

Two distinct events have been hogging the headlines of late. One has been the international uproar over the oil spill in the Gulf of Mexico by oil major, BP. Another has been the hue and cry over what victims of Bhopal's Union Carbide gas leak view as a redressal too little and too late. These two episodes belong to different time frames and in very far off parts of the world, yet there is a common thread that runs between the two events. They highlight the spectre of corporate liability.

Corporate liability determines the extent to which a corporation as a legal person can be liable for the acts and omissions of the natural persons it employs. Under the aegis of this legal protection, BP has been fined 20 billion US dollars to compensate the shrimp farmers affected by the spill. Union Carbide India Ltd., the pesticide company from whose Bhopal plant, toxic methyl isocyanate gas was released, was ordered to pay 3.3 billion USD but has so far paid only 470 million USD as compensation. The Chairman of the company against whom culpable homicide charges were filed, could not be traced.

Under laws of some lands, corporate liability is considered a criminal vicarious liability which demonstrates the gravity of this offence. A corporate can be held criminally responsible in cases of conspiracy, bribery, larceny, misuse of medicine, public nuisance, violation of regulatory/ consumer protection laws, non compliance with court orders/ decrees, extortion, statutory federal crimes and violation of Occupational Safety and Health Act. The very intent of corporate liability laws is deterrent in nature.

However, there are many grey areas that exist in this realm as can be seen both from the Indian and American episodes. Today, the corporate sphere is ruled by multinationals, whose seamless opera-

tions across different countries impede the determination of jurisdiction of this law while seeking protection. Also the multinationals have deep pockets which results in long drawn litigation processes. And we are all aware of the saying "Justice delayed is justice denied". Finally when victims seek redressal, they often fail to get anywhere in local courts, but discover that the head office abroad is a separate entity. This problem – the 'corporate veil' – means strong evidence is needed to hold a parent company liable, which can be a daunting task for disagggregated and poor victims.

More specifically in India, the statutes have not kept pace with the changing corporate scenario. Most statutes hold only the officials and not the company responsible; even the Indian Penal Code does not take corporates into consideration while directing compulsory imprisonment. Most cases do not recognize corporates to be criminally liable and even if they do so, the punishment is reduced to that of fines. Often the fines are too paltry in relation to the amount of damage or the profits of the company. This defeats the very purpose of corporate liability law since fines (which escape imprisonment) do not act as a deterrent nor are the victims adequately retributed.

These existing lacunae in the legal systems need to be filled in. Apart from stiff monetary punishments that can both act as disincentive for the company as also create a rehabilitation fund for victims; social sanctions that tarnish the reputation of such offending companies, are also effective to prevent further such incidents. Corporate liability should occupy greater place in corporate governance not merely in terms of monetising impact of such liability; but in a greater drive to replace corporate liability with greater corporate responsibility.