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COMBATING 'GREEN CRIMINOLOGY': SUSTAINABLE TRANSFORMATIONS THROUGH ESG BY-PASSING CSR

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ABSTRACT

India, a rapidly industrializing nation, faces many environmental challenges from industrial activities, deforestation, pollution, and resource extraction. As the nation strives for economic development, instances of corporate misconduct leading to environmental degradation have become a critical concern. Green Criminology, an evolving field within the broader scope of criminology, investigates these environmental offenses and harms, focusing on the individuals, organizations, and societal structures contributing to ecological degradation. This article examines the intersecting dimensions of green criminology and corporate behavior,shedding light on environmental offenses committed by companies operating within the country.

Furthermore, the article explores the role of Corporate Social Responsibility initiatives and the path to Environmental, Social, and Governance in mitigating environmental harm and promoting sustainable practices among corporations. It discusses the effectiveness of regulatory measures in deterring environmental offenses and the challenges associated with enforcing compliance in a diverse and dynamic business environment.

Keywords: green criminology, corporate governance, environment, social responsibility.

INTRODUCTION

'Green Criminology'and capitalism have always been parallel in their destruction and development. For a long time, companies have exploited the environment to extract low-effort profit, leading to an ultimate dead-end climate change, which can be doubtfully

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reversed. Linkages between environmental sociology, ideologies of metabolic rifts, unequal ecological exchanges, and scientific shreds of evidence on planetary boundaries can be made.

The relationship between green criminology and capitalism is complex and multifaceted, involving both critical analysis of the negative ecological consequences of capitalist practices and exploration of potential solutions within a more sustainable economic framework. The essential points of this interaction are:

1. Environmental Exploitation: A capitalistic system driven by profit motives often exploits natural resources without considering environmental consequences. Green Criminologists study instances where corporations engage in activities such as deforestation, pollution, and over-extraction of resources, causing significant harm to ecosystems.
2. Globalization and transnational Crimes:The global reach of capitalism has facilitated the expansion of corporations across borders, leading to international environmental crimes. Greem criminologists investigate how multinational corporations may exploit weaker environmental regulations in certain regions, contributing to ecological degradation on a global scale.
3. Inequality and Environmental Injustice:Capitalist systems can exacerbate social inequalities, leading to disproportionate environmental burdens on marginalized communities. Green criminology explores cases where vulnerable populations are disproportionately affected by pollution, habitat destruction, or exposure to hazardous waste due to capitalist-driven activities.
4. Corporate Influence on Legislation: Green criminologists examine the influence of powerful corporations on legislative processes, leading to the relaxation or circumvention of environmental offenses, creating a permissive environment for corporations.
5. Corporate Greenwashing: Capitalist entities may engage in greenwashing, presenting a false image of environmental responsibility to appeal to environmentally conscious consumers. Green criminology critically assesses these deceptive practices and their implications for genuine efforts toward sustainability.
6. Alternative Economic Models: Some proponents of green criminology advocate for alternative economic models that prioritize sustainability over profit maximization. This includes exploring ecological economics, which integratesenvironmental considerations into financial decision-making.

7. Corporate Social Responsibility: Green criminologists evaluate the effectiveness of Corporate Social Responsibility initiativesin mitigating environmental harm within a capitalist framework. They scrutinize whether these efforts represent genuine commitments to sustainability or merely serve as public relations strategies.
8. Environmental Regulations: Green criminology analyses the strengths and weaknesses of environmental regulations within capitalist systems, assessing their ability to deter and punish environmental offenses effectively.

Shortly, the relationship between green criminology and capitalism involves a critical examination of the environmental consequences of capitalist practices, as well as an exploration of alternatives and reforms that promote sustainability and environmental justice within economic systems.

Examples of pervasive victimization of both humans and animals are examined. In this anthropogenic-driven global ecological collapse era, academic disciplines must focus on environmental disarray, excessive production, ecosystem degradation, and over-consumption.

Companies undertake a systems-based approach to bypass the environmental degradation caused by them in their due course of business. The ESG – Environmental, Social, and Governance concept has evolved to prevent this.

ENVIRONMENT – A PRIORITY OR AN OBLIGATION?

Despite being prioritized by the companies in the past, environmental and associated issues have yet to gain the necessary priority compared to other equally tough societal challenges, including poverty, education, health, and sanitation. A cursory glance at the National CSR Data Portal of the Ministry of Corporate Affairs[2] in India for the last five years shows that most CSR spending has gone towards the education sector, with an average of 39% spending there. Other industries that have received funding include health and sanitation, approximately 23%, and rural development, about11%, with the environment sector at a mere7%.

Within the environment sector, expenditure is favored for projects inclusive of renewable energy, awareness-raising, or green initiatives, with very little funding going toward planting trees or revitalizing and restoring natural resources, including grasslands, forests, and water bodies. However, agroforestry continued receiving a mere monetary grant, supporting carbon

[2]National CSR Portal, Ministry of Corporate Affairs. <Home (csr.gov.in)>accessed on 22 January 2014

sequestration and livelihood goals. Since 2020, there has been a persistent bias towards education, poverty, and healthcare. This prejudice must be actively re-examined, and corrective measures must be taken.

Nonetheless, in addition to their required compliance, there are several instances of the outstanding contribution made by corporations to environmental protection and forest restoration, including tree planting. Sustainable Agroforestry Model by ITC Limited,[3] Project Hariyali by Mahindra Group,[4] Lake Restoration of Allergan by AbbVie Company,[5]and Afforestation Projects by NTPC Limited[6]are a few of the many initiatives associated with the restoration of activities undertaken by the Government.

RESTORING THE LOST

With their fantastic ability to sequester carbon, forests also present a chance to help achieve net-zero goals. However, everyone involved must take part in this. The UN Decade on Ecosystem Restoration aims to stop and reverse the loss of ecosystems in all oceans and continents.

Restoration must be prioritizedunder numerous environmental programs of governmental, non-governmental, and private organizations, including corporations, to repair350 MHA of degraded land globally and 26 MHA in India by 2030. Concern should also be expressed about the fact that many states' forest departments are seeing a reduction in funding, which corporations may partially offset with CSR contributions.

CHALLENGES FOR CORPORATES UNDER CSR

One of the many obstacles corporations encounter while implementing restoration initiatives, such as planting trees, is the program's longer gestation and completion periods relative to other social activities. This makes it more challengingto put this goal into practice, together with the lackof skilled implementing organizations, such as NGOs, and the lack of enabling policy interventions for hassle-free area selection, including damaged forests.

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[3] ITC Businesses, "Environmental Performance" (ITC Limited, Sustainability Report 2013)
[4]Mahindra Admin, "Hariyali, Renewing Lives in Araku" (Mahindra Rise, 22 February 2021)
[5]'Allergan an AbbVie Company Rejuvinates the 28.1- acre Bingipura Lake in Bangalore'*APN News* (India, 27 August 2021)
[6]ESG Disclosure, "Leading India's Power Sector" (NTPC) <Home | NTPC Limited> accessed on 22 January 2014

Due to their technical nature, forest restoration initiatives also require appropriate training and interventions for capacity building.To guarantee the availability of high-quality planting material and the necessary technical assistance for more forest restorative initiatives, the state forest departments must also play a very active partner role. Regardless of whether the areas being targeted are on private or institutional lands, inside or outside of forests, we must adequately consider the interests of the communities involved and provide the means to make our approach participatory and ensure a successful and effective outcome.

In addition to the challenges, there have also been cases of geographical prejudices, practical interpretations of actions, disingenuousness, and a lack of dedication on the part of businesses, all of which undermine the primary goal of accomplishing sustainability objectives.

According to a 2020 WWF study titled Tree Planting by Businesses[7] for European Countries, there needs to be more evidence that these businesses give tree planting or the role of trees in general enough consideration, with a clear focus on the number of trees planted. This justifies a transformation in business mindset to enable a progressive preference shift away from tree planting and toward multipurpose forest restoration.

PARADIGM SHIFT OF CSR TO ESG TO SAFEGUARD THE ENVIRONMENT

Entering the period of stakeholders' capitalism, where ultimate corporate purposesare maximizing long-term valuation to serve their interests, introducing Environmental, Social, and Governance[8] (ESG) becomes a meaningful business philosophy. It refers to a set of criteria that investors and other stakeholders use to evaluate a company's performance and impact in these three key areas. ESG considerations are increasingly important in assessing businesses' long-term sustainability and ethical practices. Here's a breakdown of each component:

1. Environmental (E): This aspect focuses on a company's environmental impact. Investors and stakeholders assess a company's commitment to environmental sustainability, including reducing carbon emissions, managing waste, conserving resources, and adopting eco-friendly practices. Environmental considerations include a company's

[7] 'Tree Planting by Businesses in France, Switzerland and the UK: A Study to inspire Corporate Commitments' (WWF Report, 2020)<https://forestsolutions.panda.org/uploads/default/report/Tree_Planting_by_Businesses.pdf> accessed on 22 January 2014

[8] McKinsey Sustainability, "Does ESG Really Matter – and Why?" (McKinsey Quarterly, 10 August 2022)

carbon footprint, use of renewable energy, waste management practices, and adherence to environmental regulations.

2. Social (S):This evaluates companies' relationships with their employees, customers, communities, and broader society. Investors may consider factors like employee relations, workplace diversity, social responsibility initiatives, and a company's overall impact on the communities in which it operates.
3. Governance (G): Good governance is essential for ensuring an organization's ethical conduct, accountability, and transparency.Governance considerations include the composition and independence of the board, executive compensation, shareholder rights, ethical guidelines, and the overall structure of corporate decision-making.

Investors and financial institutions increasingly integrate ESG factors into their decision-making processes, believing that companies with strong ESG performance are better positioned for long-term success and are likely to be more resilient in environmental, social, and governance challenges. ESG considerations inform investment strategies, portfolio management, and corporate engagement.

There has been a growing focus on sustainable and responsible investing in recent years, with a shift toward ESG investing. Investors are seeking not only financial returns but also positive societal and environmental impacts from their investments. As a result, companies are recognizing the importance of incorporating ESG principles into their business practices to attract investors, build trust, and contribute to a more sustainable and equitable global economy.

"*At best, they are noble initiatives; at worst, they are paying a mere lip service.*" Corporate acronyms, ranging from Corporate Social Responsibility[9] (CSR) tothe 'Triple Bottom line of 3Ps: People, Profit, and Planet,'[10] often remain overlooked on the sidelines, failing to leave a lasting impact on businesses and global communities. One significant drawback of corporate sustainability initiatives is their failure to integrate into the fundamental aspects of an industry, seemingly hindering the potential for meaningful, systematic, and enduring value creation.

The latest development in the corporate sustainability journey is represented by ESG, which is designed to assess and appraise a company's performance. The distinction between its

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predecessors goes beyond a mere alteration in acronyms. It signifies a paradigm shift from philosophical-centered stakeholders to unmistakably prioritizing all the stakeholders.

MESSAGES AND MEANINGS

CSR and earlier programs are internal guidelines and practices demonstrating a company's dedication to generating positive impacts. Despite widespread communication of these CSR commitments via marketing messages, they often lack concrete and comparable data to support the results. Fewcorporations and their CSR initiatives face criticism for 'greenwashing' intensifying consumer skepticism toward corporate sustainability efforts. With ESG, storytelling remains crucial, but it is fortified by specific metrics that assess a company's comprehensive performance. The level of transparency and precision in ESG metrics. Integrating broader frameworks like the Sustainable Development Goals introduces a new dimension of significance to corporate sustainability efforts. For instance, consider Diversity, Inclusion, and Equity[11] (DEI) concerns. Historically, companies have endorsed DEI initiatives via symbolic gestures but often hesitated to be fully transparent about their DEI metrics. Companies at the forefront should use ESG metrics to move beyond superficial declarations. The companies should implement a diversity scorecard to hold leaders accountable. Additionally, companies should publish annual Equality Reports presenting representation data, outlining DEI strategies, and sharing employee stories. This, in turn, exemplifies a shift towards more substantial and accountable reporting in the realm of DEI.

SYSTEMATIC STORAGES

CSR programs exhibit significant diversity from one company to another, encompassing a range of loosely connected activities, from philanthropy to employee volunteerism. The oversight of these programs tends to be fragmented across the organization due to diverse topics and activities falling under CSR. In contrast, ESG issues are inherently intersectional. The 'E,' 'S,' and 'G' aspects are not isolated categories but are interlinked. Consider climate issues as an example – ESG evaluates not only an organization's environmental impact but also the social justice issues related to the disproportionate effects of climate change on low-income populations. This systematic approach demands an integrated management approach where the entire leadership team, including the Board of Directors, assumes responsibility.

VALUE CREATIONS

[11]'What is diversity, equity, and inclusion?' (McKinsey & Company, 17 August 2022)

A noteworthy distinction in the shift towards ESG lies in the motivation behind corporate sustainability initiatives. In the past, the rationale for encouraging stakeholders to embrace CSR initiatives often revolved around the potential cost savings, such as reduced energy consumption. However, the contemporary narrative has undergone a profound transformation. ESG now serves as a strategic level, unlocking new growth opportunities and elevating overall performance, departing from the traditional emphasis on cost reduction. When executed successfully, ESG strategy is underpinned by the company's purpose and embedded deeply within the business operations.

Unilever is a trailblazer in harnessing corporate sustainability to enhance business performance. In alignment with its purpose of making sustainable living commonplace, Unilever Sustainable Living Plan[12] (USLP). As part of this plan, a subset of its brand portfolio adopted the Sustainable Living Brands metric. Since its introduction in 2014, Unilever has reported remarkable results, with these selected brands experiencing growth at a rate of 69% faster than growth. This underscores Unilever's commitment to integrating sustainability into its business strategy and reaping tangible benefits.

WAY FORWARD

Indian corporates are primarily responsible for promoting growth while ensuring that development and the environment are balanced. Corporationsshould take advantage of these mandated provisions to become change agents for sustainable development by behaving in a way that goes beyond CSR obligations and looking toward environmental goals while appropriately avoiding geographical biases, camouflaging, and greenwashing. The social and ecological sectors need to be prioritized, emphasizing carbon-sequestering initiatives like reforestation and restorative measures used by Indian corporations as part of their CSR expenditure patterns. It is necessary to ensure the networking of implementing agencies, particularly NGOs, and their capacity building and training with appropriate incentives through an integrated approach, including all stakeholders. The state must also devise plans to encourage corporate participation and reassess the current frameworks and procedures while keeping the restoration goals in mind. This refocused and revitalized corporate strategy can assist in achieving India's net-zero goals and establishing a proper balance between business and the environment.

[12]'Unilever Celebrates 10 Years of the Sustainable Living Plan' (Unilever. 6 May 2020)

India needs to pass the necessary laws and hold companies responsible for failing to disclose dangers associated with climate change. As several nations worldwide have begun requiring climate disclosures, India has to move quickly to amend the Companies Act 2013 in a way that will make this possible. The following is a list of recommendations to guarantee that corporations are more closely following environmental rules.

1. Amending environmental provisions: All current ecological laws must be amended to comply with the 2010 National Green Tribunal (NGT) Act. Since the penalty requirements in Section 26(1) of the NGT Act are far harsher than those in earlier environmental laws, the NGT must handle multidisciplinary issues in environmental matters. Furthermore, it is necessary to follow the guidelines set forth by the NGT in *Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors.*[13] to fix the environmental compensation regime by the Central Pollution Control Board (CPCB) Report of May 30, 2019. The draft Chemicals (Management and Safety) Rule must also be put into effect to guarantee that businesses share information about potential hazards associated with chemicals and help the newly established National Chemical Authority (NCA) close information gaps regarding the number of chemicals already on the Indian market or those that are proposed to be placed there.
2. Creating regulatory bodies: To monitor corporate environmental efforts and collaborate with the NGT, a regulatory agency has to be established. The State Pollution Control Board (SPCB) or the Pollution Control Committees (PCC) under Section 5, Environment (Protection) Act 1986 have directed all industries included in the 17 categories of highly polluting industries to install a continuous online emission or effluent monitoring system and make sure the data is connected to their servers. Likewise, to use this data to examine compliance in their jurisdiction, it must be necessary for all SPCBs to make their Continuous Emission Monitoring Systems (CEMS) data publicly available.
3. Increasing penalties for environmental damage: When ecological damage occurs, exemplary damages must be awarded by the Supreme Court and the High Courts. For instance, in *Sterlite Industries Ltd. v. Union of India & Ors.*,[14]the Court examined the company's annual report to determine the 10% of the PBDIT (Profit Before Depreciation, Interest, and Taxes) would be paid a compensation when the company was operating without renewing its Consent to Operate (CTP). Businesses must also follow the

[13]*Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors.*,AIR 2017SC 245
[14]*Sterlite Industries Ltd. v. Union of India & Ors.*, AIR 2017 SCW 3231

complex, discursive, and highly discretionary guidelines provided by the Task Force on Climate-related Financial Disclosure (TCFD) when disclosing climate-related risks. The TCFD Recommendations should add a new regime of compelling, flexible, and watchful climate risk disclosure.

4. Holding Parent Corporates accountable: Under the principle of 'lifting of the corporate veil,' parent businesses must answer for their subsidiaries' offenses as they oversee mostof the latter's commercial operations. In the end, parent companies, who have limited liability about the stock they invest in the subsidiary, own the profits made by the subsidiary company. Negating a parent company's culpability for the offenses committed by its subsidiary is a great disservice to society. In the decision of *Iridium India Telecom Ltd. v. Motorola Inc.*,[15] the Supreme Court ruled that "*attribution will be used to determine culpability instead of vicarious liability in the absence of a legislative or common law exception. As a result, it is crucial to look at how conglomerates use the ideas of 'limited liability' and 'separate legal entities' to avoid accountability*."

CONCLUSION

ESG considerations have risen to the forefront of the agenda for crucial stakeholders. Millennials, in particular, are spearheading the push for sustainable investing, while consumers and employees show a growing preference for businesses aligning with their values. Simultaneously, the business sector and regulatory communities drive a notable shift towards establishing global ESG reporting standards. This trend is anticipated to gain momentum, indicating a broader commitment to standardized and transparent reporting on ESG factors across industries.

The business landscape is on the verge of a pivotal moment, with demand for corporate sustainability coming from various quarters. Organizations that resist embracing this new era risk being left behind. For corporate leaders, now is the opportunity to evaluate how their organizations engage with ESG. It involves answering critical questions and realigning with leadership teams to chart a course forward:

1. 'How are you measuring the effectiveness of your sustainability programs?'
   a. Are there quantifiable metrics and benchmarks in place to assess the impact of sustainability initiatives?

[15] *Iridium India Telecom Ltd. v. Motorola Inc.*, AIR 2005 SC 514

   b. Is the measurement methodology comprehensive and reflective of ESG considerations?
2. ‘Who makes decisions about these programs?’
   a. Is there a clear governance structure in place for sustainability decisions?
   b. Are critical stakeholders involved in the decision-making process?
3. ‘How does your "purpose" underpin your sustainability strategy?’
   a. Is your organization's purpose aligned with its sustainability goals?
   b. How does your purpose guide decision-making and actions in sustainability?
4. ‘How is your sustainability program driving the growth and performance of your business?’
   a. Are there tangible connections between sustainability efforts and business growth?
   b. Is sustainability integrated into overall business strategy to enhance performance?

By addressing these questions, corporate leaders can gain insights into the effectiveness and alignment of their sustainability efforts, facilitating a proactive approach to navigating the evolving corporate sustainability landscape.

It is a noble goal to lessen immoral and environmentally harmful actions, yet there are frequently significant discrepancies between intentions and actual outcomes. While most businesses now list environmental protection and CSR as top priorities, many need more will or foresight to implement systematic change. Accepting any company’s sustainability statements at face value would be unrealistic because there are still too many gaps, traps, and chances for greenwashing. Nowadays, many sustainability certification programs are accessible to assist businessesin obtaining a precise financial evaluation of their social and environmental effects.

Worldwide, organized crime groups are a severe threat to our environment since they carry out illicit activities like waste trafficking, illegal mining, and crimes involving fisheries. India suffered greatly, resulting in environmental crimes like the Dehradun Quarrying, the Oleum Gas Leak, and the Bhopal Gas Tragedy. Transitioning from a tortious liability to criminal consequences for acts that impact the health and lives of large populations and cause irreversible environmental degradation is a fundamental aspect of environmental jurisprudence. States must simultaneously work to hold directors and officers personally liable for the deeds or inactions of the company, including its subsidiaries.