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Redefining Corporate Criminal Liability with respect to Environmental Crimes

ANANYA AGARWAL¹

ABSTRACT

Corporations play a significant role in the economy of a country, creating employment opportunities and affecting the standard of life of the people. They are a very influential segment of a country and so it is important to hold them accountable for misconduct. Even so, activities undertaken by major corporations often lead to extreme environmental harm. The researcher believes it is imperative to hold corporations criminally liable for environmental damage.

In lieu of the same, the researcher firstly explains the concept of corporate criminal liability and the theories providing a theoretical justification for the same. Secondly, seeks to understand the drawbacks in the current system of corporate criminal liability with respect to environmental crimes and provide solutions to fill the gaps in law and its implementation.

Keywords: *Corporate Criminal Liability, Environmental Crimes, Administrative Sanctions*

I. INTRODUCTION

Industrial growth undeniably is favourable, promoted even due to a myriad of economic reasons. Globalization has led to the growth various forms of companies whose budget sometimes is more than the budget of a small underdeveloped country.²

The issue however, comes in the form of a trade-off. When the environment is harmed and polluted for the advancement of commercialisation, one must pause to understand the environmental cost that goes into industrial growth and try to set a balance. With the new rules announced under EIA Draft 2020, a very obvious global trend is visible. While the government creates stronger rules and laws that favour corporate growth, it often falls short in using law to regulate corporate behaviour³; the result being the continuous degradation of

¹ Author is a student at Symbiosis Law School, Pune, India.

² Vol 1 Issue 2, Angira Singhvi, Corporate Crime and Sentencing in India: Required Amendments in Law, International Journal of Criminal Justice Sciences (July 2006).

³ Singh, Vijay Kumar, Criminal Liability of Corporations – An Environmental Perspective (May 22, 2010). Chapter 3 in: Environmental Crimes: Corporate Liability, ISBN 978-81-314-2521-3.

the environment to a point of no return.

In this context, it is important to understand how the concept of Corporate Criminal Liability affects the corporates of India in the commission of environmental crimes.

(A) Concept of Corporate Criminal Liability

Criminal liability arises only when there has been a violation of criminal law which prohibits certain acts or omissions.⁴ The basic rule of criminal liability is *actus non facit reum, nisi mens sit rea* which means to make one accountable it must be proven that an act or negligence that is prohibited by statute is committed and it is done so with a guilty spirit. Therefore, each offense has two parts, one physical and one mental.⁵

The basis of corporate criminal liability is responsibility and accountability⁶. It is but prudent to impose liability upon corporations for the detriment they cause as a result of the privilege granted to them by the society to pursue their self-interest and profiteering⁷. Since a company has a distinct legal personality, it can sue or be sued, can own and sell assets, or commit an offence⁸. Notably, companies become criminally liable for acts done in course of the business and for which the company bears a responsibility. A company can be made liable for various offences such as failure to comply with safety regulations or environmental legislations of the country⁹.

Although there is consensus that corporations can be held liable under civil and administrative laws¹⁰, there is a bit more controversy when it comes to criminal liability¹¹. There also exists confusion with regard to imposition of criminal liability on corporations with respect to environmental laws. The main issue is that a corporation has no body and soul, which makes it difficult to place *mens rea*, an essential to prove crime.

⁴ M. Arshiya Thansum and M. Kannappan, A Critical Study on Corporate Criminal Liability with Reference to Indian Case Laws, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, 681-692, ISSN: 1314-3395.

⁵ Russell, W.O., Russell on Crime p.17-51 (J.W.C. Turner Ed., New Delhi; Universal Law Publishing Pvt., 2001

⁶ Mahajan, Kartikey, Corporate Criminal Liability: Why Corporations are Preferred and Not the Employees? (2008). Company Law Journal, Vol. 4, p. 11, (2008).

⁷ Sara Sun Beale, A Response to the Critics of Corporate Criminal Liability, HeinOnline, 46 Am. Crim. L. Rev. 1481 (2009).

⁸ Vivek Sadhale & Vikas Agarwal, Criminal Liability Catches Up with Companies, (Last Visited: 1st October 2020, 11:34am), <https://economictimes.indiatimes.com/opinion/et-commentary/criminal-liability-catches-up-with-companies/articleshow/10964731.cms>.

⁹ Kiranpreet Kaur, Corporate Criminal Liability, (Last Visited: 1st October 2020, 11:54am) <https://www.mondaq.com/india/crime/882614/corporate-criminal-liability>.

¹⁰ Anca Iulia Pop, Criminal Liability of Corporations—Comparative Jurisprudence, (2006), Available at: <https://digitalcommons.law.msu.edu/king/81>.

¹¹ Dr. Virender Sindhu, Environmental crimes: An analysis, International Journal of Advanced Educational Research, ISSN: 2455-6157 (Page No. 274-282, January 2018).

(B) Environmental Crimes

The term 'Environmental Crime' has been used vaguely and indiscriminately without any universally accepted definition.¹² From a legal perspective, the best definition is provided by Mary Cliffords and Terry Edwards: '*An environmental crime is an act of violation of an environmental protection statute that applies to the area in which the act occurred and that has clearly identified criminal sanctions for purposes of police enforcement*'.¹³

With respect to corporates, Y. Situ and D. Emmons state: '*An environmental crime is an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanction. This offence harms or endangers people 's physical safety or health as well as the environment itself. It serves the interests of either organizations – typically corporations – or individuals.*'¹⁴

In India, environmental law is structured to consist of imposition of environmental standards on corporates, specifying permissible amounts of pollution etc and the punishment for the environmental crimes stemming from non-compliance with these standards.¹⁵ However, environmental laws in India were truly positively enacted only when the Apex court started to interpret environmental laws in a stricter way and developed key principles¹⁶ such as in the case of the Bhopal Gas Leak Disaster of December 1984.

1. Environmental Laws Penalizing Corporates

There are several legislations that penalize companies responsible for causing pollution upon complaint or discovery. For example, Section 47 of The Water (Prevention and Control) of Pollution Act, Section 40 of The Air (Prevention and Control) of Pollution Act and Section 16 of The Environment Protection Act deal with corporates committing environmental crimes and provide for individual liability of the person in charge of the environment degrading activities of the corporation. However, in such a case, a person may easily be exempted if the said act was beyond his control.

All these Acts specify an imprisonment period or fine but not with respect to corporates.

¹² M. Clifford and Terry D. Edwards, —Defining Environmental Crime, Environmental Crime: Enforcement, Policy and Social Responsibility, Aspen Publishers Inc., Gaithersburg, (1998).

¹³ Singh, Vijay Kumar, Criminal Liability of Corporations – An Environmental Perspective (May 22, 2010). Chapter 3 in: Environmental Crimes: Corporate Liability, ISBN 978-81-314-2521-3.

¹⁴ Y. Situ and D. Emmons, Environmental Crime: The Criminal Justice System's Role in Protecting the Environment, Sage Publications, Thousand Oaks, (2000).

¹⁵ Mandiberg, Susan F. and Faure, Michael G., A Graduated Punishment Approach to Environmental Crimes: Beyond Vindication of Administrative Authority in the United States and Europe. Columbia Journal of Environmental Law, Lewis & Clark Law School Legal Studies Research Paper No. 2008-21, (2009).

¹⁶ Singh, Vijay Kumar, Criminal Liability of Corporations – An Environmental Perspective (May 22, 2010). Chapter 3 in: Environmental Crimes: Corporate Liability, ISBN 978-81-314-2521-3.

Notably, each of these Acts, have a separate section for offences by corporates and are exactly the same in all national environmental legislations. Unfortunately, the efficacy of these Acts is debatable and discussed further in this paper.

II. LITERATURE REVIEW

(A) Criminal Liability as a Deterrent to Environmental Crimes

TITLE: Ethan H. Jessup, Environmental Crimes and Corporate Liability: The Evolution of the Prosecution of Green Crimes by Corporate Entities, 33 NEW ENG. L. REV. 721 (1999).

This paper seeks to explain why criminal enforcement is the most effective deterrent against commission of environmental crimes. It states that the power of the State to cause a loss of freedom or imposing personal criminal liability is a surety that businesses comply with environmental regulations. Exemplary penalties deter the mindset of the business community that such penalties are simply a cost that can be passed on to the consuming public.

The researcher completely agrees to this point of view. However, the one thing this paper does not take into consideration is that this point of view holds true only when the implementation of criminal law is sincere and in proportion to the crime committed. Refusal to identify personal liability or extremely low fines that seem insignificant during a cost-benefit analysis nullify the aim and effectiveness of imposing criminal liability in the first place. Therefore, it is important to identify the form and extent of corporate criminal liability that must be applied in a given situation.

(B) The Issue of Mens Rea

Title: Kartikey Mahajan, Corporate Criminal Liability: Why Corporations are Preferred and Not the Employees? Company Law Journal, Vol. 4, p. 11, 2008.

The basis of criminal liability is *actus reus* and *mens rea*, which means guilty act and guilty mind. The issue in imposing criminal liability on corporations comes in the form of establishing a guilty mind. This paper seeks to find a solution to this problem through:

1. Identification Theory:

The genesis of this theory can be found in *Lennard's Carrying Co. Ltd., v. Asiatic Petroleum Co., Ltd.*¹⁷ which stated:

'A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody

¹⁷ *Lennard's Carrying Co. Ltd., v. Asiatic Petroleum Co., Ltd.*, AC 705.

who for some purposes may be called an agent, but who is really the directing mind and will of the corporation; the very ego and centre of the personality of the corporation.’¹⁸

Therefore, a principle was founded that if the conduct of an agent or employee was such that it could be identified with the company, the company may be held liable for the conduct¹⁹.

This theory creates limitations of two kinds:

- a. This theory may be applicable in cases of small companies with few directing minds
- b. Cases in which the crime committed may be beyond the control of the directing minds of the company will be excluded from this concept.

2. Vicarious Liability:

Based on the concept of *respondeat superior*, corporations are viewed as principals and directors and other employees as the agents. The liability for criminal acts committed by officials and directors, administrators and subordinates, subjugating workers and independent contractors therefore applies to the company.²⁰ To understand this theory as an answer to the mens rea question, one must look at the judgement pronounced in the *Motorola Case*²¹. In this case, Iridium brought a case of cheating against Motorola, against the company and not its employees. Motorola argued that being a corporate body, it did not have mens rea and therefore it could not be made liable for cheating under IPC. However, these arguments were rejected as the courts considered vicarious liability in this case. Both these theories provide a theoretical justification for imposing criminal liability on the corporates as a separate legal entity but fail to touch upon the personal liability of the directing minds.

(C) Personal Liability of Directing Minds

Title: Kumar, Abhimanyu, Corporate Criminal Liability (August 10, 2009). Available at SSRN: <https://ssrn.com/abstract=1446669>

This paper makes a case for lifting of the corporate veil with regard to corporate crimes. The separate personality of the company is a statutory privilege and should be used for legal business purposes only²². When a dishonest use of the legal entity is made, the concerned individual will not be allowed to take shelter behind the corporate personality. To further the

¹⁸ *Id.*

¹⁹ Singh, Vijay Kumar, Criminal Liability of Corporations – An Environmental Perspective, Chapter 3 in: Environmental Crimes: Corporate Liability, ISBN 978-81-314-2521-3 (2002).

²⁰ Kartikey Mahajan, Corporate Criminal Liability: Why Corporations are Preferred and Not the Employees? Company Law Journal, Vol. 4, p. 16, (2008).

²¹ Iridium India Telecom Ltd. v Motorola Inc., (2010) 14 (ADDL) SCR 591.

²² Kumar, Abhimanyu, Corporate Criminal Liability (August 10, 2009). Available at SSRN: <https://ssrn.com/abstract=1446669>.

case of personal liability, the author relied on the case of *Kapila Hingorani v State of Bihar*²³ where the court held that when a corporate entity is abused for an unjust purpose, the veil can undoubtedly be lifted when the act is found to oppose justice, revenue or workman or is against the public interest. The researcher considers this paper in the light of environmental crimes. Degradation of the environment for personal benefit is indisputably against public policy. The Indian courts in such a scenario should not hesitate to hold the directing minds personally liable.

(D) Corporate Compatibility of Environmental Laws

TITLE: Puneet Pathal, International Environmental Crime: A Growing Concern of International Environmental Governance, 13 US-CHINA L. REV. 382 (2016).

This article focuses on the fact that on an international level, response to environmental crimes has been in the form of non-criminal solutions. At a domestic level, environmental crimes are seen as extension of administrative laws. It states:

*'Many environmental obligations are vague and broad. Typically, these principles are designed for broad domestic regulation or inter-state relations rather than the acting standards of criminal justice.'*²⁴

However, the paper fails to focus on the concept of corporate compatibility of environmental laws. The reason most environmental obligations are vague is because they hesitate in laying down laws that make corporates clearly liable. For instance, in India, Air Act, 1981, contains a section on offences by companies²⁵. Although an enabling provision, it fails to deal with pollution caused at the hands of a corporate specifically, largely reducing the effect of the Act on corporates. The fines levied too are pari materia to the fines levied on an individual person, and so are inadequate and do not act as a deterrent at all. Therefore, the researcher believes that elimination of the vagueness and arbitrariness of environmental laws will go a long way in levying criminal liability. Criminal liability coupled with administrative sanctions is required to ensure compliance with the set environmental standards.

III. RESEARCH OBJECTIVE

This research paper seeks to analyse whether the concept and imposition of Corporate Criminal Liability on corporations in India is an effective deterrent to commission of

²³ *Kapila Hingorani v State of Bihar*, 2003 (6) SCC 1.

²⁴ Kumar, Abhimanyu, *Corporate Criminal Liability* (August 10, 2009). Available at SSRN: <https://ssrn.com/abstract=1446669>.

²⁵ Section 40 of the Air Act, 1981. Exact provisions can be found under Section 47 of Water Act, 1974 and Section 16 of Environment Act, 1986.

environmental crimes in the view of the general Indian public. To further the study, the author lays down two hypotheses:

1. Mere imposition of corporate criminal liability in its present form is not adequate in deterring environmental crimes in view of the general public.
2. Administrative sanctions in the form of a carrot-stick approach is additionally required.

IV. METHODOLOGY

For the purpose of this paper, the author has made use of primary data by gauging the public opinion through a survey²⁶. The researcher created a sample space of 100 participants of varied ages, mostly legal adults²⁷. Their general knowledge was tested before beginning the survey so as to create a knowledgeable sample space. 97% of the total participants voted 'yes' to knowing about incidents such as the Bhopal Gas Tragedy²⁸. The successive questions nevertheless were formulated to match the understanding of people who are not necessarily from the legal fraternity.

However, this survey is limited in the sense that it has been conducted in a general way, incorporating the opinions of laymen. It lacks a legal perspective. Therefore, the data collected has been supplemented by secondary data in the form of research papers and articles written by the legal community to prove the above hypotheses.

V. ANALYSIS

(A) Development of Corporate Criminal Liability in India

The development of the concept of corporate criminal liability in India revolves around the concept of mens rea. For a long time, Indian courts believed that a corporate could not be held guilty for offences requiring a guilty mind. An extension of this logic was that companies could not be prosecuted for offences requiring imprisonment since a corporation cannot be imprisoned.²⁹ For example, in the case of *A. K. Khosla v. S. Venkatesan*³⁰, two corporations were charged with fraud. The court in this case highlighted that the two prerequisites for penalizing a corporation was the element of mens rea and the ability to impose imprisonment.

²⁶ Annexure 1, Fig 7.11.

²⁷ Annexure 1, Fig 7.1.

²⁸ Annexure 1, Fig. 7.2.

²⁹ B.N. Monisha and Keerthana.J, *Criminal Liability of Corporation- An Indian Perspective*, ISSN: 2321-4171 http://jsslawcollege.in/wp-content/uploads/2013/12/CRIMINAL-LIABILITY-OF-CORPORATION_-AN-INDIAN-PERSPECTIVE.pdf.

³⁰ *A. K. Khosla v. S. Venkatesan*, (1992) Cr.L.J. 1448.

There was nevertheless considerable concern of whether a corporation might be guilty to be convicted when the sentence set down in the statute was fine and imprisonment. *MS Javali v. Mahajan Borewell & Co and Ors* discussed this subject for the first time. The court found that both prison and fine had to be imposed where possible and only fine would be imposed in cases where prison was not possible. However, this left one area uncertain. What happens in cases of mandatory imprisonment? This question was dealt with in *Standard Chartered Bank v. Directorate of Enforcement*³¹. The Apex Court in this case rejected the notion that a company can avoid criminal prosecution in cases simply because a custodial sentence is mandatory. Since the corporation cannot be imprisoned, the court cannot enforce that sentence, though it will more likely impose the penalty if detention and fines are prescribed as punishment.³²

To summarize the current situation in India, one can look at the judgement given in *Iridium India Telecom Ltd. v. Motorola Incorporated and Ors*³³ where the Supreme Court held that businesses should stop claiming immunity from liability on the grounds that they would have been unable to possess the mens rea needed by the criminal offense commission. By introducing a doctrine of attribution and imputation, the principle that an organization is not responsible for the commission of a crime has been dismissed.

(B) Corporate Criminal Liability for Environmental Degradation

According to a survey conducted by the researcher, 93% of the people surveyed believe that corporates contribute to the overall environmental degradation and 96% people that they should be made criminally liable for the same. Therefore, in the public's opinion too corporates must be made criminally liable. The issue presents itself in the form of weak implementation and scattered legislation.

In India, there is a disconnect between corporate criminal liability and Indian laws. For example, Sections 45, 63, 68, 70(5), 203, etc of the Indian Companies Act hold only the personnel liable and not the company as a whole.³⁴ Laws in India do not make corporations criminally liable and even if they do so, the statutes and judicial interpretations impose no other punishments except for inadequate fines.³⁵ This inadequacy of the corporate criminal

³¹ **Standard Chartered Bank vs. Directorate of Enforcement, AIR 2005 SC 2622.**

³² Kiranpreet Kaur, Corporate Criminal Liability, (Last Visited: 1st October 2020, 11:54am) <https://www.mondaq.com/india/crime/882614/corporate-criminal-liability>.

³³ Iridium India Telecom Ltd. v. Motorola Incorporated and Ors. (2010) 14 (ADDL) SCR 591.

³⁴ Angira Singhvi, Corporate Crime and Sentencing in India: Required Amendments in Law, International Journal of Criminal Justice Sciences Vol 1 Issue (2 July 2006).

³⁵ N. Monisha and Keerthana.J, Criminal Liability of Corporation- An Indian Perspective, ISSN: 2321-4171 http://jsslawcollege.in/wp-content/uploads/2013/12/CRIMINAL-LIABILITY-OF-CORPORATION_-AN-

liability with respect to environmental crimes is evident by the fact of how few reported cases there are of environmental pollution by these companies³⁶. This issue is further highlighted by the fact that there does not exist one solidified law dealing with this topic but rather general provisions scattered in various statutes³⁷.

(C) Computation of Fines

Arguendo, in the absence of an explicit provision providing for the imprisonment, most courts have decided to impose a fine only, even in cases a sentence of imprisonment has been prescribed. It is a basic concept that fines must be levied considering the pecuniary circumstances of the victim, magnitude of the crime and the character.³⁸

The fines levied for a corporate and individual person for commission of environmental crimes is in the same magnitude. The law here falls short in understanding the financial capacity of the wrongdoer. Fining one person a certain amount is going to be extremely less when the same amount is fined to a corporate. In these cases, the corporates often end up doing a cost-benefit analysis to find out whether the compliance would benefit them financially or non-compliance would.³⁹

To illustrate, the fine for non-compliance with regulations under Water Act is a maximum of Rupees 10,000/-. Under Air Act, Section 38 prescribes a fine of Rupees 10,000/- for acts which amount to obstruction in the functioning of relevant authorities. These sections provide for imprisonment as well which is not implemented against. All in all, these fines fall extremely short in acting as a deterrent for corporates.

Notably, the National Green Tribunal Act, 2010 contains higher penalty provisions but its jurisdiction is limited to civil cases only where a substantial question of law has arisen.

The researcher believes that the fines should be levied against corporates for environmental crimes, keeping in mind that the financial capacity is more than an individual person. According to the survey taken by the researcher, it was found that 55% of the people believed that the fines levied should be equal to the estimated project revenue for which the crime has been committed and 42% people believed that the fine should be more than the estimated

INDIAN-PERSPECTIVE.pdf.

³⁶ Engobo Emeseh, Challenges to Enforcement of Criminal Liability for Environmental Damage in developing countries: with particular reference to the Bhopal Gas Leak Disaster, January 2003, Research Gate.

³⁷ Balakrishnan. K; Corporate Criminal Liability - Evolution of the concept, (1998) Cochin University Law Review p.255

³⁸ Hussaini, Hamzah, Corporate Criminal Liability: An Indian Perspective (October 9, 2019). Available at SSRN: <https://ssrn.com/abstract=3550424>

³⁹ Singh, Vijay Kumar, Criminal Liability of Corporations – An Environmental Perspective (May 22, 2010). Chapter 3 in: Environmental Crimes: Corporate Liability, ISBN 978-81-314-2521-3, Available at SSRN: <https://ssrn.com/abstract=2972053>

project revenue⁴⁰. This will not only render a cost-benefit analysis surely useless but also act as an effective deterrent in terms of exemplary damages.

(D) Imprisonment and Personal Liability

Indian criminal law requires a strict interpretation of law and high burden of proof in cases where imprisonment is mandated as a punishment⁴¹. Therefore, it becomes difficult to sentence a corporation to imprisonment since it cannot physically be jailed. Currently, most courts include only fine as a form of punishment for companies. The Law Commission in its 41st Report speaks of introducing fines as the only punishment as it follows the legal maxim, *lex non cogit ad impossibilia*, which means that the law does not contemplate something which is impossible.⁴²

However, this logic creates an inequality as it places individual persons and corporates at a dissimilar footing. A person not complying with environmental laws would become liable to fines *and* imprisonment whereas a corporation would only be liable to a fine⁴³, which as discussed above, is insufficient.

According to the survey taken by the researcher 83% of the people surveyed believed that the directing minds of the company should be attributed with the criminal consequences of the company's illegal acts i.e., be made personally liable⁴⁴. 90% of the sample space believed that the best deterrent to environmental crimes would be a combination of imprisonment and fines depending on the gravity of the crime.⁴⁵

Since a corporate cannot be imprisoned, in cases of grave crimes where responsibility can directly be attributed to the directing minds of the corporation, a provision should be made for the imprisonment of the directing minds. Such a provision for prosecution exists in Income Tax Act as Section 278(b) which allows for the prosecution of every person who was in charge of the conduct of the business of the company at the time of the offence.

(E) Administrative Sanctions

Neither civil law nor administrative law is enough to deter corporate misconduct.⁴⁶ However,

⁴⁰ Annexure 1, Fig. 7.7.

⁴¹ I.A. Khan, Environmental Law, Allahabad: Central Law Agency, 2002, p.59.

⁴² Divan, Shyam and Armin Rosencranz, Environmental Law and Policy in India: Cases, Materials and Statutes, 2nd Ed. Oxford India Paperbacks, 2002, p.1

⁴³ Pieth, Mark, and Radha Ivory. Emergence and convergence: Corporate criminal liability principles in overview. Corporate Criminal Liability. Springer, Dordrecht, 2011. 3-60

⁴⁴ Annexure 1, Fig.7.5.

⁴⁵ Annexure 1, Fig. 7.6.

⁴⁶ Deividas Soloveičikas, Criminal Responsibility of Corporate Bodies: Another area to pass the threshold of Ultima Ratio? University of Vilnius.

criminal liability alone cannot be the answer either. There should be a proportional blend of corporate criminal liability and administrative sanctions through regulatory bodies that check the actions of the corporates. A concept of environmental audit must be created.⁴⁷ The researcher believes that along with criminal liability, administrative sanctions must be imposed for more effective compliance with environmental laws. According to the survey, 83% people believed that sanctions levied without the interference of the court are additionally required⁴⁸.

In lieu of the same, economic sanctions can be made in non-monetary terms. A concept of corporate death can be introduced, where the defaulting company shuts down the division that is committing the crime in grave situations⁴⁹. Or temporary closure of the factory not complying with the pollution standards⁵⁰. An important approach is reversal of damages where possible. If a company has polluted the river it must be mandated to take the responsibility of cleaning up the river as their own expense and restore the environment back to its original position.

Another important method is to levy social sanctions. Without doubt, the reputation and goodwill is a necessary consideration to any corporate. The Law Commission in its 47th report had stated the following:

*'It is observed that though a company had no physical body and traditional punishments might thus prove ineffective, the real penalty could be inflicted upon its respectability, that is, by way of a stigma.'*⁵¹

In the same vein, it may be prudent to create a system of public stigmatization. In the survey conducted by the researcher, 68% people voted 'yes' and 26% people voted 'maybe' when asked if companies committing environmental crimes must be publicly stigmatized⁵². This form of penalty can be levied by forcing the corporation to publish its crimes publicly and fund the whole publication process.⁵³

Further, there should be a carrot-stick approach. 88% people believe that a company should

⁴⁷ Singh, Vijay Kumar, Criminal Liability of Corporations – An Environmental Perspective (May 22, 2010). Chapter 3 in: Environmental Crimes: Corporate Liability, ISBN 978-81-314-2521-3.

⁴⁸ Annexure 1, Fig. 7.9.

⁴⁹ Hussaini, Hamzah, Corporate Criminal Liability: An Indian Perspective (October 9, 2019). Available at SSRN: <https://ssrn.com/abstract=3550424>.

⁵⁰ *Id.*

⁵¹ Report, Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, Volume 1, March 2003, https://www.mha.gov.in/sites/default/files/criminal_justice_system_2.pdf.

⁵² Annexure 1, Fig 7.10.

⁵³ Robson, Regina A. Crime and Punishment: Rehabilitating Retribution as a Justification for Organizational Criminal Liability, Am. Bus. LJ 47 (2010).

receive benefits for regular and effective compliance with environmental laws and improving the current health of the environment. These incentives should be awarded in terms of tax rebate practicing good governance measures in protecting the environment.

VI. CONCLUSION AND SUGGESTIONS

With the above analysis, it can be made clear the current meaning of corporate criminal liability must be redefined with respect to environmental crimes. The inadequacy of the legislature in the practical implementation of criminal liability on corporates for non-compliance with environmental regulations is patent and required modification in the sense of tightening the laws and making the implementation stricter so that more incidents came under the purview of criminal liability. In lieu of the same, the researcher summarizes and puts forth certain suggestions:

1. Fines should be levied keeping in mind the size of the corporate and in proportion to the estimated project revenue, i.e. equal to or more than, depending on the gravity of the crime.
2. Personal criminal liability must be recognised and strictly enforced and provisions must be laid down for the punishment of the Board of Directors and other directing minds of the company.
3. Administrative sanctions should be expanded to include other methods of control and deterrence such as shutting down of factories that repeatedly break environmental regulations.
4. Adopting a carrot-stick approach. Since a corporate receives negative motivation in terms of deterrence, a concept of positive motivation can be introduced that provides benefits such as tax exemptions to companies that regularly and effectively adhere to environmental regulations.
5. The National Green Tribunal currently only hears civil cases nor does it have the power of suo-moto cognizance. An expansion in the powers of the NGT to hear criminal complaints will open the corporations to criminal liability more often thus ensuring stricter compliance with environmental regulations.
6. The Law Commission had suggested the inclusion of an element of public stigma⁵⁴ against corporates that habitually offend the environmental laws. In the same vein, a

⁵⁴ Report, Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, Volume 1, March 2003, https://www.mha.gov.in/sites/default/files/criminal_justice_system_2.pdf

7. public announcement system should be set up listing the names of these offenders.
8. A weak legislation often provides loopholes for perpetrators to escape through. To impose liability a clear legislative framework is required. Environmental laws in India must be expanded to create a separate law regarding offences by corporates laying down permissible limits, penalty for non-compliance, extent of penalty in proportion to the crimes committed and an express provision for personal liability of the directing minds of the company.

VII. ANNEXURE

Figure 7.1.

What is your age?

100 responses

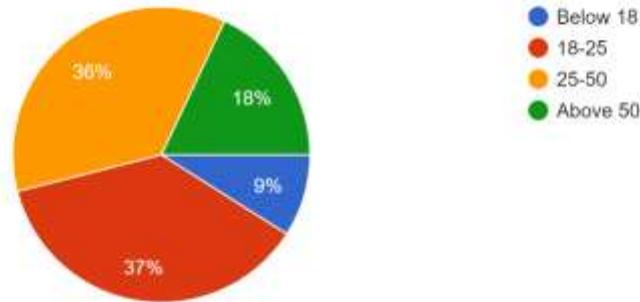


Figure 7.2.

Are you aware of incidents such as the Bhopal Gas Tragedy?

100 responses

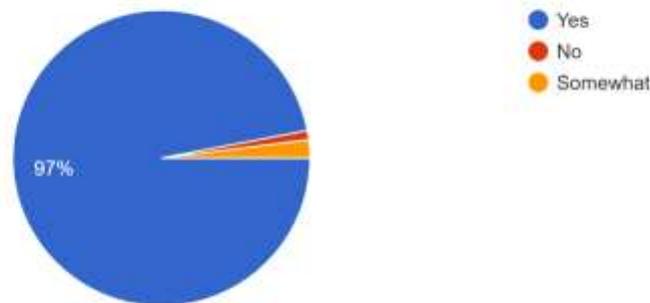


Figure 7.3.

Do you think corporations in India contribute to the overall environmental degradation?

100 responses

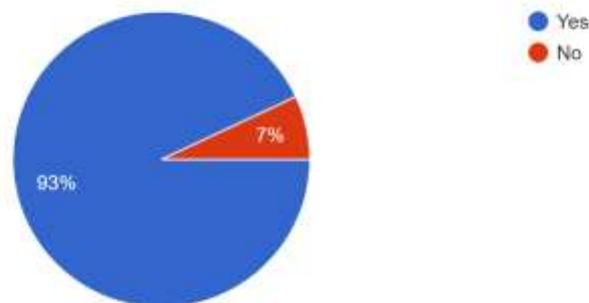
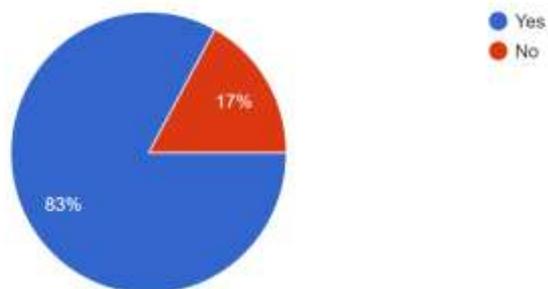


Figure 7.4.

Do you think corporations should be held criminally liable for environmental crimes?
100 responses

**Figure 7.5.**

Do you think the Board of Directors (decision-making entities of the company) should be held personally liable for the environmental crimes committed by the corporation?
100 responses

**Figure 7.6.**

What would be the most effective deterrent to commission of environmental crimes?
100 responses

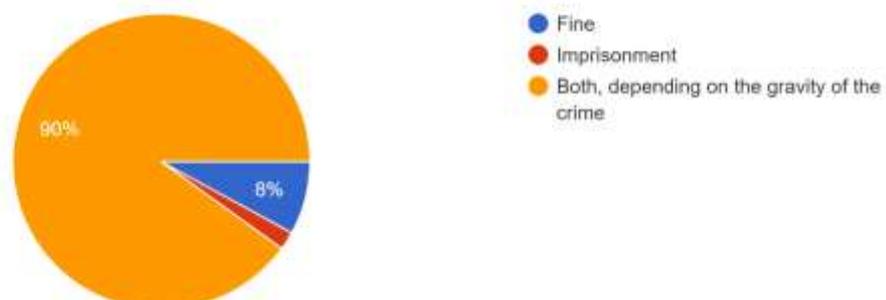


Figure 7.

How much fine should be levied?

100 responses



Figure 7.8.

Do you think additionally administrative sanctions should be levied? (Administrative sanctions are sanctions imposed by the government without intervention by a Court)

100 responses

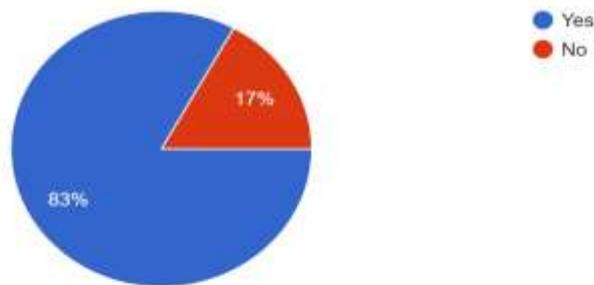


Figure 7.9

Do you think corporations should receive benefits for regular and effective compliance with environmental regulations? (For eg: Tax deductions)

100 responses

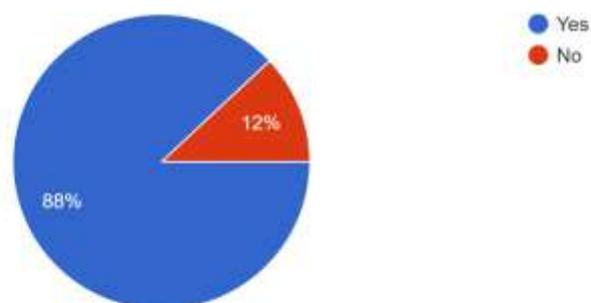
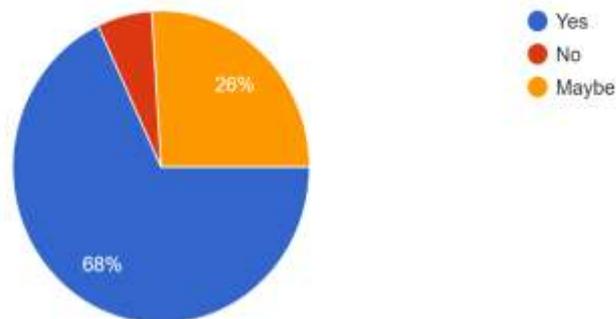


Figure 7.10

Should companies committing environmental crimes be publicly stigmatized? (For eg: Listing the names of offenders in a public announcement)

100 responses

**Figure 7.11.**

10/2/2020

Environmental Crimes and Indian Corporations

Environmental Crimes and Indian Corporations

Hello! This survey is being conducted by Ananya Agarwal from Symbiosis Law School, Pune to gauge public opinion with respect to environmental crimes being committed by Indian companies. The researcher seeks to understand whether the concept and imposition of Corporate Criminal Liability on corporations in India is an effective deterrent to commission of environmental crimes in the view of the general Indian public.

Please note that this exercise is solely for academic purposes and will be used to further this research only.

* Required

1. What is your age? *

Mark only one oval.

- Below 18
- 18-25
- 25-50
- Above 50

2. Are you aware of incidents such as the Bhopal Gas Tragedy? *

Mark only one oval.

- Yes
- No
- Somewhat

10/2/2020

Environmental Crimes and Indian Corporations

3. Do you think corporations in India contribute to the overall environmental degradation? *

Mark only one oval.

Yes

No

4. Do you think corporations should be held criminally liable for environmental crimes? *

Mark only one oval.

Yes

No

5. Do you think the Board of Directors (decision-making entities of the company) should be held personally liable for the environmental crimes committed by the corporation? *

Mark only one oval.

Yes

No

6. What would be the most effective deterrent to commission of environmental crimes? *

Mark only one oval.

Fine

Imprisonment

Both, depending on the gravity of the crime

https://docs.google.com/forms/d/1DxVO0LWSdYd0n1_z2In8b0LHhh-YrzQh2OO4L08sMao/edit

2/4

10/2/2020

Environmental Crimes and Indian Corporations

7. How much fine should be levied? *

Mark only one oval.

- Equal to the estimated project revenue for which the crime has been committed
- Less than the estimated project revenue
- More than the estimated project revenue

8. Do you think additionally administrative sanctions should be levied? (Administrative sanctions are sanctions imposed by the government without intervention by a Court) *

Mark only one oval.

- Yes
- No

9. Do you think corporations should receive benefits for regular and effective compliance with environmental regulations? (For eg: Tax deductions) *

Mark only one oval.

- Yes
- No

10. Should companies committing environmental crimes be publicly stigmatized? (For eg: Listing the names of offenders in a public announcement) *

Mark only one oval.

- Yes
- No
- Maybe