

Criminal Liability For Non-Compliance of Environmental Law : Jurisprudential and Legislative Perspective

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Introduction :

The principles of Environmental Jurisprudence have changed from being soft norms at international level to ones having liability for non-compliance and this liability has also enhanced from the strict liability to absolute liability. The recent trend is to impose a penal liability in relation to the provisions of non-compliance which can further reduce the environmental degradation along with the payment of compensation under the legislations like the Public Liability Insurance Act, 1991. This liability includes imprisonment along with fines which are to be imposed for making good the loss to the environment that have been caused. The idea of this imposition of criminal liability is similar to the imposition of criminal liability on the Maintenance under Section 125 of the Code of Criminal Procedure, 1973.

Evolution of Concept of Liability in Environmental Issues:

In the earlier times the liability under environmental issues used to be moral in nature. The Indian Vedic philosophy is the evidence of the concept of environment protection as a part of the moral duty or "*dharma*". There are various instances in the Vedas relating to the same like:

"In whom the sea, canals, lakes wells, tanks, in whom our food and cornfields had their being, in whom this all that breaths and moves, is active may this Earth grant us all excellent eatable and drinkable objects like milk, fruits, water and cereals."³

Also in the verse⁴ which states:

"The purity in us is due to the Earth. The Earth is my mother and I am Her Son. Cloud is my Father, let that nourish us."

The most important instance which can support this ideology of moral duty of humans is :

"With an utter sense of ethics and dutiful attitude, we can live happily in an honorable position. It is reiterated that the revolving Earth, of one accord with the Sun sets the super sentient seer in glory and in wealth."⁵

This similar approach of giving prominence to protection of environment is found more or less in every religion. In Islam, Allah, i.e. the God almighty is said to be the owner of everything and man is simply a trustee or a guardian of His ownership and all the other living creatures are said to be the beneficiaries. Thus, there is a close harmony between man and nature.

Christianity has also accepted a similar notion, as Pope Paul VI said:

*"The environment and resources are for everyone, they are inalienable property of everyone and there does not exist over this universal property discretionary sovereignty exempting from the responsibility towards the humanity of today and tomorrow."*⁶

According to Jain scriptures "Jainism believes in minimum destruction of living and non-living resources for the benefit of humans. One should take care that there should not be any harm to any living organism even involuntarily. Jainism also believes in simplicity of lifestyle so that minimum impact shall be felt on nature of the humans. Non-exploitation of resources and taking from the nature only what is necessary is a part of the lifestyle of the Jain philosophy. Thus environment protection and sustainable living are very much a part of Jainism. According to Buddhism, "Man should not be greedy to earn more by exploiting the nature without leaving

anything for the future generations to exploit.” There are also instances in Buddhism where tree plantation is promoted which further enhances the nature. HH Dalai Lama has stated:

“Today more than ever before, life must be characterized by a sense of universal responsibility, not only nation to nation and human to human, but also human to other forms of life.”⁷

Thus it is amply clear that the philosophical roots of every religion imposed a moral duty to stay in consonance to the environment and to exploit the environment has been accepted as a moral wrong.

However, as time progressed and there was industrialization the moral responsibility was not strong enough for the public at large to bind themselves to protect the nature. In fact there were instances where for achieving development anything could be disregarded, including the environment. The people of the 20th Century believed that there is an inversely proportional relation between development and environment protection. That one cannot be achieved unless the other suffers. And as the industrial revolution gained roots all over the world the importance of development was felt to be more than environment protection so much so that the environment was not even taken into consideration and exploitations and environmental degradations were rampant all over the industrialized world which included the colonies of various European countries. Post the World Wars, there was not much of a change in the scenario in relation to environment protection.

For the first time in the modern world the need of protection of environment was first voiced out in the United Nations Conference of Human Environment which was held at Stockholm in the year 1972. The Stockholm Conference was the starting point for environmental activities at both regional and international level.⁸ The Conference was an outstanding achievement as

for the first time 114 Countries came together for an environmental cause and also agreed upon a Declaration. This period witnessed unprecedented proliferation of international environmental organizations some of which were established through treaties. Again, during this period the existing international organizations addressed the environmental issues more aggressively.⁹ It is after the Stockholm Conference that at the international level the issue of environment protection and sustainable development came into existence.

One of the most important principles which were the outcome of the Stockholm Declaration was the “Polluter Pays” principle. This has opened the notion of civil liability for compensating the victims of environmental hazards. The rule of strict liability was initially made applicable for such cases.

Rule of Strict Liability:

Strict liability is the principle which evolved from case of *Rylands v Fletcher*¹⁰ in the year 1868. This principle clearly states that a person, who keeps hazardous substances in his premises, is responsible for the fault if that substance escapes in any manner and causes damages. This principle stands true if there was no negligence on the side of the person keeping it and the burden of proof always lies on the defendant to prove how he is not liable. According to the rule set by this case, if a person brings on his land and keeps there any dangerous thing, a thing which is likely to do mischief if it escapes, he will be *prima facie* answerable to the damage caused by its escape even though he had not been negligent in keeping it there. The liability arises not because there was any fault or negligence on the part of a person, but because he kept some dangerous thing on his land and the same has escaped from there and caused damage. Since, in such a case the liability arises even without any negligence on the part of the defendant, it is known as the rule of strict liability.¹¹ There are five exceptions

to this rule of strict liability. They are:

- Act of God
- Plaintiff's own fault
- Consent of Plaintiff
- Act of Third Party
- Statutory Authority

Due to these exceptions the rule of strict liability has been watered down especially in the matters of environment as one or the other exception is always applicable to exonerate the liability of the polluter. Thus there was a need felt in the area of environmental law to enhance the notion of liability further to include all actions causing environmental damage.

Absolute Liability:

The rule of absolute liability was evolved in the case of *M.C. Mehta v Union of India*¹². This was a very important landmark judgment that brought in a new rule in the history of the Indian Law. The rule held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate to all those who are affected by the accident. The Supreme Court took a very bold decision to evolve a new rule fit for the economic and social conditions prevailing in India. The rule of absolute liability was then formed in preference to the rule of strict liability. This rule ignored all the exceptions in the *Rylands v Fletcher* case.

The rule clearly held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate to all those who are affected by the accident and such liability is not subject to any

of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in *Rylands v Fletcher*.

The court gave two basic reasons justifying the rule:

Any enterprise carrying on hazardous activities for private profits have the social responsibility to compensate those suffering from any accident and it should absorb such loss as an item of overhead expenses.

The enterprise alone has the resources to discover and guard against such hazards and dangers.

The court also laid down the measures of compensation to be paid by the enterprise. It said that the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or dangerous activity by the enterprise.

Thus there has been a shift in the environmental jurisprudence wherein primarily the liability which was moral in nature became a legal liability. This further changed into strict liability and was then enhanced into absolute liability or no-fault liability. However, the liability was still civil in nature. Criminal liability as a concept had not been accepted as an outcome of causing environment pollution.

It is pertinent to take reference of the concept of maintenance under the personal law here. Initially during the pre-legislation period, the liability to maintain was a moral responsibility of the 'Karta' of the house. Subsequently when the Hindu Law was codified there was creation of a legal obligation on certain persons to maintain them. This was enforced through the civil Courts and the remedy for non-payment of maintenance was also civil in nature. However, it was seen that these are a lot of defaulters who are not paying the maintenance even if a decree of the Court of competent jurisdiction was passed for

the same. Therefore in 1973 when the Criminal Procedure Code was amended, the provision of maintenance was incorporated in it providing for a criminal liability for non-payment of the maintenance. Due to this it was seen that the issue of maintenance was resolved to a very large extent.

On the same lines there have been insertions of criminal liability in certain environmental laws which are enumerated as follows:

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

41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section

(1) of section 32 or directions issued under sub-section (2) of section 33 or section 33A.—
(1) Whoever fails to comply with the direction given under sub-section (2) or sub-section (3) of section 20 within such time as may be specified in the direction shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with 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.

(2) Whoever fails to comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A shall, in respect of each such failure and on conviction, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with 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.

(3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.]

42. Penalty for certain acts.—

(1) Whoever—

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or

(e) fails to intimate the occurrence of any accident or other unforeseen act or event under section 31 to the Board and other authorities or agencies as required by that section, or

(f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or

(g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1[ten thousand rupees] or with both.

(2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of meter or gauge or other measure or monitoring device is required and

such device is used for the purposes of those provisions, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1[ten thousand rupees] or with both.

43. Penalty for contravention of provisions of section 24.—Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than 1[one year and six months] but which may extend to six years and with fine.

44. Penalty for contravention of section 25 or section 26.—Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than 1[one year and six months] but which may extend to six years and with fine.

45. Enhanced penalty after previous conviction.—If any person who has been convicted of any offence under section 24 or section 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than 1[two years] but which may extend to seven years and with fine: Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

45A. Penalty for contravention of certain provisions of the Act.

Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which

may extend to ten thousand rupees or with both, and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.]

46. Publication of names of offenders.

If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

47. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been 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 company, such director, manager, secretary or other officer

shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—for the purposes of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

48. Offences by Government Departments.

Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.

(1) whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31 A, shall, in respect of each such failure, be punishable with imprisonment for a terms which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with 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.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may

extend to seven years and with fine.]

38. Penalties for certain acts.

Whoever-

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or

(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or

(f) in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or

(g) for the purpose of obtaining any consent under section 21, makes a statement which is false in any material particular shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 29[ten thousand rupees] or with both.

39. Penalty for contravention of provisions of the Act.

Whoever contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which

may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand, rupees for every day during which such contravention continues after conviction for the first such contravention.)

THE ENVIRONMENT PROTECTION ACT, 1986:

15. Penalty for contravention of the provisions of the act and the rules, orders and directions:

(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

The provisions relating to offences by companies as well as offences by government departments are the same as that of the Water Act.

Conclusion :

According to the theory of utilitarian hedonism of Jeremy Bentham every person calculates the pleasure and pain occurring from the action which he wishes to perform and abstains from doing that action if the pain accruing from the action is more than the pleasure obtained in performing it. The case

of liability under environmental law is also the same wherein the legislators have increased the pain caused by performing the act of polluting the environment by imposing criminal liability on its performance. Thus, though in a negative way there has been a change in the approach in relation to criminal liability on non-performance of environmental law.

(Endnotes)

- 1 * Assistant Professor, Modern Law College
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- 3 Atharva Veda (A.V.) 12.1.3.
- 4 Atharva Veda (A.V.) 12.1.12.
- 5 Atharva Veda (A.V.) 12.1.63.
- 6 Pope Paul VI, in his message at United Nations Conference on Human Environment, 1972 held at Stockholm.
- 7 HH The Dalai Lama, in his Nobel Peace Prize Speech, 1989 on environmental ethics of Buddhism.
- 8 Phillippe Sands, 2003: *Principles of International Environmental Law*, New Delhi: Cambridge University Press, at p. 40.
- 9 *Ibid.*
- 10 (1868) L.R. 3 H.L. 330
- 11 Bangia, R.K., *The Law of Torts*, Allahabad Law Agency, 2013.
- 12 A.I.R. 1987 S.C. 1086: 1987 ACJ 386