



GREEN TAX: A TOOL TO CONTAIN CORPORATE ENVIRONMENTAL CRIMES IN INDIA

Ms. Radha¹⁹
Mr. Brajesh Kumar²⁰

“Taxation is the price which civilized communities pay for the opportunity of remaining civilized”

--Albert Bushnell Hart²¹

ABSTRACT

Notwithstanding the presence of a wide range of legislation to contain corporate environmental crimes in India, such crimes continue unabated. The penal nature of the legislative framework has miserably failed to deter the perpetrators of such crimes owing to various factors (e.g., poor enforcement, shoddy investigation, legal loopholes, corruption, meagre conviction rate etc.), rather, it ends up giving an open licence to pollute. In such a situation, a question is often asked as to whether the criminal law alone, or even in combination with the civil laws, can deter corporations from committing environmental violations. While one school of scholars answers this question in affirmative seeking stricter provisions and punishments, the other argues against any such step as that may impede our economic development and supports exploring other alternative measures (other than civil proceedings) instead keeping criminal prosecution for a minimum number of cases where nothing else works. If the concern for the former is environment, for the latter, it is development. But the country needs both- a healthy environment as well as a robust development, i.e., a sustainable development. Can it be, therefore, said that an appropriate answer to the above question lies in Green tax, one of the economic measures (which also include green financing, green investment etc.) and still an emerging concept, which incentivises environmentally sustainable conduct (and, consequently deters

¹⁹ Research Scholar, Faculty of Law, University of Delhi.

²⁰ Research Scholar, Faculty of Law, University of Delhi.

²¹ Aarattrika Chanda, ‘Comprehensive Evaluation of Total Income’, available at: <https://www.goldensparrowngo.com/post/comprehensive-evaluation-of-total-income#:~:text=Albert%20Bushnell%20Hart%3A%20%E2%80%9CTaxation%20is,understand%20is%20the%20income%20tax.%E2%80%9D> (last visited on Aug., 2, 2024)

environmentally harmful behaviour) on the part of not only the corporations but also various other stakeholders including consumers?

The present paper seeks to find the answer by digging deeper into the concept of corporate environmental crimes and consequent criminal liability, taking a look at the existing constitutional and legal framework in India and analysing their effectiveness, along with related issues and challenges, in containing such crimes, assessing the concept of green tax and its objectives in order to see how effective it would be as a tool to contain corporate environmental crimes in India.

KEYWORDS: Green Tax, Corporate Environmental Crimes, Environment Compensation Charge, Constitution, Environment, Article 21.

INTRODUCTION

In this industrial age, various industrial activities (e.g., *emission of toxic gases in air*) pollute as well as cause severe damage to the environment. Apart from that, companies also trade in *inter alia* various species of plants, herbs as well as body parts of wild animals. However, all such activities and conducts are not environmental crimes in the eyes of law, which permits certain polluting or environmentally damaging activities (e.g., *emission within permissible limits, dumping of hazardous wastes after treatment at designated places, legally authorised wildlife trade*) treating them necessary for human survival and development. Only when such activities breach the legal boundaries, they are treated as crimes inviting appropriate sanctions prescribed under the law. But some pertinent questions still arise: “*Whether these sanctions are enough to deter the charged as well as potential offenders (industries/corporations) against indulging in these crimes?*”; Further, “*Is it appropriate to uniformly invoke criminal law in each and every environmental crime committed by corporations (corporate environmental crime)?*”; If not, “*Can an economic measure like imposing green taxes, in addition or as an alternative to criminal law mechanisms, be a way out?*”.

It is these questions that the present paper seeks to answer. *First*, it elaborates the concept of ‘environmental crimes’ using the definitions of some prominent environmental jurists. *Second*, it attempts to see why corporations indulge in such crimes and what legal consequences they face for the same. *Third*, corporate environmental crimes and the resultant liability under the Indian laws are analysed to assess the effectiveness of those laws and the issues and challenges, if any, faced by them in attaining their objective of containing such crimes. *At last*, the concept of green taxes (one of the economic measures, which include green financing, green investment etc.) is looked at to see if it can be a handy economic tool, in addition or as an alternative to criminal law, in deterring corporate environmental offenders under the Indian legal set-up from committing environmental crimes.

ENVIRONMENTAL CRIMES

‘Environmental Crimes’, also known as ‘Green Crimes’, is a difficult term to define. Several day-to-day human activities such as littering, smoking, discharging sewage water in rivers or streams pollute the environment. Similarly, various industries also cause pollution as they emit smoke in the atmosphere or discharge chemical effluents in soil, air and/or water bodies. These acts produce pollutants, either some natural substances (e.g. phosphate in soil in excessive amounts) or synthetic compounds (e.g. detergents, pesticides etc.)²², which contaminate different components of nature (air, water, forests and wild-life etc.). The environmental equilibrium is also tampered with by way of felling of trees, killing of wild animals and so on and so forth. However, each and every such activity of ours is not an ‘environmental crime’ as law today permits certain activities treating environmental pollution through them as inevitable, especially in this industrial age. Therefore, the question arises: “*What are the ‘environmental crimes’ then?*”

Lynch and Long²³ have defined ‘environmental crimes’ in terms of a wide range of human behaviours that generate environmental harms and produce ecological disorganization or the disruption of the normal organization and operation of the natural world. These ecologically destructive behaviours can include, for example, air, water, and land pollution, deforestation, and various forms of mining as well as the wildlife trade and illegal wildlife trafficking. These crimes may also include other harms against non-human species, including those that victimize pet animals, farm animals, and laboratory animals.

Therefore, this definition is wide enough to take into consideration all sorts of human behaviours which disrupt the normal course of the natural world and are ecologically destructive. It talks about the impact of such behaviours on not only the humans themselves but also the non-human species.

Some other scholars have also attempted to define it. According to *M. Clifford*, an ‘environmental crime’ is:

*“an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage.”*²⁴

²² D. Prasad, ‘Environmental Pollution and Living Beings’ in Rais Akhtar (ed.), *Environmental Pollution and Health Problems* 57 (Ashish Publishing House, New Delhi, 1990).

²³ Michael J. Lynch, Michael A. Long, ‘Green Criminology, Capitalism, Green Crime and Justice, and Environmental Destruction’, *Annu. Rev. Criminol.* 2022, p.256.

²⁴ Stuart Bell and Donald McGillivray, *Environmental Law* 254 (Oxford University Press, Oxford., 7th edn., 2008).

In other words, whether the act is done intentionally to harm or in itself is potentially harmful for the environment and has been done with an objective to make some personal or business gains, it will be treated as an offence. Thus, the definition takes into account both- the ‘*fault*’ as well as the ‘*no fault*’ liability apart from the motive of the doer.

On the other hand, *Y. Situ* and *D. Emmons* go a step ahead and define it as, “*an unauthorised act or omission that violates the law and is therefore, subject to criminal prosecution and criminal sanction.*”²⁵

“This offence”, they add further, “*harms or endangers people’s physical safety or health as well as the environment itself.*”²⁶

Thus, *Situ* and *Emmons* hold that if an illegal and unauthorised act or omission harms or endangers public as well as environmental health and safety, it will be an environmental offence inviting criminal proceedings and sanction against the offender. Therefore, ‘criminal sanction’ is an important requirement in their definition.²⁷

On the basis of above-mentioned definitions, we conclude that environmental crimes are *illegal or unauthorized acts or omissions, which harm the environment as well as public interest, are committed, intentionally or otherwise, for personal or organisational benefits and invite criminal sanctions.*

The definition clearly suggests that these crimes are committed not only by individuals but also by organisations, which include corporations²⁸ and when environmental crimes are committed by corporations, they are known as *corporate environmental crimes*.

CORPORATE ENVIRONMENTAL CRIMES

In today’s world, corporations play a key role not only in shaping up a country’s economy but also in structuring its social and political dynamics. They are no longer limited to running businesses but also contribute in legal and policy changes in a way which suits their ends.²⁹ This wide influence enables them inter alia to have an easy access to a country’s natural resources, especially those in developing and under-developed countries, wherein multinational corporations (MNCs) based in developed countries connive with the local governments and exploit these resources much to the detriment of the interest of the local populace.³⁰ Apart from this, they also indulge in other kinds of environmental crimes such as illegal

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Brian Wolf, “‘Green Collar Crime’: Environmental Crime and Justice in the Sociological Perspective” 5 (7) *Sociology Compass* 499 (2011).

²⁸ Duncan Brack, “Combating International Environmental Crime” 12 *Global Environmental Change* 143 (2002).

²⁹ Brian Roach, “Corporate Power in a Global Economy.” An ECI Teaching Module on Social and Environmental Issues, Economics in Context Initiative, (Global Development Policy Center, Boston University, 2023).

³⁰ David O. Friedrichs, Dawn L. Rothe, “State-Corporate Crime and Major Financial Institutions: Interrogating an Absence” 3 (2)

disposal of toxic wastes,³¹ corporate crime in the forestry sector (e.g., illegal logging) and trafficking of hazardous waste,³² taking advantage of weak laws,³³ poor enforcement thereof³⁴ and rampant corruption³⁵. Accordingly, many countries, *including India*,³⁶ have enacted legislation to prosecute and punish such corporate offenders.³⁷

CORPORATE ENVIRONMENTAL CRIMES IN INDIA

India has long been a victim of corporate environmental crimes having witnessed and suffered one of the world's worst environmental disasters³⁸ in *Bhopal*³⁹, where a big multinational company, in collusion with the State,⁴⁰ poisoned the environment, killed scores of people instantly and left many others to die a slow and painful death for years to come.⁴¹ It is also alleged by some scholars⁴² that judiciary also failed the victims by denying them the justice they needed, and deserved, at that moment. Even after *Bhopal*, many such incidents, though less in severity, have kept happening at regular intervals pointing towards lacunae in law and policy mechanism to check such crimes.⁴³ This is just one side of the story as even though these environmental disasters get reported and discussed, many other environmental crimes involving companies (e.g., *wild-life trafficking, illegal logging, dumping of hazardous wastes*) remain unaccounted for as they neither get reported by media nor by official agencies. There is no official data on such crimes in the

State Crime Journal 160 (Autumn 2014).

³¹ Paulette L. Stenzel, "Environmental Law and American Business: Dilemmas of Compliance, by Joseph F. DiMento" 26 NAT. RES. J. 906 (1986).

³² "UNEP-INTERPOL Report: Value of Environmental Crime up 26%" *UNEP News*, June 4, 2016, available at: <https://www.unep.org/news-and-stories/press-release/unep-interpol-report-value-environmental-crime-26#:~:text=The%20report%20recommends%20strong%20action,sustainable%20development%3B%20and%20economic%20incentives> (last visited on Aug. 3, 2024).

³³ *Ibid.*

³⁴ Axel Luttenberger, Lidija Runko Luttenberger, "Challenges in Regulating Environmental Crimes" *7th International Maritime Science Conference*, Apr. 20-21, 2017, Solin, Croatia, 213, available at: <https://typeset.io/pdf/challenges-in-regulating-environmental-crimes-xyxwwdoqiv.pdf> (last visited on Aug., 3, 2024).

³⁵ *Supra* note 12.

³⁶ Sairam Bhat, "Civil, but Criminal" *India Together*, Nov. 1, 2004, available at: <https://indiatogether.org/civilcrim-environment> (last visited on Aug. 3, 2024).

³⁷ Sean J. Bellew & Daniel T. Surtz, "Criminal Enforcement of Environmental Laws: A Corporate Guide to Avoiding Liability" 8 *Vill. Envtl. L.J.* 205 (1997); Sandy Moretz, "The Rising Cost of Environmental Crime" *Occupational Hazards* 38 (March, 1990).

³⁸ Hannah Ellis-Petersen, "Bhopal's Tragedy has not stopped: The Urban Disaster still Claiming Lives 35 Years on", *The Guardian*, Dec 8, 2019, available at: <https://www.theguardian.com/cities/2019/dec/08/bhopals-tragedy-has-not-stopped-the-urban-disaster-still-claiming-lives-35-years-on> (last visited on Aug., 3, 2024).

³⁹ Upendra Baxi, "Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?" 1 *Business and Human Rights Journal* 21 (2015).

⁴⁰ Shruti Rajagopalan, "Bhopal Gas Tragedy: Paternalism and Filicide" 5 *Journal of Indian Law and Society* 201 (2012), available at: <http://docs.manupatra.in/newsline/articles/Upload/54419DA8-C305-4D5C-A8F3-3B4633CEEA5B.pdf> (last visited on Aug. 3, 2024).

⁴¹ *Supra* note 20; Apoorva Mandavilli, "The World's Worst Industrial Disaster Is Still Unfolding" *The Atlantic*, July 10, 2018, available at: <https://www.theatlantic.com/science/archive/2018/07/the-worlds-worst-industrial-disaster-is-still-unfolding/560726/> (last visited on Aug. 3, 2024).

⁴² Satinath Sarangi, "Bhopal Disaster: Judiciary's Failure" 30(46) *Economic and Political Weekly*, Nov. 18, 1995.

⁴³ Apoorva, Shreeja Sen, "Industrial Disasters: Is India better Prepared than it was in 1984?" *The Mint*, Dec. 2, 2014, (updated) available at: <https://www.livemint.com/Politics/NtYcWmazGAis6CEpj4yAkP/Industrial-disasters-Is-India-better-prepared-than-it-was-i.html> (last visited on Aug. 3, 2024).

country, unlike, for example, in U.S.,⁴⁴ because the National Crime Records Bureau (NCRB) of India, which is the official database of all the recorded crimes across the country, compiles and publishes data on environmental crimes committed by individuals only.⁴⁵ It reflects failure to give due seriousness to these crimes despite being aware of their severity as well as harmful effects on the environment, the life of human and non-human species and the existence of the very planet itself. Consequently, it also emboldens the corporate offenders to keep doing their business as usual at the cost of public and environmental health without any fear or shame. Moreover, the government is also unable to thoroughly analyse and make the required changes in the plethora of legislation that it has to deal with such crimes.

CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK: ISSUES AND CHALLENGES

There is no gainsaying the fact that India has a comprehensive Constitutional and legislative framework to deal with environmental violations. The following sub-sections briefly discuss this framework:

A. Constitutional Mechanism

The Indian Constitution has some key provisions (including Art. 21, which has been judicially interpreted to bring ‘*Right to safe environment*’ within its ambit),⁴⁶ obliging the government as well as the citizens of this country to preserve and protect the environment.⁴⁷ To fulfil this objective, it has also given wide powers to the union as well as the state legislatures to make appropriate laws on the subject.⁴⁸ These provisions are wide enough to empower the government to do all that is necessary to do by legislative and administrative action to protect the human environment. The use of the word

⁴⁴ United States Sentencing Commission, “Organisational Offenders” (2022), available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Organizational-Offenders_FY22.pdf (last visited on Aug. 6, 2024).

⁴⁵ National Crime Records Bureau, “Crime in India, 2022”, Vol. II, 917 (Ministry of Home Affairs, 2023).

⁴⁶ *Om Govind Singh v. Shanti Swarup*, AIR 1979 SC 143; *Ratlam Municipality v. Virdhi Chand*, AIR 1980 SC 1622; *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*, AIR 1985, SC 652; *M.C. Mehta v. UoI*, AIR 1988 SC 1037 (Also known as *Ganga Pollution (Tanneries) Case*); *Consumer Education and Research Centre v. UoI*, (1995) 3 SCC 42; *T. Damodar Rao v. Special Officer, Municipal Corporation of Hyderabad*, AIR 1987 A.P. 171; *Kinkri Devi v. State of H.P.*, AIR 1988 H.P. 4.

⁴⁷ Paras Diwan, “Environmental Protection: Issues and Problems” in Paras Diwan, Peeyushi Diwan (eds.), 1 *Environment Administration, Law and Judicial Attitude* 13 (Deep & Deep Publications, New Delhi, 2nd edn., 1997). Probably, ours is the only Constitution which contains a specific provision for the protection of the environment. The 42nd Amendment has inserted Art 48A which runs: “*The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.*” In addition to Art. 48A, Art. 47 provides for the improvement of public health as one of the duties imposed on the State. Our Constitution, U/Art. 51A, also lays down the fundamental duty of every citizen “*to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.*”

⁴⁸ The Constitution of India, 1950, sched. 7. The environmental legislative powers, under the constitutional scheme, have been divided into three lists, namely, the Union List (List I), the State List (List II) and the Concurrent List (List III). There are 5 entries (52-55, 57) in the List I whereas the List II and III have 11 (6, 10, 14-18, 21, 23-25) and 8 (17A-B, 20-A, 29, 36-38) entries respectively. Although, none of the entries under these lists specifically uses the word ‘environment’ as such, it is obvious from the different heads under these entries that they refer to environment. For example, ‘Industries’ (Entry 52, Union List) are something which deeply affect the environment whereas ‘Water’ (Entry 17, State List) and ‘Forests’ (Entry 17A, Concurrent List) are integral components of the environment.

“environment” indicates the width of the power assigned to the State. It means aggregate of all the external conditions and influences affecting life and development of human beings, animals and plants, including various external factors, such as air, climate, culture, water, noise, temperature, soil, etc., which affect the health and development of life. The State is empowered not only to adopt a policy for the protection of the environment but also to take effective steps to improve polluted environment, and to prevent pollution of the environment. In furtherance of this objective, the State can take measures to lay down restrictions on the use of factors adversely affecting the environment.⁴⁹

B. Legislative Framework

Using the aforementioned Constitutional powers, the government has enacted more than 200 statutes at the central and the State level to give shape to the constitutional mandate, its commitments at various international fora⁵⁰ and the judicial directives. In fact, India was among the first few countries to have anti-pollution and protection of environment law existing even in the first-half of the 20th century.⁵¹ The Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment Protection Act, 1986 are some of the prominent legislation aimed at checking different kinds of environmental crimes, whether committed by individuals, companies or government institutions. Out of all of these statutes, the Environment Protection Act, 1986 holds a special significance as it is an umbrella legislation to deal with all kinds of environmental crimes and has enhanced punishments for offenders as compared to earlier enacted special legislation (e.g., the Water Act and the Air Act).⁵² The Indian Penal Code, 1860 (IPC) itself contained several provisions which made pollution a crime. Thus, sections 277 (Fouling water of public spring or reservoir) and 278 (Making atmosphere noxious to health) were related to water and air pollution respectively whereas sections 426 (Punishment for mischief), 430 (Mischief by injury to works of irrigation or by wrongfully diverting author), 431 (Mischief by injury to public road, bridge and river) and 432 (Mischief by causing an obstruction or inundation to public drainage) dealt with general pollution. Section 268 dealt with public nuisance under which *inter alia* noise pollution could be controlled. The sections 133 (Conditional order for removal of nuisance) and 144 (Power to issue order in urgent cases of nuisance or apprehended danger) of the Code of Criminal Procedure, 1973 (Cr.P.C.) provided instant relief in cases related to public nuisance. Though these Codes have now

⁴⁹ *Supra* note 29.

⁵⁰ *Supra* note 29 at 7.

⁵¹ *Ibid.*

⁵² The Environment (Protection) Act, 1986 (Act 29 of 1986), s. 15; The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), ss. 41, 42, 43, 44, 45A; The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981), ss. 38, 39. The Water (Prevention and Control of Pollution) Amendment Act, 2024 now decriminalises several violations.

been replaced by the newly enacted *Bharatiya Nyaya Sanhita, 2023*⁵³ (BNS) and the *Bharatiya Nyaya Suraksha Sanhita, 2023* (BNSS)⁵⁴ respectively, these provisions continue to hold their place albeit under re-numbered sections. Further, section 12 of the Factories Act, 1948 regulates the disposal of industrial waste and effluents. Noise, Air and visual pollution can be controlled under the Motor Vehicles Act, 1939.⁵⁵

Notwithstanding these wide constitutional and legislative provisions, the corporate environmental crimes continue unabated in the country. Therefore, it's natural to ask, "*Whether the presence of multiple laws deter corporate offenders from committing environmental crimes?*" And if the answer is negative then the question arises: "*What are the obstacles that they come across in attaining their desired objective(s)?*"

C. Issues and Challenges

The laws mentioned above make corporate environmental crimes punishable with imprisonment and/or fine. However, as far as the effectiveness of these punishments legislative enactments is concerned, according to *Paras Dewan*⁵⁶, "*These statutes are not faultless. Yet much more faulty is their implementation.*" *Abraham and Rosencranz*⁵⁷ see the Indian pollution control system as primitive and largely ineffective to deal with its enormous pollution problems. They consider these laws as *weak* and their enforcement *haphazard*. The opinion of these scholars is substantiated from the situation at ground as one witnesses continuously degrading air, water and soil qualities and spread of pollution-caused diseases afflicting hearts, lungs and other organs of humans and non-humans (animals and birds) in the country. While some of the prominent Indian cities⁵⁸ find themselves listed among world's worst polluted cities to live in, India is placed at the bottom (176) in the Environmental Performance Index (EPI), 2024⁵⁹. The unabated industrial disasters⁶⁰ are also

⁵³ The Bhartiya Nyaya Sanhita, 2023 (Act 45 of 2023). For example, s. 277 ((Fouling water of public spring or reservoir) and 278 (Making atmosphere noxious to health), IPC have now been renumbered as ss. 279 and 280 respectively under the BNS.

⁵⁴ The Bhartiya Nagrik Suraksha Sanhita, 2023 (Act 46 Of 2023). S. 133, Cr.P.C. is now s. 152, BNSS.

⁵⁵ *Supra* note 29 at 7.

⁵⁶ *Ibid.*

⁵⁷ C.M. Abraham, Armin Rosencranz, "An Evaluation of Pollution Control Legislation in India" 11 *Columbia Journal of Environmental Law* 101 (1986).

⁵⁸ Shikha Gautam, '10 of World's Most Polluted Cities Now; 3 are in India', *The Times of India*, Nov.7, 2023, available at: <https://timesofindia.indiatimes.com/travel/web-stories/10-most-polluted-cities-right-now-3-are-in-india/photostory/105031261.cms> (last visited on 6 Jan., 2024). The 3 metropolitan cities namely, Delhi, Kolkata and Mumbai feature in this list.

⁵⁹ Environmental Performance Index, 2024, available at: <https://epi.yale.edu/measure/2024/EPI> (last visited on Aug., 5, 2024); Akanksha Mishra, "India at 176 among 180 Countries in Environmental Performance Index, 2024, High Emissions Flagged again", *The Print*, June 12, 2024, available at: <https://theprint.in/environment/india-ranks-5th-from-bottom-in-environment-performance-index-2024-high-emissions-flagged-again/2128391/> (last visited on Aug., 5, 2024).

⁶⁰ Adil Bhat, "India's Deadly Industrial Workplaces in the Spotlight", *Business India*, Jan. 9, 2024, available at: <https://www.dw.com/en/deadly-industrial-accidents-in-india-kill-and-disable-thousands/a-67930230> (last visited on Aug., 5, 2024).

results of such ineffective and poorly implemented laws, aided by unsustainable business practices by the companies and absence of any accountability.

Another problem with implementing penal laws, in letter and spirit, is the nature of sanctions and corporations' fictional as well as complex character. As corporations are nothing but merely a legal fiction, they can be fined but can not be jailed even when law prescribes both imprisonment and fine as punishment for a particular crime. The Supreme Court of India has also unequivocally and emphatically said so.⁶¹ But the experience suggests that fear of imprisonment, *which would have otherwise deterred corporations*,⁶² not being there, imposing fines only hardly proves to be an effective deterrent for these wealthy corporations as for them, fines are nothing but merely a cost of doing business which, eventually, is to be passed back to consumers.⁶³ And, if we try to find out the individuals responsible for the corporate act/omission but who are hiding behind the corporate cloak, the complex corporate structure and legal immunities make it too difficult to pierce that veil and catch hold of the culprits.

All these issues convert law into a toothless snake which can be easily played with and they also raise some serious questions on its deterrent effect. At the same time, they create a lingering doubt as to whether the uniform application of criminal law in all cases involving corporations is appropriate or there is a need to look at some alternative measures too. While some scholars support *strict enforcement* of criminal law against corporations holding that environment is more important than development,⁶⁴ some others oppose uniform application of criminal law against corporations for environmental violations as it will harm the economic development of poor nations and also hold that the criminal sanctions may have a limited deterrent effect in these cases as corporations themselves find these sanctions appropriate only for extreme and repeated violations.⁶⁵ They assert that strong enforcement techniques are necessary but such techniques are *not sufficient in and of themselves*.⁶⁶

In this debate, while one group gives prime importance to the environment and supports criminal sanctions, the other one gives primacy to development opposing the blanket use of criminal law. However, as the need of the hour is a development in sync with the environment i.e., sustainable development, therefore, there is a

⁶¹ Standard Chartered Bank & Ors v Directorate of Enforcement (2005) 4 SCC 530.

⁶² Judson W. Starr, "Turbulent Times at Justice and EPA: The Origins of Environmental Criminal Prosecutions and the Work that Remains" 59 *Geo. Wash. L. Rev.* 900 (1991).

⁶³ G. Nelson Smith, III, "No Longer Just a Cost of Doing Business: Criminal Liability of Corporate Officials for Violations of the Clean Water Act and the Resource Conservation and Recovery Act" 53 *LA. L. Rev.* 119 (1992).

⁶⁴ Vijay Kumar Singh, "Criminal Liability of Corporations- An Environmental Perspective", available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2972053 (last visited on Aug. 10, 2024).

⁶⁵ *Supra* note 13 at 907.

⁶⁶ *Ibid.*

need to create a balance between these two conflicting approaches by taking a middle path. Since the issue is to deal effectively with corporations, which do business on cost-benefit analysis, resorting to economic measures and reserving criminal sanctions for egregious violations can be quite fruitful under the circumstances. It will incentivise compliance of environmental laws and also keep the developmental process on track, particularly in poor countries which need corporations for their social and economic development, thus addressing concerns of both the groups.

Now a days, there are a number of economic measures (such as, *green financing*, *green investment*, *carbon trading* apart from *levying green taxes*) which are increasingly being used in many jurisdictions because of the limitations that the conventional environmental regulations have and also due to the belief that major environmental problems facing the world today can not be resolved merely by use of specific abatement technologies and setting emission limits rather, a substantial change in consumption and production pattern is required but which, though, will come at a substantial cost and to minimise this cost, economic tools are needed.⁶⁷ This paper, however, concerns itself with green taxation only and assesses its objectives, advantages and disadvantages in order to see how effective an economic tool it would be to contain corporate environmental crimes in a country like India, where other legal measures have failed to bear fruits.

GREEN TAXES

Tax is a turning point and a benchmark for a country's overall development, livelihood transformation and improvement of its per capita income as there is quite an interesting saying by Benjamin Franklin that *only things that are certain are death and taxes*, meaning thereby that every person is subject to the tax laws and has to recompense taxes from his or her earned income.⁶⁸ Further, taxes do play a crucial role in carrying out various developmental work (e.g., building infrastructure) to enhance social and economic wellbeing of a country and its people as they are an important source of revenue for any government. In modern times, taxes are also being used by several countries across the world (e.g., European Union, U.K.)⁶⁹ to strictly control environmental hazards by discouraging industries and businesses from being involved in activities that may pose a serious threat to the environment,⁷⁰ which is an essential component of any country's social and economic upliftment. Such taxes are known as 'green taxes' or 'environmental taxes' or even 'carbon

⁶⁷ Don Fullerton, Andrew Leicester et al, "Environmental Taxes", Working Paper (Cambridge, July, 2008), *available at*: https://www.researchgate.net/publication/5189204_Environmental_Taxes?enrichId=rgreq-9493fe0b4b905e935fb813ad5b6f7561-XXX&enrichSource=Y292ZXJQYWdlOzUxODkyMDQ7QVM6MTAzMjQ3MTYzNDI4ODcwQDE0MDE2Mjc0NTA1NDc%3D&el=1_x_2&esc=publicationCoverPdf (last visited on Aug. 16, 2024).

⁶⁸ Srishti Bansal, "Tax Evasion: A Critical Analysis with respect to the Case of *Make My Trip (India) Pvt. Ltd. v. Union of India & Others*", *available at*: <https://ssrn.com/abstract=4335179> (last visited on Aug. 14, 2024).

⁶⁹ *Supra* note 49.

⁷⁰ Arun Pal, "Green Taxation: Its Impact and Necessity in India", *available at*: https://www.researchgate.net/publication/341726100_Green_Taxation_-_Its_Impact_and_Necessity_in_India?enrichId=rgreq-a6cb20d1b9761e1737b8ce8547e018f0-XXX&enrichSource=Y292ZXJQYWdlOzM0MTcyNjEwMDtBUzo4OTY0MzQwNzMyNTU5MzdAMTU5MDczNzk0NjI5OQ%3D%3D&el=1_x_2&esc=publicationCoverPdf (last visited on Aug. 14, 2024).

taxes' (because of being levied on carbon emission by industries)⁷¹. According to the Organisation for Economic Co-operation and Development (OECD) Guidelines,⁷² these taxes can directly address the failure of markets to take environmental impacts into account by incorporating these impacts into prices and environmental pricing through taxation leaves consumers and businesses the flexibility to determine how best to reduce their environmental footprint.

a. Origin

The concept of using taxation to correct negative externalities, such as pollution, is generally credited to *Pigou* (1920), and therefore, these corrective taxes are sometimes also referred to as *Pigouvian taxation*.⁷³ Further, it is also linked to the *polluter pays principle* (i.e., You Pollute, You Pay),⁷⁴ which happens to be one of the strong pillars of sustainable development.

b. Objective

The main objective behind imposing green taxes on industries (as well as other stakeholders including consumers) is to watch closely and regulate the production and use of non-environment friendly products and services so that their negative impact can be offset. Hence, by levying 'green tax' in proportion to the damage done by the negative externalities, generated either from the production/consumption/extraction behaviour in an economy,⁷⁵ the government makes them internalize the negative impacts that their activities have on the environment.⁷⁶ By internalizing those external costs, such a tax could reflect the real environmental cost of the activity and build that cost into private-sector decision making.⁷⁷ These taxes are also intended to discourage the overuse of natural resources that damage the ecology.⁷⁸

c. History

The idea of levying environmental taxes was first mooted in the Rio Declaration, which established that to internalize environmental problems, prices must be internalized along with products and services. Subsequently, it was also included in other environmental conferences and treaties, such as the Green

⁷¹ P. Vinutha, R. Ajay, "A Study on Green Tax in India: Its Effectiveness and Challenges" 15 *Journal of Seybold Report* 1798 (2020).

⁷² Organisation for Co-operation and Development, "Environmental Taxation: A Guide for Policy Makers" (2011).

⁷³ Robertson C. Williams III, *Environmental Taxation* Working Paper (Cambridge, June, 2016) 22303, available at: <http://www.nber.org/papers/w22303>, (last visited on Aug. 14, 2024).

⁷⁴ Janet E. Milne, "Green Taxes and Climate Change: Theory and Reality", available at: <https://www.ifo.de/DocDL/dicereport407-forum2.pdf> (last visited on Aug. 16, 2024).

⁷⁵ Mohanish Verma, "Environment-driven taxes: An interesting challenge for policymakers" *Business Standard* Sep. 07, 2022 (Updated), available at: https://www.business-standard.com/article/opinion/environment-driven-taxes-an-interesting-challenge-for-policymakers-122090700709_1.html (last visited on Aug. 16, 2024).

⁷⁶ *Supra* note 52.

⁷⁷ *Supra* note 56.

⁷⁸ *Supra* note 57.

Economy Report of the United Nations Environment Program (UNEP), the OECD and the European Environment Agency.⁷⁹

d. Advantages

Although green taxes are viewed by many non-economists as taxes whose revenue is used to address environmental goals, to most economists, however, they are taxes on pollution emissions playing a corrective role.⁸⁰ However, the fact is that environmental taxes are not only meant to correct externalities, they also generate *additional* revenue, which can be used *inter alia* to reduce or prevent an increase in other taxes, to reduce the budget deficit, to pay for public goods.⁸¹ At the same time, interactions between environmental taxes and other pre-existing taxes (primarily income tax) can significantly raise the efficiency costs of environmental taxes (or any other similar tax or policy).⁸² Moreover, they also provide, as against the traditional command-and-control environmental regulations, a cost-effective way to reduce emissions of greenhouse gases and other air pollutants and also promote energy security.⁸³

e. Disadvantages

Undoubtedly, green taxes produce environmentally beneficial and economically effective results. Nevertheless, they also have certain disadvantages. *First*, a uniform tax rate may prove to be inefficient if the damage caused by pollution varies with sources of emission. Therefore, ideally, a source-based differential rate should be fixed. However, it may also result in lobbying from industries. *Second*, the consequences of environmental taxes, at times, may be adverse, if the taxpayers respond in a way that is more damaging to the environment than the taxed emissions. For example, a tax on toxic waste may provide a powerful incentive to reduce waste, but it may also induce illegal dumping or burning. *Third*, as such taxes may be applicable to energy, transport and carbon content of fuels, a significant chunk of income of people with low earnings will go in paying these taxes making them unwilling to pay. In this way, these taxes are regressive. *Fourth*, taxes on industrial inputs may increase the cost of production and also affect the local producers if they are competing against foreign producers, who are not subject to paying such taxes.⁸⁴

⁷⁹ Venkat Raj, “Environmental Law: You Pollute, You Pay” 11 *Arabian J Bus Manag Review* 1 (2021).

⁸⁰ *Supra* note 55.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.* See also; *Supra* note 49 & note 56.

⁸⁴ *Supra* note 49.

Having analysed the objective, advantages and disadvantages of levying green or environment taxes, we can now address the main issue at hand i.e., whether these taxes can play an effective role in abating corporate environmental crimes in India.

GREEN TAXES AND INDIA

India, being an OECD member-state, has introduced different types of environment or eco taxes, also termed as Environment Compensation Charge (ECC), at central and regional level. The Constitution of India⁸⁵ confers legislative powers upon the Parliament (Art. 248 r/w Sch. VII, List I, Entry 97) and the State Legislatures (Art. 245 r/w Sch. VII, List II, Entry 6) to bring laws imposing such taxes. Accordingly, while States like Tamil Nadu⁸⁶ and Bihar⁸⁷ adopted the legislative path to levy green taxes on motor vehicles, Goa⁸⁸ passed a law to levy green cess on environmentally hazardous products. Further, the ‘Clean Energy Cess’ (a kind of carbon tax) by the Government of India imposed on coal, peat and lignite, entry tax on vehicles in Himachal Pradesh, tax on old vehicles in 6 States, including Delhi, for discouraging old vehicles which affect ecological balance are some other examples of eco taxes imposed in India.⁸⁹ It is also worth mentioning here that even under the Forest (Conservation) Act, 1980, it has been provided that an entity, which diverts forest land for non-forest purposes, must provide financial compensation for afforestation in non-forest or degraded land.

The Judiciary has also been quite vocal and supportive of such measures. The Supreme Court had first ordered for levying a green tax of Rs. 700 and Rs. 1300 on the light commercial vehicles and the trucks entering Delhi respectively and then subsequently doubled it in a later decision.⁹⁰ A Compensatory Afforestation Fund (CAF) was also created, following the direction of the apex court itself in 2002,⁹¹ for the preservation of forests under the Forest (Conservation) Act, 1980 which is managed under the Compensatory Afforestation Fund Act, 2016 (the CAF Act).⁹² Again it was the Supreme Court of India which, through its directions,⁹³ led the way for CNG-based public transport in India. Such vehicles are exempted from green taxes. The High Courts are not far behind in supporting such initiatives through their decisions. For example, the Madras High Court saved S. 3A of the Tamil Nadu Motor Vehicle Taxation Act, 1974 (which introduced a ‘green tax’ for the more than 15 years old motor vehicles plying in the State through an amendment in 2003) when its Constitutional validity was questioned. The challenge was raised on the ground of legislative competence of the State to pass a law on a subject like “pollution” which is neither in the State nor in the Concurrent List of Schedule VII of the Constitution. However, the Court read

⁸⁵ The Constitution of India, 1950.

⁸⁶ The Tamil Nadu Motor Vehicles Taxation Act, 1974 (Act 13 of 1974), s. 3A.

⁸⁷ The Bihar Motor Vehicles Taxation Act, 1994 (Act 8 of 1994), s. 6.

⁸⁸ The Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 (Act 15 of 2013).

⁸⁹ *Supra* note 57.

⁹⁰ Shreeja Sen, Mayank Aggarwal, “SC Doubles Green Tax on Commercial Vehicles Entering Delhi”, *The Mint*, Dec. 16, 2015.

⁹¹ *T.N. Godavarman Thirumalpad v. Union of India* (1997) 2 SCC 267.

⁹² The Compensatory Afforestation Fund Act, 2016 (Act No. 38 of 2016).

⁹³ *M.C. Mehta v. Union of India* (1998) 8 SCC 648.

the said legislative power within Entry 6 of the State List which deals with “public health” and held that as any environmental ‘pollution’ also affects ‘public health’, the State Legislature is well within its powers to enact a law to regulate it hence, the provision is constitutionally valid.⁹⁴ In another such case, the Bombay High Court upheld the Constitutional validity of the Goa Green Cess Act, 2013.⁹⁵ Quite recently, the Himachal Pradesh High Court has suggested the State Government to collect green tax from the tourists coming to the State, the way it is done in Sikkim and Bhutan, so as to maintain the State’s cleanliness.⁹⁶

However, the presence of these legal and policy measures as well as judicial initiatives are yet to produce the desired result, unlike in the case of the UK and many European Union countries cited above. The reasons are not too far to sight and can be described as follows:

- i. According to Draft Guidelines, 2021,⁹⁷ for example, green tax imposed on older vehicles (including those owned by transport companies) is not uniform across all States and UTs which enables a vehicle registered in a State/UT, without any provision for such tax, to ply across the country, thus, negating the impact of these taxes. Moreover, the rate of such taxes is quite nominal (Rs. 200-500 p.a.) in some States (e.g., Telangana, Karnataka) which fails to act as disincentive for polluters.
- ii. A large part of taxes collected by the government have either not been properly utilised or have not been used for the intended purposes. For example, an inquiry into the use of Clean Energy Cess and Forest Development Tax (FDT) collected by the Government of Karnataka revealed ineffective use of money, corruption and mismanagement of funds.⁹⁸
- iii. The above problems are also due to absence of an appropriate legislation, which covers different aspects of green taxation and fixes accountability for any violation;
- iv. Lack of comprehensive research on the effectiveness of eco taxes poses another roadblock in knowing how far these measures are effective, what impediments are there on their way and how those obstacles can be removed.
- v. There is also lack of awareness on the part of enterprises and the general public about the advantages of green taxes which comes in the way of encashing those advantages as producers and consumers of goods and services keep carrying on their business as usual without worrying much about the environmental impact of their choices.

⁹⁴ *K.M. Vijayan v. State of Tamil Nadu*, AIR 2005 (NOC) 408 (MAD).

⁹⁵ Sharmeen Hakeem, “Bombay High Court Upholds Constitutional Validity Of Goa Green Cess Act For Reduction Of Carbon Footprint”, *Live Law*, Sep. 21, 2023, available at: <https://www.livelaw.in/high-court/bombay-high-court/bombay-high-court-upholds-constitutional-validity-go-a-green-cess-act-carbon-footprint-fee-238346#:~:text=Sharmeen%20Hakim&text=The%20Bombay%20High%20Court%20at,2013%20or%20the%20Green..> (last visited on Dec. 2, 2024).

⁹⁶ “High Court Suggests Green Tax to Rid Himachal of Waste”, *The Hindustan Times*, July 26, 2024, available at: <https://www.hindustantimes.com/cities/chandigarh-news/high-court-suggests-green-tax-to-rid-himachal-of-waste-101721939554157.html> (last visited on Dec. 2, 2024).

⁹⁷ Government of India, “Draft Guidelines for Imposition of Green Tax on Older Vehicles by State/UT Governments” (Ministry of Road Transport and Highways, 2021).

⁹⁸ *Supra* note 61.

CONCLUSION & SUGGESTIONS

Environmental crime has many forms (pollution, illegal logging, wild-life trafficking etc.) and is committed by individuals as well as organisations, including corporations, for personal or organisational benefits. Such crimes committed by corporations i.e., *Corporate environmental crimes* have been rampant in India, some of which get reported while the rest remain unreported. Though there are many penal provisions in statute books, they have, by and large, remained ineffective and failed to have the desired deterrent effect on corporate offenders due to reasons such as weak enforcement, corruption and so on. There is also an absence of proper official data on various environmental crimes committed by companies as the NCRB publishes data on environmental crimes committed by individuals only. Further, the need for social and economic development of the country and a crucial role played by corporations such development also discourages the government from going hard against corporate offenders for the fear of losing businesses and investment. In such a situation, many scholars have also argued in favour of balancing things by relying more on economic measures and using criminal law only in selective and appropriate cases.

Green taxation is one such measure which has proved to be quite useful in containing corporate environmental crimes, for example, in the UK, and many European Union countries. India has also adopted it but the desired result is yet to be achieved due to reasons such as lack of uniformity in tax rates, mis-utilisation and under-utilisation of taxes so collected, absence of a comprehensive legislation, dearth of detailed research as well as lack of awareness.

In this light, the paper suggests that a proper **central** legislation on the subject be enacted (**by the Parliament using its powers under Art. 248 r/w List I, Entry 97**) and it be strongly enforced, a comprehensive research be carried out on time to time to check its effectiveness and make appropriate amendments in the law or its enforcement mechanism as and when needed, awareness be created through different media so that business entities and general public can avail of its benefits and most importantly, ‘*sustainable development*’ becomes the new *life and business mantra* for them.
