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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

CORPORATE LIABILITY REGARDING ENVIRONMENT PROTECTION

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Abstract

The rapid expansion of industrialisation has posed a severe threat to the natural environment, necessitating a robust legal framework that holds corporations accountable for environmental degradation. This paper examines the concept of corporate liability concerning environment protection, with particular emphasis on the Indian legal landscape. It analyses the evolution of environmental liability from the doctrine of absolute liability enunciated in M.C. Mehta v. Union of India to the contemporary statutory and tortious frameworks under the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. The paper also evaluates the role of the National Green Tribunal in enforcing environmental compliance and imposing punitive damages upon errant corporations. Furthermore, it explores the 'polluter pays' principle, the precautionary principle, and the growing discourse on mandatory Corporate Social Responsibility obligations as tools for environmental governance. Comparative perspectives from international jurisdictions, including landmark rulings from the United Kingdom and the Netherlands, are incorporated to enrich the analysis. The paper concludes by advocating for stronger enforcement mechanisms, greater judicial activism, and comprehensive legislative reforms to ensure that corporate actors bear commensurate responsibility for the ecological harm they cause.

Keywords: *Corporate Liability, Environmental Protection, Absolute Liability, Polluter Pays Principle, National Green Tribunal*

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INTRODUCTION

The relationship between corporate enterprise and the natural environment has historically been one of tension and exploitation. As corporations pursue profit maximisation, the natural environment—comprising air, water, soil, and biodiversity—often bears the brunt of industrial activity. The discharge of toxic effluents into rivers, the emission of noxious gases into the atmosphere, and the indiscriminate disposal of hazardous waste are not mere abstractions; they represent tangible injuries inflicted upon ecosystems and human communities alike. The legal system's response to this challenge has been the development of a framework of corporate environmental liability that seeks to internalise environmental costs, deter polluting behaviour, and provide redress to affected parties.

In India, the constitutional commitment to a clean environment is enshrined in Articles 21, 48-A, and 51-A(g) of the Constitution of India. The judiciary has interpreted the right to life under Article 21 to encompass the right to a wholesome environment, thereby elevating environmental protection to the status of a fundamental right. Simultaneously, a vast corpus of statutory law—most notably the Environment (Protection) Act, 1986[4]—has been enacted to regulate corporate conduct and impose liability for environmental violations.

This paper proceeds as follows. Part II traces the historical development of corporate environmental liability in India. Part III examines the statutory framework governing such liability. Part IV analyses judicial developments, particularly the doctrinal evolution of absolute liability. Part V discusses key principles such as the 'polluter pays' principle and the precautionary principle. Part VI considers the role of the National Green Tribunal. Part VII surveys comparative international perspectives. Part VIII evaluates Corporate Social Responsibility as an instrument of environmental governance. Part IX addresses enforcement challenges, and Part X concludes with recommendations for reform.

[4]The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

HISTORICAL DEVELOPMENT OF CORPORATE ENVIRONMENTAL LIABILITY IN INDIA

The origins of environmental liability in India can be traced to the common law principles of nuisance, negligence, and the rule in Rylands v. Fletcher.[5] Under the strict liability rule established in Rylands v. Fletcher, a person who brings onto his land anything likely to do mischief if it escapes is prima facie answerable for all the damage which is the natural consequence of its escape. While this rule provided an early mechanism for holding industrial actors accountable, it was subject to significant limitations, including the defences of act of God, act of a stranger, and consent of the plaintiff.

The inadequacy of the Rylands v. Fletcher framework became starkly evident in the context of large-scale industrial disasters. The Bhopal gas tragedy of 1984, in which the leakage of methyl isocyanate gas from the Union Carbide India Limited plant killed thousands and injured hundreds of thousands of persons, exposed the limitations of existing liability rules.[6] The tragedy demonstrated that traditional negligence-based frameworks were ill-equipped to deal with the magnitude of harm caused by industrial enterprises engaged in inherently dangerous activities.

The Shriram Food and Fertilizer case[7] marked an important judicial intervention, with the Supreme Court of India imposing liability upon a corporation for the leakage of oleum gas, even as it struggled with the doctrinal constraints of the existing framework. It was, however, the landmark judgment in M.C. Mehta v. Union of India[8] that heralded a decisive shift in Indian environmental jurisprudence. The Supreme Court, in that case, departed from the rule in Rylands v. Fletcher and enunciated the doctrine of absolute liability, which constitutes an indigenous and far more demanding standard of corporate accountability.

[5]Rylands v. Fletcher, (1868) LR 3 HL 330.
[6]Union Carbide Corporation v. Union of India, (1990) 1 SCC 520 (Bhopal Gas Tragedy Settlement).
[7]Shriram Food and Fertilizer Industries v. Union of India, (1985) 2 SCC 431.
[8]M.C. Mehta v. Union of India, (1987) 1 SCC 395.

THE STATUTORY FRAMEWORK FOR CORPORATE ENVIRONMENTAL LIABILITY

The statutory framework governing corporate environmental liability in India is extensive, comprising a multiplicity of central and state enactments that address different aspects of environmental protection. The principal statutes of relevance are the Environment (Protection) Act, 1986 (EPA), the Water (Prevention and Control of Pollution) Act, 1974,[9] and the Air (Prevention and Control of Pollution) Act, 1981.[10]

The Environment (Protection) Act, 1986 confers upon the Central Government broad powers to take measures for the protection and improvement of the quality of the environment and to prevent, control, and abate environmental pollution. Section 15 of the EPA imposes criminal penalties upon persons who contravene or fail to comply with the provisions of the Act, including corporations. Crucially, Section 16 provides for the liability of companies and their officers where the offence is committed by a company and is attributable to the neglect or consent of a director, manager, secretary, or other officer of the company.

The Water (Prevention and Control of Pollution) Act, 1974 established the Central and State Pollution Control Boards with authority to regulate the discharge of sewage and trade effluents into water bodies. Section 41 of the Act provides criminal penalties for causing pollution of water, and Section 47 makes the company as well as its responsible officers liable for offences committed by the company.

The Air (Prevention and Control of Pollution) Act, 1981 similarly empowers Pollution Control Boards to regulate industrial emissions and imposes penalties for violations. The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008[11] further impose detailed obligations upon corporations engaged in the generation, collection, storage, and disposal of hazardous waste.

[9] The Water (Prevention and Control of Pollution) Act, 1974, No. 6, Acts of Parliament, 1974 (India).
[10] The Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India).
[11] The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, Rule 4 (India).

Collectively, these statutes create a comprehensive regulatory architecture that imposes both civil and criminal liability upon corporate actors for environmental violations. The civil liability dimension encompasses obligations to pay compensation for damage caused to the environment and to persons affected thereby, while the criminal dimension encompasses imprisonment and fines for responsible officers.

JUDICIAL DEVELOPMENTS: THE DOCTRINE OF ABSOLUTE LIABILITY

The most significant judicial contribution to the law of corporate environmental liability in India is the doctrine of absolute liability enunciated by the Supreme Court in M.C. Mehta v. Union of India.[12] Justice P.N. Bhagwati, writing for the Court, held that an enterprise engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. Crucially, this liability is not subject to any of the exceptions recognised under the Rylands v. Fletcher rule.

The Court further held that the measure of compensation in such cases must be commensurate with the magnitude and capacity of the enterprise so that it acts as a deterrent. This pronouncement established the principle that liability under the absolute liability doctrine is not merely compensatory but also has a punitive and deterrent character. The judgment has since been applied in numerous cases involving industrial pollution, effluent discharge, and hazardous waste management.

In Indian Council for Enviro-Legal Action v. Union of India,[13] the Supreme Court held that industries causing pollution and environmental degradation are bound to compensate the affected persons and restore the environment. The Court applied the 'polluter pays' principle as part of the

[12] M.C. Mehta v. Union of India, (1987) 1 SCC 395, 420 (the Oleum Gas Leak Case, introducing the absolute liability principle).
[13] Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.

absolute liability doctrine, holding that the financial costs of preventing or remedying pollution should lie with the undertakings which cause the pollution.

The Sterlite Industries case[14] further illustrated the dimensions of corporate environmental liability in the context of a copper smelting plant whose operations were found to have caused significant air and water pollution in the surrounding areas. The court's intervention in directing the closure of the plant demonstrated the willingness of Indian courts to impose far-reaching consequences upon corporations that persistently violate environmental norms.

The case of Intellectuals Forum, Tirupathi v. State of A.P.[15] reinforced the principle that courts must balance developmental interests with environmental protection, and that the burden of proof lies upon the proponent of an activity that may harm the environment to demonstrate that no irreversible damage will result therefrom.

KEY PRINCIPLES OF CORPORATE ENVIRONMENTAL LIABILITY

Several foundational principles undergird the law of corporate environmental liability in India and internationally. These principles, many of which have been judicially recognised as part of customary international law and domestic environmental jurisprudence, shape the contours of corporate responsibility.

A. **The Polluter Pays Principle** The 'polluter pays' principle, first articulated at the international level in the Rio Declaration on Environment and Development,[16] mandates that the costs of pollution should be borne by the party responsible for causing it. In India, the Supreme Court in Vellore Citizens' Welfare Forum v. Union of India[17] recognised this principle as an integral part of sustainable development and directed polluting tanneries to pay compensation for the environmental damage they had caused.
B. **The Precautionary Principle** The precautionary principle, derived from Principle 15 of the Rio Declaration, holds that where there are threats of serious or irreversible damage,

[14]Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575.
[15]Intellectuals Forum, Tirupathi v. State of A.P., (2006) 3 SCC 549.
[16]Rio Declaration on Environment and Development, 1992, Principle 16, UN Doc. A/CONF.151/26/Rev.1 (Vol. I).
[17]Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647.

lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. The Supreme Court in A.P. Pollution Control Board v. M.V. Nayudu[18] held that this principle has been absorbed into domestic environmental law and must be applied by courts and regulatory authorities in cases involving potential environmental harm.

C. **The Principle of Sustainable Development** The principle of sustainable development, as articulated in the Stockholm Declaration[19] and subsequent international instruments, requires that development activities be conducted in a manner that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The Supreme Court in Lafarge Umiam Mining (P) Ltd. v. Union of India[20] held that the principle of sustainable development requires decision-makers to integrate environmental considerations into developmental decisions, particularly in cases involving extractive industries.

D. **Absolute Liability as a Distinct Principle** As discussed in Part IV above, the doctrine of absolute liability represents a distinct and more demanding principle than strict liability under Rylands v. Fletcher. Unlike strict liability, absolute liability admits of no exceptions and is designed specifically to address the unique dangers posed by enterprises engaged in inherently hazardous activities. This principle has effectively transformed the basis of corporate environmental liability in India from fault-based to enterprise-based, placing the responsibility for all harm caused by hazardous activities squarely upon the enterprise that undertakes them.

THE NATIONAL GREEN TRIBUNAL AND CORPORATE ENVIRONMENTAL LIABILITY

The establishment of the National Green Tribunal (NGT) under the National Green Tribunal Act, 2010[21] represented a landmark development in the institutional architecture for enforcing corporate environmental liability in India. The NGT is a specialised judicial body with the jurisdiction to

[18] A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718.
[19] Stockholm Declaration on the Human Environment, 1972, Principle 21, UN Doc. A/CONF.48/14/Rev.1.
[20] Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338.
[21] The National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India).

adjudicate disputes relating to the implementation of environmental laws and to award compensation for environmental damage.

The NGT has exercised its jurisdiction vigorously since its establishment, adjudicating a wide range of cases involving industrial pollution, illegal mining, construction in environmentally sensitive zones, and improper disposal of solid and hazardous waste. In the matter concerning Ganga pollution caused by distilleries,[22] the NGT directed erring industrial units to pay substantial compensation and imposed conditions for the installation of effluent treatment plants as a prerequisite for continued operation.

One of the most significant features of the NGT's jurisprudence is the expansive interpretation it has given to the concept of compensation. The NGT has held that compensation for environmental damage must encompass not only the immediate harm to persons and property but also the cost of restoring the environment to its pre-damage condition, the cost of monitoring environmental quality, and the loss of ecological services. This broad approach to remediation reflects a sophisticated understanding of the multi-dimensional nature of environmental harm and represents a significant advance over the traditional common law conception of damages.

The NGT has also developed a robust jurisprudence on the interim measures available to prevent ongoing environmental harm, including the power to stay the operation of environmentally harmful activities pending the disposal of cases before it. This power has proven to be a potent tool for preventing the continuation of corporate environmental violations during the pendency of legal proceedings.

COMPARATIVE INTERNATIONAL PERSPECTIVES

The development of corporate environmental liability is not confined to India; international jurisprudence and legislation have significantly influenced the contours of this area of law. A comparative examination reveals both convergences and divergences in the approaches adopted by different legal systems.

[22]National Green Tribunal, In re: Ganga Pollution (Distilleries), Original Application No. 200 of 2014.

In the United Kingdom, the landmark decision of the Supreme Court in Vedanta Resources plc v. Lungowe[23] allowed Zambian communities affected by pollution from the Nchanga Copper Mine, operated by a Zambian subsidiary of the UK-based Vedanta Resources, to bring claims against the parent company in UK courts. The judgment recognised the possibility of parent company liability for the environmental torts of subsidiaries, thereby extending the territorial reach of corporate environmental accountability.

In the Netherlands, the Urgenda Foundation v. State of the Netherlands case[24] established a landmark precedent in which the Dutch Supreme Court upheld an obligation upon the State to take more ambitious measures to reduce greenhouse gas emissions. While primarily directed at state actors, the decision has important implications for corporate environmental responsibility, as it validates the use of private litigation as a mechanism for enforcing climate-related obligations.

In the United States, the Deepwater Horizon oil spill of 2010 gave rise to extensive litigation against British Petroleum and its associated contractors, resulting in multi-billion-dollar settlements for environmental damage, economic losses, and civil penalties.[25] The case illustrated the scale of liability that can arise from catastrophic corporate environmental failures and the importance of comprehensive environmental insurance and risk management mechanisms.

A comparative analysis of these international developments reveals a global trend towards expanding the scope of corporate environmental liability, recognising parent company responsibility for subsidiary conduct, and utilising private litigation as a complement to regulatory enforcement. These developments offer valuable lessons for the further development of corporate environmental liability in India.

[23]Vedanta Resources plc v. Lungowe & Others, [2019] UKSC 20.
[24]Urgenda Foundation v. State of the Netherlands, ECLI:NL:HR:2019:2007 (Netherlands Supreme Court, 2019).
[25]Deepwater Horizon Oil Spill: Transocean Ltd., In re Oil Spill by the Oil Rig 'Deepwater Horizon', 910 F. Supp. 2d 891 (E.D. La. 2012).

CORPORATE SOCIAL RESPONSIBILITY AND ENVIRONMENTAL PROTECTION

The Companies Act, 2013 introduced a mandatory Corporate Social Responsibility (CSR) obligation upon certain categories of companies, requiring them to spend at least two percent of their average net profits on CSR activities, which include environmental sustainability initiatives.[26] Schedule VII of the Act specifically lists ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources, and maintaining quality of soil, air and water as eligible CSR activities.

While CSR obligations represent a positive development in the integration of environmental considerations into corporate governance, critics have noted that they do not constitute a substitute for robust regulatory enforcement of environmental liability. The voluntary and discretionary character of CSR—even in the Indian statutory model, where expenditure is mandated but the choice of activities remains largely at the discretion of the corporation—limits its effectiveness as a mechanism for ensuring that corporations bear the full costs of the environmental harm they cause.

Nevertheless, CSR can complement the regulatory framework by encouraging proactive environmental stewardship, fostering a corporate culture of environmental responsibility, and building stakeholder trust. The Securities and Exchange Board of India's Business Responsibility and Sustainability Reporting (BRSR) framework[27] further strengthens environmental accountability by requiring listed companies to disclose detailed information on their environmental performance, including their energy and water consumption, greenhouse gas emissions, and environmental compliance record.

The integration of environmental, social, and governance (ESG) criteria into investment decisions has also begun to exert significant pressure upon corporations to improve their environmental performance. Institutional investors increasingly require companies to demonstrate strong

[26] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), s. 135.
[27] Securities and Exchange Board of India, 'Business Responsibility and Sustainability Reporting' (BRSR) Framework, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021.

environmental credentials as a condition of investment, creating market-based incentives for corporate environmental responsibility that complement the regulatory and judicial mechanisms discussed in the preceding sections.

ENFORCEMENT CHALLENGES AND THE WAY FORWARD

Notwithstanding the existence of a comprehensive statutory and judicial framework for corporate environmental liability, enforcement remains a significant challenge in India. Several systemic factors undermine the effective implementation of environmental law and limit the deterrent effect of environmental liability.

First, regulatory capacity is often inadequate. The Central and State Pollution Control Boards, which are the primary regulatory authorities responsible for monitoring industrial emissions and effluents and enforcing environmental standards, are frequently understaffed, under-resourced, and subject to political influence. This limits their ability to conduct regular inspections, detect violations, and take prompt enforcement action against polluting industries.

Second, the criminal liability provisions of environmental statutes are rarely invoked in practice. The prosecution of corporate officers for environmental offences is the exception rather than the rule, and even when prosecutions are initiated, the slow pace of criminal proceedings often frustrates the deterrent purpose of criminal sanctions. The Supreme Court has emphasised the importance of the rule of law in environmental enforcement, particularly in cases where influential actors seek to evade accountability.[28]

Third, the assessment of environmental damage is technically complex and often contested. Corporations engaged in adversarial litigation frequently challenge the methodology used to quantify environmental harm, leading to protracted disputes that delay the payment of compensation. The development of standardised methodologies for environmental damage

[28]Vineet Narain v. Union of India, (1998) 1 SCC 226 (recognising the duty of the State to act against influential actors polluting the environment).

assessment, drawing upon expertise in ecology, economics, and public health, is essential for overcoming this challenge.

Fourth, the participation of affected communities in environmental enforcement proceedings is often limited. Public interest litigation has provided an important avenue for citizen participation in environmental governance, but the procedural and financial barriers to access to justice remain significant, particularly for marginalised communities disproportionately affected by corporate pollution.

Addressing these challenges requires a multi-pronged approach encompassing institutional reform, legislative strengthening, judicial innovation, and civil society engagement. Regulatory authorities must be adequately resourced and insulated from political interference. Criminal liability provisions should be more actively enforced, particularly in cases of persistent or egregious violations. Environmental impact assessment processes should be strengthened to ensure that the environmental consequences of proposed industrial activities are rigorously evaluated before approvals are granted. And access to justice mechanisms should be expanded to enable affected communities to participate effectively in environmental enforcement proceedings.

CONCLUSION

Corporate liability for environmental protection represents one of the most important and dynamic areas of contemporary law. The rapid pace of industrialisation, the escalating threat of climate change, and the increasing recognition of the links between environmental degradation and human rights have combined to make the question of corporate environmental accountability more urgent than ever before.

India has made significant strides in developing a framework of corporate environmental liability, from the bold judicial innovation of the absolute liability doctrine in M.C. Mehta v. Union of India to the establishment of the National Green Tribunal as a specialised forum for environmental adjudication. The statutory framework, while comprehensive in its coverage, requires more vigorous and consistent enforcement if it is to fulfil its intended purpose of deterring corporate environmental violations and providing effective redress to those who suffer harm as a result thereof.

The principles of absolute liability, the polluter pays principle, and the precautionary principle provide a sound doctrinal foundation for holding corporations accountable for environmental harm. The challenge now is to translate these principles into practice through effective regulatory enforcement, robust judicial oversight, and a corporate culture that genuinely internalises the imperative of environmental responsibility.

Looking ahead, the development of corporate environmental liability must be attentive to emerging challenges, including the environmental impacts of digital industries, supply chain pollution, and the corporate contribution to climate change. The global trend towards recognising parent company liability for the environmental conduct of subsidiaries, as illustrated by the Vedanta decision in the United Kingdom, also merits close attention in the Indian context, where many large industrial enterprises operate through complex corporate structures that can obscure the locus of environmental responsibility.

Ultimately, the effective protection of the environment through corporate liability requires not merely legal rules but a fundamental shift in the relationship between corporate enterprise and the natural world—a shift from exploitation to stewardship, from externalisation of costs to internalisation of responsibility, and from compliance as a minimum standard to sustainability as a core corporate value. The law can and must play a central role in catalysing and sustaining this transformation, but it can succeed only if it is supported by strong institutions, an informed judiciary, an engaged civil society, and a political will to hold corporate actors accountable for the environmental legacy they leave behind.