalization of the economy in India. Companies in India are often involved in venturing out environmental crimes like illegal felling of trees, forest encroachment, poaching and illegal wildlife trade etc. Many natural resources are being used by such corporations in a non-judicious manner leading to scarcity of them in certain regions of the nation [1]. Further, the business operations of such entities are depleting the wholesomeness of the natural resources in the nation. The environment and its resources belong to everyone; however, the environmental crimes being committed by the corporations are seriously impeding the rights of the people. Many indigenous communities living in the forests and its

vicinity are facing livelihood crises owing to the business operations of the companies. Often their access to the forest resources are being denied by the corporations and are being forced to leave forest. Further, the loss of wildlife by the business operations is also a economical, social and cultural loss for such communities. The ecological loss caused by such crimes have long term and serious consequences on the ecology affecting all the living creatures in the world [1].

Many times, the corporations refrain from following environmental laws and policies which are being formulated for protecting the environment and its resources. They purposefully ignore such norms at the time of formulating any new project or carrying out such a project. Further, factors like lack of knowledge, existence of corruption in the administration and lack of prosecution in environmental crimes also fascinates these corporations to commit such crimes against the environment. At times poor living conditions and need for livelihood compels individuals to commit such crimes on behalf of the business houses.

Research Objectives

The researcher through present paper strives to achieve the following objectives:

- To study the concept of Corporate Environmental Crimes
- To identify the causes of such crimes in India
- To explore the impact of such crimes on the Indian environment and the people
- To analyze the existing legal framework in preventing such crimes
- To identify challenges in preventing such crimes and providing solutions to such challenges

RESEARCH METHODOLOGY

The research being conducted in the present paper is exploratory in nature as the paper seeks to explore the causes, consequences and solutions for the corporate environmental crimes in India. The paper is being formulated using doctrinal methodology where in the data is being collected using primary (statutes and reports etc.) and secondary (books and articles, newspapers etc. Sources).

The corporations in the modern era have become more capital-intensive which has allowed them to produce more goods in a cost efficient manner. The raw materials available in the environment are being used for production of finished goods by business houses [2]. However, in this process the environment and its quality gets degraded. The extraction of raw materials from the forest and the process involved in such extraction often affects the ecology of the place and at the same time, the dumping of by products of such manufacturing process by industries pollutes the ecology and its resources. Industrial wastes coming from factories are toxic in nature and contaminate the environment.

Corporations and Their Ethical Responsibility Towards Environment

Corporations being a juristic person, holds a legal personality. Further, the establishment and existence of such corporations is largely dependent upon the society wherein it carries out its operations. The companies use society's resources like human beings, forests and minerals for generating their revenue. Therefore, it owes a duty to become more responsible towards the society and the environment on whose basis it is existing.

The companies must ensure that their actions do not cause any ecological loss and are being carried out in a judicious manner. They must treat ecology and its resources as property of the society and shall refrain from using it in an irrational manner. They must understand that the long-term survival of their business is directly proportional to the health of the people and preserving the wholesomeness of the environment. An environmentally responsible business entity often ensures that from manufacturing process to the sale of the product everything shall be eco-friendly or shall cause minimum harm to the environment. Further, an environmentally responsible entity always works in coordination with other stakeholders like government and individuals so as to ensure creation of a green economy in the nation.

The corporate environmental responsibility calls for an ethical commitment towards safeguarding natural resources from ecological hazards by the business entity. It strives to ensure that a corporation takes measures which results in decreasing energy consumption, promoting ecofriendly business operations and preventing non-judicious application of resources [3]. Further, running a sustainable business may endorse numerous benefits to the business entity like creation of goodwill amongst the customers, ensuring long-term survival in the society. tax benefits, avoidance of environmental liability and penalties etc.

Corporate Environmental Crimes

Environmental crime amounts to any harmful or illegal acts being committed either directly or indirectly against the environment. These acts are often termed as offences against the environment. Individuals are generally considered to be the main culprit behind the commission of such acts, however, the role of corporate entities and other organized

criminals cannot be ignored in the commission of such crimes [4]. The environmental crimes takes various forms such as polluting the natural resources, overuse or over exploitation of environmental resources, improper disposal of toxic waste or neglecting environmental norms in the nation. Environmental crimes are mostly driven by the motive of earning money or gaining some commercial advantage. At times the corporates are completely ignorant about the laws being formulated for protection of the environment and its resources [5]. Further, even if they have the knowledge about the laws, they do not have a skilled workforce and modern gadgets to assist them in following such norms. These can be divided into following forms such as:

- **Pollution:** Contamination of environmental resources like air, water and soil by the business operations of the corporate have become a critical issue in recent years [6]. The resale of greenhouse gases like CO₂, SO₂ in the air by the factories and mines affects the air quality of the place and makes the place unsafe for human beings by resulting health hazards like lung cancer, asthma etc. Further, release of toxic and untreated industrial waste into the rivers, lakes and ponds reduces the wholesomeness of water, reduces oxygen level in the water resources, makes water resources unfit for animal and human consumption. There are instances where contamination of such water resources have resulted in the death of aquatic animals and plants, thereby disrupting the entire aquatic ecosystem. We cannot forget that dumping of such untreated industrial wastes by the corporate contaminates soil, diminishes soil fertility and seriously affects agricultural productivity
- **Non-Judicious Use of Resources:** Environmental resources like water, land and forests are limited, however, in India they are being used by the corporations in a non-judicious manner [7]. Many Indian woodlands suffer serious threats in the form of deforestation, illegal logging of trees, illegal fishing, poaching activities etc. at the hands of corporations. Many trees are being cut for the supply of raw materials in the factories beyond the permissible limits. Similarly, companies often get involved in fishing of these species of fish whose fishing is banned or allowed in a limited manner
- **Incorrect or False Reporting:** Under certain regulations the corporations are required to submit environmental reports to the concerned regulating authorities which decide whether to grant, continue or dismiss the application for issue of licences or environmental clearance [3]. However, the corporations manipulate the report by inculcating false and misleading information about level of emissions, the mitigating measures taken etc. This allows them to carry on towards the commission of crime. Further, the companies may deliberately omit certain facts in the environmental reports submitted by them related to non-compliance of environmental regulations etc. This impedes the process of scrutinizing the environmental performance of the corporation
- **Failure in Complying with Environmental Laws:** Many times, the corporations fails to comply with the environmental norms being formulated by the state and its agencies such as emission of toxic gases and waste beyond the prescribed limits [8]. Further, the corporations may fail to follow the environmental compliances like EIA Environmental Impact Assessment before or during any project having environmental implications. There are instances wherein the corporations deliberately do not install or follow waste management techniques while undertaking their business operations. Such failure may result in environmental damage, destroy the wholesomeness of the resources, make the atmosphere noxious and jeopardize public health. Untreated waste and improper waste management causes health hazards which may have long-term effects on the body of an individual

Laws Governing Corporate Environmental Crimes

Constitution: The backbone of environmental legislations governing environmental crimes is perhaps the Constitution of India. Art. 48A of the Constitution imposes a duty upon the State and its agencies to take measures, actions and policies for protecting and promoting environment and wildlife in the nation. It calls for the State to formulate laws which ensure that natural resources of the nations are preserved and their quality is improved. Thus, it advocates that no state corporations or state-funded entities shall be involved in any activity which impairs environmental quality.

Further, Art. 51A(g) imposes similar responsibility upon the citizens of the nations. It makes the citizens bound to protect and improve the natural resources of the state like mountains, rivers etc. and to have compassion towards the other living creatures. Therefore, the corporation which is an association of individuals shall ensure that its business operations do not harm the ecology and wildlife of the state.

Further, Art. 21 and subsequent interpretations of it by the Judicial system in the nation have made the right to a wholesome and pollution-free environment a part of the fundamental right to life. The Hon'ble Supreme Court in *Subhash Kumar v. State of Bihar* AIR 1991 SC 420 the court was of the view that right to life under Art. 21 includes the right to pollution free water and air. Further, in the case titled as *Mehta vs. Union of India* AIR 1988 SC 1037 the court observed that right to life includes living in a pollution-free environment and being free of diseases. Also, in the case titled as *Mehta v. Union of India (Absolute Liability)* the Hon'ble Apex Court while formulating a new principle of Absolute Liability was of the view that where an enterprise engages in any inherently hazardous activity and any harms

results while carrying out such an activity, the enterprise shall be absolutely be liable for such harm and defences available in strict liability cannot be used by such enterprise. The corporation in such a case is bound to compensate according to its capacity. The principle did make corporations be more vigilant while undertaking their business operations and to ensure that the victims of the disaster caused by their operations are being adequately compensated.

Environmental Protection Act, 1986

The act was formulated with a view to ensure protection and improvement of the environment. It enlists guidelines regarding planning and implementing strategies for ensuring environmental safety along with mechanisms for responding in situations which seek to threaten the environment. The legislation also imposes penalties and punishment upon the corporations which may violate the provisions of the said act. S.7 of the legislation imposes an obligation on any person who carries any industry, activity or process, to abstain from emitting environmental pollutants exceeding the prescribed limits so mentioned in various schedules of the Act.

S. 15 and S. 17 of the legislation imposes liability upon the person who releases pollutants beyond the prescribed limits. In *Mehta v. Nath* (2006) 6 SCC 213, the Hon'ble Supreme Court held that "pollution is inherently, a tort against the community as a whole, therefore, one who is guilty of causing pollution has to pay for the damages for restoration of the environment and ecology." Further. S.8 makes it prohibitory for any person for dealing or handling any substances which are hazardous in nature.

Air (Prevention and Control of Pollution) Act, 1981

The legislation was formulated with the objective of preventing, abetting and controlling air pollution. Such legislation holds an immense importance in cities like Delhi, Mumbai and Gurgaon which are home for many industries, however, owing to such clusterization of industries in and around such cities there exists a major issue of air pollution. The air quality in such urban areas is very low and the residents suffer from air-borne diseases.

S. 40 of the Act makes officials of corporations responsible for any wrongful act being committed by the company. However, if it is being proved that an overt act has been committed without the knowledge of the employee or official then exemption may be provided. The Hon'ble Supreme Court in the case titled as *Mehta and Anr. v. Union of India* (1986) SCr (1) 321 while laying the principle of absolute liability observed that no hazardous industry can be allowed to operate in close habitation with humans. In *Mehta and Anr. v. Union of India* (1996) 8 SCC 462 (*Badkhal Lak and Surajkund Case*) the Apex Court directed to stop mining activities within 2 kms of radius around tourists resorts of Badkhal and Surajkund along with the development of a greenbelt of 200 meters as the mining operations began causing air and noise pollution in such regions. In the case titled as *Pollution Control Board v. Mahabir Coke Industry* (2000) 9 SCC 344 the hon'ble Supreme Court upheld the decision of the Pollution Control Board wherein it directed industry to conform with the prescribed standards so formulated.

Water (Prevention and Control of Pollution) Act, 1981

Water is an essential part of every person's life. Without availability of clean and wholesome water life would become meaningless. In order to ensure that the citizens of the nation have access to clean and hygienic water, the Water (Prevention and Control of Pollution) Act, 1981 was passed. As. per S. 25 of the Act it is essential for a person to obtain approval from the State Board before starting any industry, activity or procedure, which have a degree of chances to release or emit untreated waste water into water bodies like rivers, streams etc. In the case titled as *A. P. Pollution Control Board v. Nayudu* (2001) 2 SCC 61 the Court was of the view that neither can any industry be established nor any steps be taken for establishment of it without the consent of the Pollution Control Board. Since the conduct of the respondent was against the conditions of the Act, no estoppel can be climbed against the act. Similarly in Apex Court while applying precautionary and polluter pays principle in the case titled as *Tirupur Dyeing Factory Owners Ass v. Noyyal River A. Protection Ass. and Ors* (2009) 9 SCC 737 levied a penalty for contaminating the river Noyyal in order to meet expenses incurred for reversing the ecological damage caused.

Further, while dealing with the issue of allocation of water bodies to private companies for undertaking developmental projects in the case titled as *Jitendra Singh v. Ministry of Environment* the Hon'ble Supreme Court declared that "The decision taken by the Greater Noida Industrial Development Authority for the transfer of several ponds in town Saini to a private enterprise for development breached the rigorous principle of non-alienation of common water bodies set forth in *Jagpal Singh v. State of Punjab* (2011) 11 SCC 396. Paras. 17, 22. While the idea can possibly be waived for initiatives that serve a social public purpose or benefit local people, privatizing and destroying water bodies for commercial purposes while erecting larger replacement water storage sites elsewhere is not eligible under this exclusive exception. Furthermore, eradicating natural reservoirs would inflict permanent damages to the flora, fauna and the communities that rely on them, which could not be compensated for by the setting up of artificial ponds elsewhere".

Biodiversity Act, 2002

Biodiversity of a region holds an immense importance in the ecosystem of the place. Further, the biological resources provide certain economical and non-economic advantages. Thus, it becomes necessary for ensuring preservation and judicious use of biological resources. Keeping this in view the biodiversity act was formulated for safeguarding biodiversity and ensuring judicious along with fair distribution of its resources. S. 57 of the legislation makes concerned officials of the company accountable for any contravention of any provisions of the act due to the activities of the corporation. Further the act requires the corporation to take permission of the Biodiversity Authority or Board before acquiring any biological resources for their business operations. *Hershey India Pvt. Ltd. Case*. The Judicial Magistrate found "That the company violated the provisions of the Act by failing to inform the National Biodiversity Authority or State Biodiversity Board not to inform National Biodiversity Authority or State Biodiversity Boards before acquiring biological resources as raw material for any product manufactured under the National Biological Diversity Act of 2002. The said act stands to violate S. 19 of the Act" [9].

Challenges

Corporate environmental crime is a pressing issue, especially for a nation like India. There are laws and agencies being created for identifying and preventing such crime from happening. However, the regulatory framework in India suffers from following difficulties while dealing with corporate environmental criminals:

- **Institutional Fragmentation and Capacity Limitations:** Studies being conducted on the functioning of environmental bodies and institutions like pollution control boards and forest department revealed numerous deficiencies in the system. These institutions suffer from the issue of lack of qualified personnel and shortage of staff [10]. Further, there is an acute shortage of modern technologies and gadgets for monitoring and preventing corporations from committing environmental crimes. Further, there is a lack of central command which could regulate the actions of corporations especially involving ecological crime. Corporates are required to make disclosures of their activities and business operations before different agencies and departments and lack of coordination amongst the departments lead to a failure identifying and preventing corporate environmental crimes
- **Corruption:** Existence of corrupt practices in the administration often affects the enforcement of environmental laws and policies. This may involve issuance of illegal permits or selective enforcement or harbouring criminals in escaping from penalties for violation of environmental laws [11]. The existence of corruption in the law enforcement department allows the corporations to commit environmental crimes by not paying attention to the legal norms with respect to preservation of the environment and its resources
- **Public Awareness and Education:** Another challenge on the road towards preventing Corporate Environmental Crimes is limited or lack of public awareness about such crimes. Many times people do not know or they fail to understand the methods adopted by the company for causing environmental crime. At times the individuals are being misled by the advertisements and other business activities of the corporations. Further, even if knows about such crime being taking place finds himself in a helpless state owing to lack of knowledge about the legal mechanisms available for preventing such crimes. Lack of knowledge about commission of such crimes prevents the public from participating or taking any action against environmental crimes being committed by corporations
- **Jurisdictional Challenges:** Corporate environmental crimes such as illegal trade of natural resources like wildlife, plants, minerals etc. takes place across the national boundaries. Therefore, preventing such crime becomes a tedious task due to complicated enforcement processes and need to have sound cooperation amongst the countries. The smugglers operate through networks across the national boundaries and existence of corrupt administration allows them to undertake such illegal activities. Further every nation has different laws with respect to environmental resources, exploitation of a resource in a nation may be valid but the same may be illegal
- **Delayed Justice:** Slow disposal rates of environmental cases in India often lead to delay in providing environmental justice to the people especially the ones whose environmental rights are being encroached upon. Such a delay in taking judicial action gives liberty to the corporations for conducting activities which could or are polluting the environment and its resources. Further, till the time any judicial action is taken the environmental damage may go beyond repair thereby, affecting the lives of the people dependent upon it and may cause displacement of them

Suggestions

Prevention of Corporate environmental crimes is not an easy task in India owing to factors like corruption, lack of awareness, infrastructural challenges etc. However, the following remedies can be resorted to prevent or reduce such challenges:

- **Public Awareness Movements:** Conducting campaigns and organizing movements for making people aware about any environmental crime being committed by any corporate or business entity, not only brings bad name to such entities from committing such crimes [1]. Further, it acts as an eye opener for the public which can make concerned agencies to be more accountable in the future
- **Industrial Workshops:** Workshops, seminars and panel discussions can be conducted for industrial persons and corporate houses, thereby informing them about the environmental norms, need for conserving the ecology of the nation and motivating them to take measures for supporting the ecology of the nation
- **Protecting Whistleblower:** At times the fear of being ridiculed or life threat compels the individual from exposing the environmental crime being committed by any corporate. They may be a victim of the crime or a poor person. Owing to lack of protection being provided to such whistleblowers in the nation, many individuals refrain from exposing the ecological crimes being committed by the corporations, leading to ecological loss. The present Whistle Blowers Protection Act, 2011 suffers from weak enforcement and specifically talks about environmental crimes
- **Participation of NGOs:** Engagement of NGOs can assist in identifying and preventing environmental crimes being committed by any corporate house. NGOs not only help in educating the people about the environmental crimes and the form they are being committed but also expose such crimes when they are being committed. NGOs work as pressure groups which often compels the state and its agencies to take serious action against such corporate environmental crimes
- **Compensatory Damages:** Vindication of environmental damage caused by the corporate can be done by imposing retributive sanctions in the form of damages [12]. Such damages allows the victims of any ecological crises caused by the corporation to the position where they were before the damage got sustained. It makes commission of any ecological harm a costly affair for firms and corporate houses and compels them from doing any environmental crime
- **Amending Existing Environmental Regulations:** With time everything changes, nothing in this world remains the same forever, so are the legislations. As the time progresses the nature of environmental crimes committed by the corporations have also changed [3]. Unfortunately the current legal framework is unable to meet with the requisite changes. Thus, there is a dire need to update the existing legal norms for dealing with the issue of growing corporate environmental crimes [13]

CONCLUSION

Corporate environmental crimes are perhaps becoming a pressing issue in recent years in India [14]. These are mainly being motivated with the aim of earning more wealth mostly at the cost of environmental damage [15]. The environment belongs to everyone, however, unjust use of environmental resources and the damage caused to such resources by the corporate actions impairs the environmental rights of marginalized communities. They are either being devoid of having access to ecological resources or are forced to enjoy contaminated resources, resulting in severe health issues. Environmental legal regime in India aims to prevent such harm however, it is prone to certain defects like delay in justice, shortage of staff, corruption etc. which motivates corporates to commit such crime in India. Thus, there is a need to enhance the efficiency of the existing legal system especially in terms of dealing with such environmental crimes by corporations. There is also a need to have a multistakeholder cooperation in preventing such crimes by the corporates.

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