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CORPORATE CRIMINAL LIABILITY IN ENVIRONMENTAL OFFENSES: ASSESSING LEGAL FRAMEWORKS AND ENFORCEMENT CHALLENGES

AUTHORED BY - RUHI AMIN SAITH

ABSTRACT

Recent environmental catastrophes, such as Chevron's deliberate pollution of the Amazon and the Rio Doce Dam collapse caused by Samarco, underscores the grave impact of corporate actions. Instances like the oil leakage in Nigeria attributed to Shell or the Deepwater Horizon oil spill by BP in the Gulf of Mexico act as strong indications of the enormity of environmental offenses. A common thread connects these incidents: corporations. They illuminate how corporate misdeeds wreak havoc on nature. While modern environmental laws offer the promise of holding companies accountable, enforcement is far from simple due to the intangible nature of corporations. As the spotlight intensifies, the debate rages on about whether corporations should face criminal consequences. This paper delves into the evolution of Corporate Criminal Liability, exploring the significance of "mens rea" in environmental crimes. While India boasts robust environmental laws, the pivotal question remains: Can these laws truly deter corporations from harming our planet? The answer is a subject of ongoing, impassioned discourse.

Keywords: Environmental Crimes, Identification Theory, Vicarious Liability, Mens Rea

INTRODUCTION

"The world's leading ozone destroyer takes credit for leadership in ozone protection"

– Kenny Bruno¹

Globalization has linked the world and brought improvements, evident in profits and improved quality of life. However, there's a cost - we've traded clean environments for designer bags. Despite rules, implementation often falls short.

Throughout the history of Company Law, corporations have concealed their wrongdoings by using the shield of a "Separate Legal Entity." Therefore, to counter the illicit activities hidden under this

¹ The World of Greenwash, CorpWatch, January 1, 1997, (August 16th, 10:30 PM) www.corpwatch.org/campaigns/PCD.jsp?articleid=244

façade of incorporation, the concept of lifting the corporate veil emerged.

We've seen multiple corporates, who under the pretext of greenwashing have caused irreparable harm. An instance is Volkswagen, which installed software in 482,000 "clean diesels"² US vehicles to cheat emission tests. This caused harmful pollutant emissions outside tests, violating the Clean Air Act after regulators discovered the deception.³

This paper will aim to provide a link between corporate criminal liability through the perspective of environmental crimes.

METHODOLOGY

The essay employs doctrinal research, referencing primary sources like laws and court judgments, and secondary sources like digital repositories, scholarly articles, and legal verdicts. Insights were gained from relevant scholarly papers, online databases, and blogs. Using this approach, additional information was analyzed from e-libraries and databases like Jstor, Hein Online, West Law, and Manupatra.

LITERATURE REVIEW

1. Criminal Liability of Corporations – An Environmental Perspective – Vijay Kumar Singh⁴

The author supports holding corporations accountable for environmental violations and suggests increasing penalties due to previous fines being inadequate for the significant harm caused. They argue that steeper penalties are necessary to prevent corporations from prioritizing profits over environment degradation.

2. Environmental Crimes: An Analysis – Dr. Virender Sindhu⁵

The author brought attention to a deficiency in the enforcement of the legal system by discussing

² Joby Warrick, EPA : Volkswagen used 'defeat device' to illegally skirt air pollution controls, The Washington Post [EPA: Volkswagen used 'defeat device' to illegally skirt air-pollution controls - The Washington Post](https://www.washingtonpost.com/news/energy-environment/wp/2015/09/08/volkswagen-used-defeat-device-to-illegally-skirt-air-pollution-controls/)

³ EPA: Transportation, Air Pollution, and Climate Change, United States Environment Protection Agency, (August 16th, 10:30 PM) [Transportation, Air Pollution, and Climate Change | US EPA](https://www.epa.gov/transportation-air-pollution-and-climate-change)

⁴ Vijay Kumar Singh, Criminal Liability of Corporations – An Environmental Perspective, Chapter 3 in: Environmental Crimes: Corporate Liability, ISBN 978-81-314-2521-3, (August 16th, 11:00 PM) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2972053

⁵ Dr. Virender Sindhu, Environmental crimes: An analysis in the International Journal of Advanced Educational Research, Volume 3; Issue 1; January 2018, (August 16th, 11:00 PM) <https://www.scribd.com/document/453498297/environmental-crime-pdf>

cases where courts utilized civil penalties despite the existence of provisions for criminal penalties within environmental law.

3. International Environment Crime: A Growing Concern of International Environment Governance – Puneet Pathak⁶

The author highlighted the contrasting strategies employed internationally and domestically to handle environmental wrongdoing by corporations. International courts often lean towards non-criminal resolutions, while domestic courts tend to categorize such cases as administrative in nature.

4. Union Carbide Corporation v. Union of India⁷

Applying 'mens rea' to corporations is tough here. The case showcased severe corporate negligence, causing deaths and long-lasting gas leak effects. The court took 25 years for a 2-year sentence, highlighting the injustice of conventional criminal law.

5. Lennard's Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd⁸

In this case, it was ruled that if an employee's behavior is closely linked to the company, the company can be deemed responsible for those actions. Nevertheless, this verdict does not address the matters of criminal accountability and the obligations of corporations with multiple directors.

6. Iridium India Telecom Ltd v. Motorola Inc⁹

The court established Motorola's responsibility for the fraudulent actions carried out by its employees. Despite Motorola's argument of lacking mens rea, the court employed the doctrine of vicarious liability.

RESEARCH GAPS

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- 1) Should corporations be subject to prosecution via civil litigation or criminal litigation?
 - 2) Do the penalties imposed for environmental offenses adequately address the repercussions of the transgressions?

⁶ Puneet Pathak - International Environment Crime : A Growing Concern of International Environment Governance, 13 US-CHINA L. REV. 382 (2016) (August 16th, 11:00 PM) [International Environment Crime : A Growing Concern of International Environment Governance](#)

⁷ Union Carbide Corporation v. Union of India, 1989 SCC (2) 540

⁸ Lennard's Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd, AC 705

⁹ Iridium India Telecom Ltd v. Motorola Inc, (2010) 14 ADDL SCR

- 3) Is the inclusion of mens rea a pivotal factor in cases of corporations implicated in environmental offenses?

RESEARCH ANALYSIS

1) Development of Corporate Criminal Liability

The Corporate Criminal liability debate focused on two aspects: absence of mens rea and inability to be imprisoned¹⁰. Courts leaned towards the idea that if law required both fines and imprisonment, corporations might only need to pay fines¹¹. However, this raised a query: What about cases needing imprisonment? The Supreme Court¹² clarified that corporations can't evade prosecution solely due to mandatory imprisonment. Penalties are possible if part of the punishment. Currently in India¹³, a stricter stance on corporate criminal liability is evident. The highest court affirmed that 'absence of mens rea' can't defend businesses. Corporations will be liable through attribution and imputation principles.

1.1) *Corporate Criminal Liability in Environmental Crimes*

A study by Friends of Earth International¹⁴ highlights corporations' significant environmental damage. Exxon Mobil, for instance, accumulated around 20.3 billion tons of carbon dioxide over 120 years, this means that they contributed to 4.7 to 5.3% of worldwide man-made carbon dioxide emissions since its inception.

The evolution towards corporate criminal liability in environmental law began with the case New York Central & Hudson River Railroad Co., v. United States,¹⁵ which challenged the notion that corporations lack mens rea. This transformation is essential to prevent undue corporate immunity and better manage environmental abuses.

2) The Problem with Sentencing Corporations

2.1) *Too many laws too little interpretation*

Indian legislation reveals notable discontent. The Companies Act of 2013 assigns responsibility to individuals rather than corporations. The trend of blending administrative, environmental, and

¹⁰ A.K. Khosla v. S. Venkatesan, (1992) Cr.L.J. 1448.

¹¹ MS Javali v. Mahajan Borwell & Co and Ors

¹² Standard Chartered Bank v. Directorate Enforcement, AIR 2005 SC 2622

¹³ Iridium India Telecom Ltd v. Motorola Incorporated and Ors, (2010) 14 (ADDL) SCR 591.

¹⁴ Dorsey, Michael K., "A Plan for Democratic Control of Corporate Crime.", September 2004, (August 16th 11:00 PM) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=597722

¹⁵ New York Central & Hudson River Railroad Co., v. United States, 212 US 481 (1909)

sporadic criminal laws to fulfil administrative obligations is noticeable.

Penalties¹⁶ for environmental crimes are insufficient and poorly defined, rendering these provisions symbolic rather than effective. Clarity in regulations for environmental offenses is lacking, replaced by a disjointed collection of rules. Conversely, countries like Germany feature a dedicated portion within their Criminal Code for environmental infractions, augmenting administrative sanctions.¹⁷

2.2) *Imbalance of Fines*

Many environmental violations stem from ignorance, not malice. If actions aren't seen as wrong, they persist undetected. The UK's Environmental Industries Commission argues small fines can wrongly make companies view them as a cost-effective solution for environmental harm.¹⁸ Corporations, unable to be jailed, often receive monetary penalties, but their effectiveness is uncertain. Individual fines account for paying ability, but this isn't consistent for corporations, causing imbalance. For example, the Water Act¹⁹ imposes a 10,000 Rupees maximum fine for both, yet corporations evade imprisonment, reducing deterrence. The National Green Tribunal Act of 2010 has stricter penalties, but it's limited to complex civil cases. Research-wise, it's vital to fine corporations for environmental breaches, considering their superior financial capacity.

2.3) *“ex Non Cogit Ad Impossibilia”*²⁰

Due to the water tight statutes of criminal law, we notice an imbalance of punishment between corporations and individuals. Corporations cannot be jailed, but new provisions must be set to imprison key decision-makers for clear responsibilities in serious cases is needed. A model to strive for is exemplified by the Income Tax Act²¹, which allows for the prosecution of every individual who carried the responsibility for managing the company's operations at the time of the transgression.

The 47th Commission Report²² introduced a new approach: stigmatizing corporations when

¹⁶ Indian Penal Code, 1860, Chapter IV

¹⁷ German Criminal Code (Strafgesetzbuch – StGB), Chapter 29, offences against the environment.

¹⁸ Grabosky, Peter and Frances Gant, “Improving Environmental Performance, Preventing Environmental Crime”, 2000, (August 16th 11:00 PM) <https://www.ojp.gov/ncjrs/virtual-library/abstracts/improving-environmental-performance-preventing-environmental-crime>

¹⁹ The Water (Prevention and Control) Act, 1974. § 38

²⁰ I.A. Khan, Environmental Law, Allahabad: Central Law Agency, 2002, p.59.

²¹ Income Tax Act, 1961 § 78(b),

²² Report, Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, Volume 1, March 2003, (August 16th 11:00 PM) https://www.mha.gov.in/sites/default/files/criminal_justice_system_2.pdf.

imprisonment isn't possible. Reversing damages, restoring the environment post-misconduct, and penalties like temporary closures for pollution failure are effective. Vigilant monitoring and media's role in stigmatization, akin to greenwashing, are vital.

3) Corporate Social Responsibility

In the Companies Act of 2013, Section 135 mandates Corporate Social Responsibility (CSR)²³, requiring companies to allocate 2% of recent net profits to CSR. To genuinely integrate social and environmental factors, businesses must be sustainable and socially responsible²⁴, not solely profit-driven. They should strive for a triple bottom line: economic, environmental, and social performance, encapsulating people, planet, and profit²⁵

CONCLUSION

The Brutland Report stresses aligning profits and environmental preservation, with profits promoting ecological protection. Challenges in this balance are seen in Environmental Impact Assessment.²⁶ Corporations escape accountability in current legal systems, diluting environmental regulations for development pretexts. Strong enforcement and upholding laws are the solution.

SUGGESTIONS

- 1) The issue's data mostly comes from the West; India lacks comparable statistics. Thus, legislating effective solutions without a clear understanding is tough. Research initiation is vital.
- 2) Globalization spurs corporate and MNC expansion, often exploiting underdeveloped nations²⁷. Thus, controlling MNC entry/exit and promoting local goods is vital.

²³European Commission (2009) Corporate social responsibility. (16th August, 11:30 PM), https://single-market-economy.ec.europa.eu/policies/sustainable-business/corporate-social-responsibility_en

²⁴ Antunes D, Santos A, Hurtado A (2015) The communication of the LCA: the need for guidelines to avoid greenwashing. *Espacios* 36(5), (16th August, 11:30 PM) https://www.researchgate.net/publication/283019567_The_communication_of_the_LCA_The_need_for_guidelines_to_avoid_Greenwashing

²⁵ Elkington J (1994) Towards the sustainable corporation: win-win-win business strategies for sustainable development. *Calif Manag Rev* 36(2):90–100. (16th August, 11:30 PM), <https://doi.org/10.2307/41165746>,

²⁶ Divya B. Rao and M.V. Ramana, Violating Letter and Spirit: Environmental Clearances for Koodankulam Reactors, *Economic and Political Weekly*, Vol. XLIII No. 51, p.14. (16th August 2023, 10:40 PM), <https://www.epw.in/journal/2008/51/commentary/violating-letter-and-spirit-environmental-clearances-koodankulam-reactors>

²⁷ Samir Kumar Singh. (2005). An Analysis of Anti-Dumping Cases in India. *Economic and Political Weekly*, 40(11), 1069–1074. (16th August 2023, 10:40 PM), <http://www.jstor.org/stable/4416337>

- 3) Large corporations surpass small nations' budgets²⁸, making fines insufficient²⁹. Broader actions like stigma, dissolution, or temporary closure are necessary.³⁰
- 4) Merge environmental fines using the 2010 National Green Tribunal Act, Section 26(1)³¹, for wider choices. Quickly institute separate corporate misconduct guidelines, distinct from individual penalties. There could also be a distinct legislation on Polluter Pays Principle.
- 5) Parent firms, despite limited liabilities, own subsidiary profits and must be liable for subsidiary actions.³²
- 6) Strengthen regulators, establish an independent environmental protection entity, and incentivize eco-responsible corporate conduct through tax benefits, maintaining a balanced approach between rewards and penalties.

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²⁸ UNRISD (2002) (16th August 2023, 10:40 PM) <http://www.globalpolicy.org/reform/2002/modelun.pdf>

²⁹ Sterlite Industries(I) Ltd v. Union of India & Ors. (2013) 6 S.C.R 573

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³¹ Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors., WRIT PETITION(C) NO. 375 OF 2012

³² Iridium India Telecom Ltd. v. Motorola Inc, CRIMINAL APPEAL NO.688 OF 2005

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