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Liability of Corporate Bodies for Environmental Harm and Financial Crimes: A Critical Legal Analysis

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Liability of Corporate Bodies for Environmental Harm and Financial Crimes: A Critical Legal Analysis

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Abstract

The increasing presence of corporate players in the global economy has only served to augment their powers to influence environmental sustainability besides financial systems. Despite the crucial role that corporations play in the economic development, their activities have equally been associated with significant environmental destruction and complex financial machinations. The current research paper critically assesses the legal framework that can be utilized in the liability of corporate entities in environmental degradation and financial fraud with special reference to Indian legal framework.

The paper analyses the evolution of corporate criminal responsibility, the natural problems in defining the mens rea of artificial legal persons. It talks about the key legal principles, including absolute liability, vicarious liability and doctrine of attribution that have contributed greatly to the liability of corporations. The effectiveness of the legal methods and regulatory frameworks in addressing corporate misconduct is also examined in the paper.

The research reveals by studying the trends in the judiciary and particularly in the case of Bhopal Gas Tragedy and M.C. Mehta v. Union of India that the judiciary is actively involved in expanding the liability of a company. Despite these developments, enforcement inefficiencies, misuse of corporate veil and gaps in regulation are still some of the major challenges.

The paper concludes with the fact that the legal framework in India should be reinforced regardless of the image changes in the country, yet the enforcement mechanism needs to be enhanced, the regulatory control, and the alignment with the international standards such as the ESG governance. Corporate accountability must be enhanced to ensure that the environment is safe and financial integrity is maintained.

Keywords-*Corporate Liability, Environmental harm, Financial Crimes, Absolute Liability, ESG Governance*

Introduction

1.1 Background and Rationale

In the modern globalized economy, corporations have become the leading participants who shape not only the economic development, but environmental sustainability and financial integrity. The growth of industrial work, as well as the rate of technical progress, has greatly enhanced the possibility of environmental damage and sophisticated financial offenses. Corporate entities, although playing a role in the development of the economy, have also been involved in massive environmental degradation, air and water pollution, deforestation, and climate change, and in financial malpractices, such as fraud, money laundering, and insider trading.

Corporate structure changes- small business to multinational conglomerates- have resulted in the spreading of responsibility, and it is now harder to place liability. Conventionally, legal systems were structured to regulate natural persons and therefore, there were conceptual and practical problems with extending liability to artificial legal persons. But as cases of corporate misconducts have been on the rise, the law has evolved to hold corporations both civil and criminal liable.

The devastating effects of environmental damage by companies have been disastrous, especially in developing nations such as India. The notorious industrial tragedy that occurred in the Bhopal Gas Tragedy case has demonstrated the disastrous consequences of corporate negligence and the inefficiency of current legal systems to address the problem in time and offer efficient solutions¹. To these challenges, legal systems in various parts of the globe have increasingly realized that there is need to hold corporations accountable. The judiciary in India has also taken the initiative of broadening the liability scope, especially under Article 21 of the Constitution on the right to a healthy and clean environment, to the right to a healthy and clean environment, and the growing importance of Environmental, Social, and Governance (ESG) practices are indicative of a transition toward a more rigid corporate accountability². In such a way, the purpose of this research is to study the changing legal environment of corporate responsibility towards environmental damage and financial offenses, and to determine whether the current models are relevant to the new challenges.

¹ In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec. 1984, 634 F. Supp. 842 (S.D.N.Y. 1986).

² M.C. Mehta v. Union of India, (1987) 1 SCC 395 (India).

1.2 Research Problem

Nevertheless, even with the important legal changes that have taken place, the practical introduction of the liability on corporate bodies is still an issue of challenge. The conceptual challenge of assigning mens rea, or criminal intent, to a juristic person is one of the major problems. In contrast to natural persons, corporations operate via their directors and officers, which poses some complicated issues as to who the directing mind and will of the company is³.

The other significant issue is the abuse of corporate veil whereby individuals are able to cover themselves against personal liability. Although separate legal personality is a core concept in the corporate law, it has been widely abused to escape responsibility, especially in the instances of environmental harm and monetary frauds⁴.

Also, the enforcement procedures in India are not strong because of the inefficiency of the regulations, the absence of coordination between the authorities and the delays in the procedure. Another problem of environmental litigation is that it may take a long time before a case is heard, diminishing the ability of legal penalties to work. Corporate financial crimes are no exception and are typified by sophisticated transactions and international aspects, which complicate their detection and prosecution.

The research problem is thus based on the ineffectiveness of the current legal frameworks in their use to adequately respond to corporate misconduct as well as holding the perpetrators of environmental damage and financial crimes accountable.

1.3 Study Objectives.

The purpose of the research is to reach the following objectives:

- To critically examine the notion of corporate liability in the scenario of harming the environment and financial crimes.
- To explore the legal and constitutional framework that regulates corporate accountability in India.
- To examine judicial trends and case laws that have established corporate liability.
- To spot loopholes and problems in the current legal regime.
- To propose changes in enhancing corporate accountability mechanisms.

³ Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74 (India).

⁴ Salomon v. Salomon & Co. Ltd., [1897] AC 22 (HL).

1.4 Research Questions

The research aims to answer the following important questions:

- Can corporations be criminally liable to environmental offenses and financial offenses?
- What is the effectiveness of the Indian environmental laws in controlling corporate behaviour?
- How effective have courts been in implementing corporate responsibility?
- What are the shortcomings of the current legal principles like corporate veil and mens rea?
- What can the emerging frameworks like ESG do to enhance corporate governance and liability?

1.5 Research Methodology

This study uses a doctrinal approach as it is concerned with the interpretation of the statutes, judicial rulings, and academic sources. Primary sources are legislative acts like environmental and corporate law, and historic judicial decisions. Secondary sources have been books, journal articles, and reports.

An international comparative approach is also utilized in the review of international developments in corporate liability, especially as far as environmental damage and financial crimes are concerned. This facilitates a wider knowledge of the best practices globally and how they can be applied to the Indian context.

The study also includes analytical approach that is critical in nature, where the usefulness of the current laws is analysed and where reforms are needed.

2. Theoretical Foundations of Corporate Liability

2.1 Concept of Corporate Personality

Corporate liability is based on the principle of corporate personality which acknowledges a company as an independent legal person not inheriting the shareholders or directors. This principle was well established in the historic ruling of *Salomon v. Salomon and Co. Ltd.* in which the House of Lords stated that a company possessed an independent legal person which could hold property, making contracts and could be sued under its own name⁵.

Separate legal personality doctrine is one of the pillars of contemporary corporate law, which supports economic growth by restricting liability of shareholders. But it is this principle that has helped corporations to get away with environmental damage and financial felony. People behind corporate misconduct usually get away with personal liability by establishing a legal gap between the company and its members.

⁵ Supra note 4

To resolve this problem, courts have come up with the doctrine of lifting or piercing of the corporate veil whereby they may look beyond the corporate veil and hold individuals responsible in situations of fraud, misconduct or avoidance of legal liability⁶.

2.2 Development of Corporate Criminal Responsibility.

Traditionally, corporations have been thought to be incapable of committing crimes as criminal liability demanded actus reus (guilty act) and mens rea (guilty mind) which could not be ascribed to an artificial person. This conservative perception was slowly being forgotten as corporate malpractice came into more focus.

Contemporary jurisprudence admits that corporations may be criminally liable under the acts and intentions of their agents. The principle of attribution, or the so-called alter ego doctrine, allows courts to impute the mental state of certain managerial employees to the company.

In *Iridium India Telecom Ltd. v. Motorola Inc.*, the Supreme Court of India was categorical in its acceptance that a company could have the necessary mens rea by its directing mind and will, a move which brought Indian corporate criminal jurisprudence into conformity with the international trends⁷. Moreover, the case of *Standard Chartered Bank v. Directorate of Enforcement* affirmed that even crimes that involve mandatory imprisonment can be charged and fined to a corporation⁸.

2.3 Principles of Corporate Liability.

Doctrine of attribution (Alter Ego Principle) (A).

The attribution doctrine asserts that the actions and the state of mind of those individuals who dictate the affairs of the corporation- directors and senior executives can be attributed to the corporation. This is a crucial principle in determining corporate liability in the areas of environmental and financial crime. The use of this doctrine makes sure that corporations cannot get out of liability by stating that they did not mean to do it since the will of their controlling officers is viewed as the will of the company⁹.

(B) Vicarious Liability

The term vicarious liability depicts the liability on an individual due to the actions of another individual. In the business world, it enables businesses to face liability to the malpractices of their employees during employment.

⁶ *Life Ins. Corp. of India v. Escorts Ltd.*, (1986) 1 SCC 264 (India).

⁷ *Supra* note 3

⁸ *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530 (India).

⁹ *Tesco Supermarkets Ltd. v. Nattrass*, [1972] AC 153 (HL).

This doctrine is especially applicable in regulatory crimes and criminal offences involving the breaking of the law whereby it can be hard to prove that top management was directly involved. Vicarious liability is a common law that is entrenched in Indian laws to provide effective imposition of corporate malpractice.

(C) Strict and Absolute Liability.

The principles of strict and absolute liability are important in environmental law. In strict liability, an individual is responsible in case of harm caused by dangerous activities regardless of negligence but has some exceptions. But the principle of absolute liability that is arrived at by the Supreme Court of India is one step further as it does away with all exceptions.

The doctrine of absolute liability was proposed by the Supreme Court in *M.C. Mehta v. Union of India*, which states that in cases involving hazardous operations, the enterprise is absolutely liable to any harm caused irrespective of the faultiness of the enterprise¹⁰.

(D) Piercing the Veil of Incorporation.

The piercing of the corporate veil doctrine enables the court to ignore the separate legal identity of a company and to impose personal liability on the members or directors. This doctrine is applied when it comes to fraud, avoidance of legal duties or misuse of corporate form.

This doctrine is especially relevant in the circumstances of environmental damage and financial fraud because in many cases the corporations are run with the help of the multi-tiered structure of subsidiaries and shell companies. The effect of the corporate veil is that by lifting it, courts will be able to hold those behind the wrongful actions liable.¹¹

2.4 Financial crime liability on corporations.

The liability of corporations in financial criminal activities has become a popular issue as the nature of financial transactions continues to grow and business activities are internationalized. Corporate structures are usually used to perpetrate financial crimes, including fraud, insider trading, bribery, and money laundering, with the individuals perpetrating such behavior remaining unknown.

The Indian law deals with corporate financial crimes under different laws such as the Companies Act, 2013 and the Prevention of Money Laundering Act, 2002. These laws do not only hold corporations liable, but also their directors and officers, especially when it comes to consent, connivance, or negligence. The case of *Sunil Bharti Mittal v. CBI* underscored the importance of a balanced approach

¹⁰ Supra note 2

¹¹ *State of Rajasthan v. Gotan Lime Stone Khanij Udyog Pvt. Ltd.*, (2016) 4 SCC 469 (India).

to attribution of liability so that a person cannot be liable just because of his or her status.

2.5 Interface of Environmental Harm and Financial Crimes.

The overlap of environmental degradation with money related crimes is becoming more pronounced in contemporary business malpractices. Illegal mining, industrial pollution, and environmental violations are usually accompanied by financial anomalies, such as tax evasion, falsification of records, and money laundering¹².

This overlap highlights why there is a need to have an integrated legal approach that combines both the environmental and financial aspects of corporate liability. It also emphasizes the significance of regulatory coordination and integration of holistic compliance systems, including the ESG (Environmental, Social, and Governance) standards, to guarantee corporate responsibility.

3. Statutory Framework Governing Corporate Liability in India

3.1 Constitutional Framework

Corporate liability of environmental damage in India is anchored on the constitutional grounds. The Constitution does not only grant the State the power to control the actions of corporations but also sets forth duties to preserve the environment. Through the broad interpretation of article 21 that ensures the right to life and personal liberty, the judicial system has made the right to a clean and healthy environment a right and has enhanced the legal framework that corporations are responsible¹³.

In addition, Article 48A (Directive Principles of State Policy) require the State to preserve and enhance the environment, and Article 51A(g) places a general obligation on citizens, including corporate entities, to preserve natural resources¹⁴. In *Subhas Kumar v. State of Bihar*¹⁵, the Supreme Court confirmed that the right to clean water and air is an extension of Article 21 and this constitutional framework should play the normative role in the statutory regulation and judicial intervention in the case of corporate environmental liability.

¹² Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 (India).

¹³ M.C. Mehta v. Union of India, (1987) 1 SCC 395 (India).

¹⁴ INDIA CONST. arts. 48A, 51A(g).

¹⁵ Subhash Kumar v. State of Bihar, (1991) 1 SCC 598 (India).

3.2 Environmental Statutory Framework

3.2.1. The Environment (Protection) Act, 1986(A).

The umbrella legislation of environmental protection in India is the Environment (Protection) Act, 1986 (EPA). The Act, which was enacted after the Bhopal Gas Tragedy, gives a broad authority to the Central Government to control the activities of industries and to curb the activities that pollute the environment.

Section 15 of the Act outlines punitive measures to the violation of its provisions including imprisonment and fines¹⁶, more importantly, Section 16 specifically takes care of the offending companies, stating that all individuals in charge of, or obligated to the conduct of the business of the company shall be regarded guilty unless they can demonstrate ignorance, or due diligence¹⁷.

This clause creates a structure of vicarious liability so that the corporate officers cannot evade liability in the case of environmental offences.

3.2.2. Water (Prevention and Control of Pollution) Act, 1974 (B).

Water Act is an effort to avert and manage water pollution and preserve or rehabilitate the wholesomeness of water. It creates Central and State Pollution Control Boards, which have the power to control industrial discharge¹⁸.

Section 47 of the Act addresses the liability of companies and adopts a similar principle of vicarious liability as under the EPA. The Supreme Court has highlighted the importance of strictness of the environmental laws in the context of industrial pollution, and this goes to support the responsibility of corporate bodies.

3.2.3 The Air (prevention and Control of Pollution) Act, 1981.

The Air Act is about the prevention, control, and abatement of air pollution. Similar to the water act, it creates regulatory bodies and sets regulations on emissions. Section 40 of the Act deals with corporate liability, which makes companies and their officers liable to violations¹⁹. The Act is important in controlling the emissions of industries and the adherence to the environmental standards.

3.2.4. National Green Tribunal Act, 2010.

The National Green Tribunal Act, 2010 provides a specialized court where environmental disputes are to be adjudicated. The Tribunal has the power to offer relief and compensation to environmental damage victims and enforce environmental laws. The Tribunal deploys principles like sustainable development, precautionary principle and the polluter pays principle²⁰. It has

¹⁶ Environment (Protection) Act, No. 29 of 1986, § 15, India Code (1986).

¹⁷ Id. § 16.

¹⁸ Water (Prevention and Control of Pollution) Act, No. 6 of 1974, § 47, India Code (1974).

¹⁹ Air (Prevention and Control of Pollution) Act, No. 14 of 1981, § 40, India Code (1981).

²⁰ National Green Tribunal Act, No. 19 of 2010, § 20, India Code (2010).

become an influential body in administering corporate environmental liability and providing prompt justice.

3.3 Corporate Law Framework

(A) Companies Act, 2013

The Companies Act 2013 is an important Act that controls the behaviour of a company and makes it accountable. Section 166 subjects the directors to fiduciary responsibilities, obligating them to act in good faith and in the best interest of the company, employees, shareholders and the environment²¹.

Section 447 addresses fraud punishment, which is very harsh and includes fines and imprisonment terms²². Section 135 brings about Corporate Social Responsibility (CSR) where some companies are required to engage in some activities that are associated with environmental sustainability²³. All these provisions are geared towards responsible corporate citizenship, and discouragement of mischief.

(B) SEBI Regulations and ESG Framework.

In order to improve corporate governance and transparency, the Securities and Exchange Board of India (SEBI) has come up with different regulations. Business responsibilities and sustainable reporting (BRSR) framework mandates businesses to report on their practices regarding the environment, social and governance. This is a transference to preventive regulation in terms of transparency and accountability. The increasing focus on ESG norms is a worldwide tendency to become more environmentally and socially oriented in the of corporate representatives.

3.4 Financial Crime Regulatory Framework.

PMLA: (A) Prevention of Money Laundering Act, 2002.

The PMLA is intended to avert money laundering and seize proceeds of crime. It renders accountable the companies and their officials who are engaged in the laundering of illegal funds. The Act can be applied to corporate entities and their directors may be found liable in case the offence is carried out with their consent or connivance²⁴.

(B) Companies Act and Fraud in a Company.

Fraud is broadly defined in section 447 of the Companies Act, 2013 and is heavily punished. It is applicable to individuals and corporate bodies, thus covering all aspects of financial misconduct.

²¹ Companies Act, No. 18 of 2013, § 166, India Code (2013).

²² Id. § 447.

²³ Id. § 135.

²⁴ Prevention of Money Laundering Act, No. 15 of 2003, § 70, India Code (2003).

(C) SEBI Act and Insider Trading Regulations.

SEBI act controls the securities markets and bans insider trading and fraud. Business companies that engage in such practices face punishment, such as fines and market sanctions.

3.5 Environmental and Financial Liability convergence.

Corporate malpractices are frequently accompanied by infractions of the environment as well as financial anomalies. An example is that illegal mining activities can entail environmental degradation and criminal acts like tax evasion and money laundering.

The convergence underscores the necessity of coming up with a unified regulatory framework that can cover both sides of the corporate liability. It also highlights the significance of coordination of the regulatory bodies such as the environmental agencies and financial regulators.

4. JUDICIAL TRENDS AND CASE LAW ANALYSIS

4.1 Transformative Role of the Indian Judiciary in Corporate Environmental Liability

Indian environmental jurisprudence has not been developed by innovation in the form of a legislation, but has been greatly influenced by judicial intervention. Courts have taken the initiative to broaden the liability of the corporate actors due to the regulatory lack of action and administration gaps. The most evident manifestation of this growth has been in the interpretative approach of Article 21 by the Supreme Court that has been judicially changed into an environmental rights source that can be enforced upon the State as well as upon the private entities.²⁵

Another landmark in this development is the decision in *M.C Mehta v. Union of India*, in which the Court was fully aware of stepping out of line with the common law principles of the past and stated the doctrine of absolute liability. The Court established a strict criterion against risks of businesses dealing with dangerous activities, unlike the rule in *Rylands v. Fletcher* that allowed exceptions, in that the Court held that the entire social cost of their business activities had to be absorbed within the business enterprise. This change of doctrine is a normative change-fault based liability to risk based accountability.²⁶ This doctrinal shift reflects a normative reorientation—from fault-based liability to risk-based accountability.

²⁵ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598 (India).

²⁶ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India); *Rylands v. Fletcher*, (1868) LR 3 HL 330 (UK).

4.2 Corporate Accountability and the Legacy of the Bhopal Disaster

The Bhopal Gas Tragedy continues to be a reference point in the debate of corporate responsibility in India. The scale of the catastrophe was able to expose not only the carelessness of corporations but also the ineffectiveness of legal institutions in their attempts to do effectively nothing about the mass destruction of multinational corporations.

In *Union Carbide Corp. v. Union of India*, the Supreme Court ruled in favor of a settlement that was intended to provide short-term solutions, yet the outcome received the long-term blame of underestimating the extent of the damage and a flaw in not establishing a good precedent of corporate accountability. The case illustrates a dilemma in the decision-making process by the judicial system, the immediate necessity to compensate the victims, and the preventive objective in the long term.

It is worth noting that the Bhopal event resulted in changes in laws and courts, including strengthening environmental control and eventual articulation of stricter liability laws. But it also revealed that without the establishment of effective mechanisms and cooperation in transnational regulation, the legal doctrines cannot operate on their own.

4.3 Judicial Recognition of Corporate Criminal Liability in Financial Contexts

The judiciary involvement with corporate responsibility has not been limited to environmental matters; it has also been applied in financial offenses. The Indian Supreme Court has over time broken the previous reluctance to bring criminal liability against corporations.

In *Iridium India Telecom Ltd. v. Motorola Inc.*, the Court made it clear that corporate persons may have the necessary mens rea by way of their controlling officers²⁷. This acknowledgement is noteworthy in that it breaks the long-standing conceptual wall and brings the Indian law into harmony with contemporary ideas of corporate responsibility.

In addition, in *Standard Chartered Bank v. Directorate of Enforcement*, the Court considered the pragmatic question of punishment, and found that corporations may also be charged despite statutory requirements to impose a fine, as an alternative penalty²⁸. This practical interpretation makes sure that companies cannot get away with liability because of technical restrictions to sentencing.

These rulings collectively create the fact that the corporate entities are fully compatible with the criminal justice system, especially when it comes to financial offenses.

²⁷ *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74 (India).

²⁸ *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530 (India).

4.4 Liability of Directors: Between Accountability and Overreach

Another issue that has grown in judicial circles has been the scope to which individual directors and officers should be liable. Courts have aimed to balance between the prevention of the abuse of corporate structure and the indiscriminate liability attribution.

In *Sunil Bharti Mittal v. CBI*, the Supreme Court dismissed the idea of automatic vicarious liability of directors, pointing out that the criminal liability has to be founded on either of the statutory provisions or provable contribution to the alleged offence²⁹. This would avoid the watering down of the criminal law principles by making sure that liability is not assigned merely over the basis of corporate hierarchy.

Simultaneously, the courts have never been shy to jump in where corporate forms are employed as a tool of fraud. The Court, in *State of Rajasthan v. Gotan Lime Stone Khanij Udyog Pvt. Ltd.*, has indicated that the corporate veil will not be seen as a shield against misuse of legal personality in an area where it is determined that legal personality may result in injustice³⁰.

This is a two pronged attack in that there is a subtlety in the corporate governance of acknowledging the existence of limited liability, and at the same time ensuring that it is not abused.

4.5 Expansion of Environmental Compensation and the Polluter Pays Principle

The application of environmental liability by the judiciary in India has also been progressively based on economic tools, especially the use of compensation as per the polluter pays principle. This principle imposes the economic cost of environmental damage on the party that has caused such damage, thus harmonizing the legal responsibility with the economic responsibility.

In *Indian Council for Enviro-Legal Action v. Union of India*, the Supreme Court awarded heavy compensation to polluting companies with an express rejection of the fact that the inability to pay could be used as a reason to pay lesser compensation³¹. The rationale of the Court is based on a certain principle: environmental harm is not only a violation of the regulations but a sort of social cost that has to be paid by the polluter.

This method has become institutionalized in other ways through the National Green Tribunal that routinely levies environmental restitution in instances of industrial contamination. This tendency represents a shift towards enforceable and measurable solutions, as opposed to pure declarations.

²⁹ *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 (India).

³⁰ *State of Rajasthan v. Gotan Lime Stone Khanij Udyog Pvt. Ltd.*, (2016) 4 SCC 469 (India).

³¹ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 (India).

4.6 Transnational Corporate Liability: Emerging Judicial Perspectives

The trend of judicial rulings in India indicates that there is a strong dedication towards enhancing corporate responsibility. This development does not come without its constraints, though. Judicial creativity has frequently led the pack over legislative certainty, which has led to disparities in doctrine and enforcement issues.

In addition to this, even though the courts have been effective in stating the principles like absolute liability and polluter pays, the practice of the principles is still disproportionate. Administration of justice by the courts has still been compromised by delays, inability to measure the damages, and lack of regulatory capacities.

However, the active approach of the judiciary has played a crucial role in developing the debate around corporate accountability. The courts by broadening the area of liability and focusing more on substantive justice than on legal differences have paved the way to a more responsive and fair legal system³².

4.7 Critical Appraisal of Judicial Trends

Principles of enhancing corporate liability can be seen in the course of judicial cases in India. But this development has not been without restrictions. Lawmaking has frequently lagged behind judicial creativity, leading to a lack of doctrine and administration problems.

In addition, the courts have been successful in stating what can be described as principles like absolute liability and polluter pays but the reality in applying these principles is not evenly distributed. The ineffectiveness of judicial intervention remains due to delays in adjudication, the inability to measure damages and the inadequacy of regulators.

However, the active role of the judiciary has played a significant role in determining the debate on corporate responsibility. The broadening of liability and the focus on the substantive justice, rather than on the formal legal differences, have prepared courts to the more responsive and fairer legal system

5. Critical Analysis, Challenges and Reforms

5.1 Structural Weaknesses in the Existing Liability Framework

Even though corporate liability in India is operationally sophisticated on the basis of its doctrinal approach, the actual practice of the law shows a disjuncture between the theoretical basis and the practical form of operation of the law. The framework seems to be holistic on paper, but the effectiveness is compromised by piece meal regulation architecture. The problem is that environmental governance is spread among various authorities, such as Pollution Control Boards, specialized tribunals, and the issues of financial crimes are researched by

³² Lungowe v. Vedanta Resources plc, [2019] UKSC 20.

some other agencies, such as the enforcement directorates and market regulators. Such an institutional disconnect frequently leads to lagging in response and watered down responsibility.

Another drawback is the fact that corporate wrongdoing is evidentiary complex. Contemporary companies are managed by multidimensional decision-making processes and thus establishing locus of intent is challenging. Despite the doctrine of attribution trying to fill this gap, courts are often faced with a difficulty in trying to isolate the directing mind especially in large, decentralized organizations. As a result, the liability is either narrowed or allocated in a disproportionate manner to the lower-level functionaries, thus undermining deterrence.

5.2 Limitations of Doctrinal Tool: Corporate Veil and Mens rea.

The principle of separate legal personality, though necessary to attain economic efficiency, still poses a barrier to proper accountability when it comes to the instances of environmental damage and financial fraud. Corporate entities frequently use complicated schemes, and by using subsidiaries, shell, and cross-border schemes, the responsibility chain becomes blurred.

The Indian courts, though theoretically have acknowledged the ability to lift the veil of incorporation, have been hesitant and intermittent in using it. The State of Rajasthan v. Gotan Lime Stone Khanij Udyog Pvt. Ltd. decision exemplifies judicial goodwill to overlook corporate form when it is taken in order to override the interests of the people, but these are not the common cases. This limited use diminishes the strength of the doctrine to deal with corporate abuse at systemic levels.

Equally, attribution of mens rea remains conceptually and practically challenging. Although the acceptance of corporate intent by the courts is a great step forward, it is highly reliant on the factual aspects and therefore results are not consistent.

5.3 Deficit of Enforcement and Inefficiency of Regulations.

The lack of strength of enforcement mechanisms is one of the greatest challenges to effective corporate liability. Regulatory authorities usually do not have sufficient resources, technical know-how, and independence to efficiently observe corporate compliance. In environmental offences, especially, administrative penalties are often imposed and often not commensurate to the extent of damage, as compared to monetary fines.

There is also the problem of delays in judicial processes making the legal sanctions weak. When there is a delay between the event of harm and the incurring of a liability, compensatory effectiveness and deterrent value is minimized. The financial sphere is another area where corporate fraud can be highly complicated, with cross-border transactions and online tools, making enforcement even more challenging. The investigative agencies have problems in

jurisdiction and barriers of evidence, which corporations can utilize to avoid liability.

5.4 New Developments: ESG and Preventive Liability.

One change that has become evident over the past few years is the transition to preventative governance, specifically, the implementation of Environmental, Social, and Governance (ESG) systems. Transparency, risk management, and ethical conduct are highlighted in ESG norms, thus promoting internalization of compliance mechanisms in corporations. In India, through regulatory efforts like Business Responsibility and Sustainability Reporting (BRSR), it is clear that there is an increased focus on disclosure-based accountability. Although these measures do not substitute the traditional liability regimes, they supplement them by encouraging proactive compliance.

Nevertheless, the success of ESG frameworks is determined by the plausibility of disclosures and availability of enforcement mechanisms to counter misrepresentation, often called greenwashing. Unless regulations are in place, ESG risks will merely be a window dressing exercise and not a serious accountability tool.

5.5 Doctrinal and Institutional Reforms are needed.

(A) Enhancing Legal Principles.

The current doctrines also require a re-tune to suit the realities of the modern corporations. Judicial discretion should not be used to water down the doctrine of absolute liability in situations involving hazardous industries. On the same note, the concept of lifting the veil of incorporation should also transform into a rare exception rather than a more formal instrument in the event of environmental and financial damages.

(B) To improve Enforcement Mechanisms

The regulatory agencies need to be prepared with more autonomy, resources, and technological capabilities. The environmental and the financial regulators should be institutionalized to coordinate in dealing with the overlapping types of corporate misconduct.

There could be special investigative units with the emphasis on corporate crime that would greatly enhance the rate of detection and prosecution.

(C) Going Global with Corporate Responsibility.

With the transparency of the corporate operation worldwide, laws in the domestic countries need to be modified to accommodate transnational liability. Parent companies can be liable to the actions of subsidiaries, and Indian courts can look to international cases like *Lungowe v. Vedanta Resources plc*, which acknowledge this liability.

Such principles would be developed to make justice more accessible to victims and eliminate corporate ability to take advantage of jurisdictional loopholes.

(D) ESG plus Legal Liability.

Statutory liability regimes should be incorporated with ESG frameworks in order to be enforceable. Failure to comply with ESG disclosures should be met with legal penalties thus making voluntary standards a mandatory obligation.

5.6 Concluding Observations

The history of corporate liability in India is marked by a slow yet a substantial shift to increased accountability. Innovation in judicial practice, especially of environmental law, has created a robust normative basis. Nevertheless, the fact that gaps in enforcement and limitations of the doctrine persist shows that the principle-practice shift is not complete yet.

An efficient liability regime needs not only to be more powerful in law but also in terms of institutional consistency, regulatory effectiveness, and the readiness to modify law dogmas to current challenges. Finally, corporate accountability should not just be regarded as a legal obligation but rather as a vital part of sustainable development and economic integrity.

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