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## BEYOND COMPLIANCE: EXAMINING THE EVOLUTION OF CORPORATE ENVIRONMENTAL LIABILITY IN INDIA

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### ABSTRACT

As India deals with escalating environmental crises, from extreme air pollution and unsafe industrial activity to heightened consequences of climate change, the limitations of existing environmental tort law and corporate liability laws have become increasingly evident. This article examines the adequacy of India's regulatory framework as articulated in *the Environment (Protection) Act, 1986 and Companies Act, 2013*, to hold corporations accountable for environmental harm. In this paper, doctrinal and jurisprudential research, including landmark rulings on the evolution of the absolute liability doctrine, pulls into focus what roles are played by the judiciary, regulatory agencies, and civil society. We analyse the reforms and evolving contours of Corporate Social Responsibility (CSR) and sustainability requirements imposed on corporations in India under its corporate regulatory regime. This study identifies serious enforcement and institutional challenges that prevent the deterrent function of environmental law laws in India. The final recommendations to improve regulatory frameworks, institutional capacity, and getting the balance right between corporate liability and meeting India's twin mandates of development, and environmental protection will be provided.

### INTRODUCTION

*Salmond and Heuston* provides the following definition of **tort** : *A tort is a 'civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.'*<sup>1</sup> Corporate environmental liability generally holds that corporations must be

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<sup>1</sup> Law of Torts (1992), 20th Edn., pp. 14, 15.

responsible for environmental damages. India is on the verge of becoming one of the largest economies in the world, while being the fifth most polluted country in the world<sup>2</sup>. It faces the dilemma of balancing industrial development with environmental sustainability. In *M.C. Mehta v. Union of India*<sup>3</sup>, the Supreme Court gave relief and damages under tort principles for industrial pollution, making **environmental damage a public tort**. In India, there is a growing close link between tort law and environmental protection, particularly because corporate behavior is becoming more intrusive and damaging toward the environment. In *Vellore Citizens' Welfare Forum v. Union of India*<sup>4</sup>, The Court was able to introduce several important principles including *the precautionary principle* and *the polluter pays principle*. The Court's decisions show the principles of tort being rooted in jurisprudence around environmental issues.

Perhaps the most significant development arising from *the Bhopal Gas Tragedy*, was the emergence of *the doctrine of absolute liability*, which has supplanted the defence of reasonable care in hazardous industry cases.<sup>5</sup> These developments demonstrate that Indian tort law has been adapted to improve corporate accountability and promote environmental justice. Corporate environmental liability rests on the "*polluter pays*" principle which requires corporations to pay cleanup costs and address environmental damage. This liability framework offers deterrence and motivation towards sustainable corporate action and greater transparency.<sup>6</sup>

At the level of the Constitution, environmental protection is a national duty and obligation to build a welfare state. While *the Constitution of India* does not expressly confer a fundamental Right to a clean environment,<sup>7</sup> *Articles 48A and 51A(g) of the Directive Principles and Fundamental Duties* respectively impose duties on the State and citizens to protect the environment and are an integral part of Article 21. *The right to a healthy environment* has been interpreted by the judiciary, pursuant to *Article 21, to be part of the right to life*.<sup>8</sup> "Any

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<sup>2</sup> IQAir, *World Air Quality Report 2023*, IQAir (Mar. 19, 2024), <https://www.iqair.com/in-en/world-air-quality-report>.

<sup>3</sup> *M.C. Mehta v. Union of India*, AIR 1987 SC 965

<sup>4</sup> *Vellore Citizens' Welfare Forum v. Union of India*, 1996, 5 SCC 647

<sup>5</sup> *Union Carbide Corporation v. Union of India*, AIR 1990 SC 273

<sup>6</sup> *Polluter Pays Principle*, *ScienceDirect*, <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/polluter-pays-principle>

<sup>7</sup> *Virender Gaur v. State of Haryana*, (1995) 2 S.C.C. 577 (India)

<sup>8</sup> *India Const.* art. 21; id. art. 48A; id. art. 51A(g)

*disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution.*"<sup>9</sup>

The Supreme Court has repeatedly recognized *Article 21 of the Constitution of India* as including the right to live in a clean and healthy environment, and has more recently stated that one human right is directly related to the environmental right to ensure protection from climate change. With the rising climate crisis, there is a growing need to affirmatively recognize environmental protection as a human right or a separate enforceable right.

## **RESEARCH QUESTIONS**

1. How effective are India's existing legal frameworks, especially tort law and corporate liability regimes, in holding corporations accountable for environmental harm and providing remedies for the harm against corporations?
2. What are the main legal and institutional barriers to corporate accountability for environmental harm and how can this be resolved in India through statutory reform and creative jurisprudence?

## **RESEARCH OBJECTIVES**

1. To critically evaluate the existing legal framework governing corporate liability for environmental harm in India, with particular emphasis on the principles and application of environmental tort law.
2. To examine the evolution of environmental jurisprudence in India and assess its influence on the development of corporate accountability mechanisms.
3. To identify the challenges and limitations in the enforcement of corporate environmental liability and propose legal and policy reforms aimed at strengthening the efficacy of environmental tort remedies in India.

## **RESEARCH METHODOLOGY**

This study is limited to doctrinal and normative legal methodology with aspects of comparative and policy analysis. Primary sources are court decisions by the Indian courts, mostly the

Supreme Court, constitutional provisions, and statutory provisions - statutes are *the Environment (Protection) Act, 1986, and the Companies Act, 2013* relevant to corporate environmental liability in tort cases in India. The paper identifies key judicial decisions with specific scrutiny on how the judicial interpretation of corporate environmental liability and tort principles holding corporations liable has advanced over time.

To assess systemic gaps and prospects for reform, I provided comparative perspectives with international legal principles, including principles from developing international transnational environmental law and liability principles from foreign tort systems. I utilized a policy perspective to evaluate the appropriateness of the current legislative framework and regulatory regime established to impose some corporate accountability.

The aim of this multipronged methodology is to establish an academically rigorous understanding of the advantages and challenges of India's corporate environmental liability regime, along with legal arguments for actionable reform proposals that satisfy domestic policy priorities and international best practices.

## **LITERATURE REVIEW**

### **1. "*Transnational Corporations and Environmental Damage: Is Tort Law the Answer?*" (2001), Michael Anderson**

In his article, Michael Anderson investigates the possibility of using tort law to compensate for environmental damage brought on by multinational companies (TNCs). Although tort law, in theory, provides a framework for victim recompense and corporate accountability, he contends that serious issues compromise its efficacy. These include the intricacy of applying domestic legal rules to foreign corporate conduct, jurisdictional barriers, and challenges in establishing causality across national borders. Anderson draws attention to the ways that laws such as *forum non conveniens* frequently deny victims in underdeveloped nations access to justice. In the end, he comes to the conclusion that while tort law is crucial, it is not enough to handle the scope and complexity of environmental harm caused by transnational corporations. This suggests the necessity of international legal structures and accompanying

regulatory reforms.<sup>10</sup>

## **2. "Beyond the Liability Wall: Strengthening Tort Remedies in International Environmental Law," Noah M. Sachs**

Noah M. Sachs provides a critical assessment of the inability of the existing international tort liability regime to address transboundary environmental degradation. Sachs identifies three key factors that inhibit the practical implementation of the regime: (1) the conflicting interests of developed and developing countries; (2) the high transaction costs and low anticipated benefits for each party; and (3) the inclusion of strict liability provisions in the treaties that disincentivize participation by states. Sachs concludes that the obstacles have stalled over a dozen civil liability treaties, most of which are unratified and dormant. To overcome these barriers, he calls for a restructuring of both the substantive content of the liability treaties and the negotiation process. Sachs also suggests potential avenues for norm diffusion as a way to advance liability principles in new and innovative ways outside typical treaty-making practices.<sup>11</sup>

## **3. "Risk to Responsibility: Corporate Environmental Liability in India" by Santhosh Prabhu and Sharika Rai**

Santhosh Prabhu and Sharika Rai discuss the development of corporate environmental liability in India, noting a shift from a risk-based approach towards corporate responsibility. The authors look at relevant legislation in India, such as the Environment (Protection) Act of 1986 and the Companies Act of 2013, and conclude that expanded obligations for corporations have been established to protect the environment. The authors examine the inclusion of Corporate Social Responsibility (CSR) requirements and discuss implications for directors' duties in holding corporations responsible for the environment. The paper considers enforcement challenges like delays in the courts and limited monitoring of corporate activity, and notes the role of the judiciary in enforcing corporate behavior. The authors

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<sup>10</sup> Michael Anderson, *Transnational Corporations and Environmental Damage: Is Tort Law the Answer?*, 41 Washburn L.J. 399 (2001).

<sup>11</sup> Noah M. Sachs, *Beyond the Liability Wall: Strengthening Tort Remedies in International Environmental Law*, 55 UCLA L. Rev. 837 (2008).

recommend reform and building policy capacity that enhances corporate accountability regarding environmental liability statutes, which will better balance economic development with environmental sustainability in India.<sup>12</sup>

## **SOCIO LEGAL ANALYSIS**

India's environmental governance regime is shaped by an intricate interplay between statutory frameworks, constitutional interpretation, and judicial activism. The foundational legislation—the *Environment (Protection) Act*, 1986 and the *National Green Tribunal Act*, 2010—confers broad powers upon the central government and quasi-judicial bodies such as the **National Green Tribunal (NGT)** to prevent, control, and remediate environmental harm. However, the enforcement machinery under these statutes remains frail, with lightly punitive sanctions and institutional under capacity allowing corporate violators to evade substantial liability for preventable environmental degradation.<sup>13</sup> This undermines the deterrent objectives embedded within the statutory architecture. Recognising these deficiencies, the **Indian judiciary** has actively stepped in to develop substantive environmental principles and extend liability doctrines. In *Indian Council for Enviro-Legal Action v. Union of India*, the Supreme Court held that pollution is not merely a statutory offence but a **civil wrong**—a tort inflicted upon the community at large.<sup>14</sup> This marked a significant shift from regulatory to compensatory justice, empowering courts to award damages for environmental restoration and to impose obligations even in the absence of explicit statutory violations.

## **PUBLIC INTEREST LITIGATION**

Through innovative use of **Public Interest Litigations (PILs)** under *Articles 32 and 226*, the courts have expanded access to environmental justice, especially for disadvantaged populations lacking formal legal capacity.<sup>15</sup> PILs have become a critical tool for environmental accountability, enabling individuals, NGOs, and community groups to seek judicial intervention against environmentally destructive corporate conduct without **clear legislative codification, standardised liability norms, and capacity-building** within enforcement

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<sup>12</sup> Santhosh Prabhu & Sharika Rai, *Risk to Responsibility: Corporate Environmental Liability in India*, Int'l J. L. Just. Jurisprudence 4(2):291–298 (2024)

<sup>13</sup> *Environment (Protection) Act*, No. 29 of 1986, § 15 (India); *National Green Tribunal Act*, No. 19 of 2010, §§ 14–15 (India); Anirudh Singh Malik, *Corporate Liability for Environmental Harm in India*, 6 Int'l J.L. Mgmt. & Hum. 2975, 2981–82 (2023).

<sup>14</sup> *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 S.C.C. 212, 235 (India).

<sup>15</sup> Lavanya Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 19 J. Env't. & Dev. 293, 295–302 (2010)

agencies; environmental tort remedies remain sporadic and unevenly applied. A more systemic approach is required—one that bridges **tortious duties**, **constitutional obligations**, and **regulatory mandates**. This entails: raising penalties to proportionate levels; empowering regulatory bodies with clearer thresholds for establishing corporate liability; and recognising **environmental due care** as a binding duty within both statutory and common law frameworks.

**Corporate Social Responsibility (CSR)** refers to the *way of running the businesses by which corporate houses contribute towards social good and adds to value. It can be defined as a sense of responsibility of the companies towards their community and the environment in which they operate.*<sup>16</sup>

It involves acknowledging the environmental consequences of corporate activities and implementing proactive strategies to mitigate harm. In recent years, CSR has gained significant traction in India, emerging as a mechanism through which companies can engage with social and ecological issues meaningfully.

India's legal foundation for CSR is established under the *Companies Act, 2013*, which mandates that certain companies—based on specified financial thresholds—*allocate at least 2% of their average net profits towards CSR initiatives.*<sup>17</sup> Among the approved activities are those aimed at fostering sustainable environmental practices, such as conservation of natural resources, climate change mitigation, and promotion of ecological awareness. The implementation of mandatory CSR provisions has led to increased corporate engagement in environmental initiatives. Many Indian companies have undertaken projects to reduce their environmental footprint by adopting renewable energy, improving waste management systems, reducing emissions, and preserving biodiversity. These initiatives not only contribute to environmental stewardship but also enhance corporate reputation, improve stakeholder relationships, and strengthen employee engagement and brand loyalty.<sup>18</sup>

## COMPARATIVE ANALYSIS

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<sup>16</sup> Shivangi Dhawan & Rabinarayan Samantara, *Corporate Social Responsibility in India: Issues and Challenges*, 11 *IIMS J. Mgmt. Sci.* 91 (2020), <https://doi.org/10.5958/0976-173X.2020.00008.1>.

<sup>17</sup> *Companies Act*, No. 18 of 2013, § 135 (India)

<sup>18</sup> Anirudh Singh Malik, *Corporate Liability for Environmental Harm in India*, 6 *Int'l J.L. Mgmt. & Hum.* 2975 (2023).

In jurisdictions like the United States and European Union, tort principles reinforce statutory environmental law; thus, they provide useful lessons for enhancing corporate environmental liability in India. In the United States, *the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as the Superfund law)* imposes strict, joint, and several liability upon potentially responsible parties for environmental contamination.<sup>19</sup> CERCLA is meant to supplement common law tort remedies derived from public and private nuisance, nuisance, and trespass, which are still relevant to private enforcement of environmental law.<sup>20</sup> In mass tort litigation, class actions have emerged as an effective procedural means to provide deterrence and secure compensation. For example, *In re DuPont C-8 Litigation*,<sup>21</sup> and *Exxon Shipping Co. v. Baker*,<sup>22</sup> show how collective remedies can further address corporations responsible for harm to the environment on a larger scale than traditional remediation claims.

In Europe, **the Environmental Liability Directive** applies a polluter-pays principles, but is mostly used through administrative routes rather than judicial action.<sup>23</sup> The ELD imposes strict liability for dangerous occupational activities, and fault-based liability for non-dangerous environmental damage; however, they are generally used by public authorities instead of tort-based litigation but are still a common form of enforcing liability for inappropriate environmental behaviour.

These comparative models identified two possible approaches - judicial compensation versus administrative enforcement, that India might pick and choose from. Regardless of the model it pursues, each model reflects the necessity of clear standards of liability, agents strong enough to enforce the law, and procedures convenient enough for victims.

## IMPLEMENTATIONAL CHALLENGES

The effective functioning of the National Green Tribunal (NGT) is limited by constant resource constraints and jurisdictional limitations, despite the progressive architecture created by the

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<sup>19</sup> Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601–9675 (1980) (USA).

<sup>20</sup> Daniel A. Farber, *Tort Law in the Era of Climate Change, Katrina, and 9/11*, 43 Val. U. L. Rev. 1075, 1082–84 (2009).

<sup>21</sup> *In re E.I. DuPont de Nemours C-8 Pers. Injury Litig.*, 2017 WL 944207 (S.D. Ohio Mar. 10, 2017).

<sup>22</sup> *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008).

<sup>23</sup> Directive 2004/35/EC, of the European Parliament and of the Council of 21 April 2004 on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage, 2004 O.J. (L 143) 56.

National Green Tribunal Act, 2010. Because there are currently no accepted scientific norms or standardised scientific methods for evaluating environmental degradation, compensation awards are often discretionary, creating inconsistent and unforeseen conclusions, which undermines adjudicatory legitimacy.<sup>24</sup>

Regulatory bodies such as the Central, State Pollution Control Boards (CPCB, SPCB) face shortages of personnel, technical/legal processes, autonomy and resources. This has prevented these regulatory bodies from adequately assessing environmental compliance or taking an active role in environmental stewardship.<sup>25(2)</sup> For example, not only facing institutional barriers, but procedural barriers (high costs of litigation, specificity of environmental claims and information inequity between impacted communities and corporate polluters).

As a result, access to meaningful, timely environmental justice for at-risk populations is severely diminished, and the constitutional commitment (Article 21) to a clean and healthy environment is thus primarily diminished.

## RECOMMENDATIONS

### 1. Codify the Doctrine of Absolute Liability

While the Supreme Court in *M.C. Mehta v. Union of India* developed **the doctrine of absolute liability**,<sup>26</sup> it is a judge-led principle and does not exist as an express statutory standard. I believe that for certainty and for this doctrine to be binding, it should be codified across all environmental statutes and specifically in laws regulating hazardous industries and polluting industries.

### 2. Reform Penalty Regimes to Drive Effective Deterrent

The current penalties under environment laws in Canada in statutes such as the Environment (Protection) Act 1986, is insufficient to deter corporate crime, specifically given that most harm is caused by larger actors within an industry. A more progressive penalty system should be

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<sup>24</sup> *National Green Tribunal Act*, No. 19 of 2010, §§ 14–15 (India).

<sup>25</sup> Divan & Rosencranz, *Environmental Law and Policy in India* 339–370 (2d ed. 2001)

<sup>26</sup> *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 1086 (India)

introduced by including: levels of harm with reference to Environmental harm; the economic capacity of the individual or corporation; in some egregious cases, penalties determined through their annual percentage of revenue, as is done in both competition law or fraud regimes.<sup>27</sup>

### **3. Codify distinct corporate environmental crime**

A distinct corporate environmental crime should be codified that takes into account corporate decision-making bodies. The following should be included in statutory provisions: Criminality should attach to directors and senior officers; The corporate veil should be pierced, if necessary; The mens rea for corporations shall be motivated by Board actions, approvals or omissions. This would bring India into alignment with international leading practices like those in Canada and the UK with their corporate liability legislation.

### **4. Reverse the Burden of Proof for Hazardous Activity Cases**

For environmental claims involving hazardous substances or dangerous activities there should be a reversal of the burden of proof to the defendant corporation to establish that it took appropriate precautions and that the alleged harm arose from its actions. This would codify the precautionary principle and align with *Vellore Citizens' Welfare Forum v. Union of India* and international expectations including Rio Declaration Principle.

### **5. Strengthen Environmental Litigation Mechanisms**

The National Green Tribunal needs its jurisdiction, staffing and scientific expertise significantly strengthened. Also, There should be good environmental benches in High Courts manned by experts; There should be fast-track litigation options for urgent environmental claims; There needs to be greater budgetary provision for legal aid for environmental PILs;

### **6. Standardise Compensation Guidelines for Environmental Damage**

Guidelines need to be developed with a science and policy base for granting compensation, including: Valuation of ecosystem service; Assessment of long term public health impacts; Valuation of cultural and community loss. Guidelines should be developed using ecological economics, environmental health science, and under the polluter pays principle, both in terms of compensatory restoration and deterrence.

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<sup>27</sup> *Competition Act*, No. 12 of 2003, § 27(b) (India)

## CONCLUSION

India's regime of environmental tort liability has been forged through judicial innovation and subsequent legislative development, including the incorporation of doctrines like absolute liability, polluter pays, and the precautionary principle. Public interest litigation has also provided greater access to environmental justice through civil society action or affected communities being able to hold actors of environmental harm to account.

Nevertheless, the mechanisms in practice are still weak. There are barriers in law that include institutional incapacity, challenges to proving causation, and inter-collective and corporate power imbalances that inhibit accessing remedies. Furthermore, these deficiencies impact already vulnerable communities who are often ill-equipped to access environmental protection or pursue social equity.

In addressing these gaps we encourage the following: 1) statutory codification in relation to judicial principles; 2) creation of legislated corporate environmental offences; 3) increasing applicable penalties and making them deterrent in nature; 4) reversal of proof burdens in respect to hazardous activities; and, 5) strengthen the institutional capacity of adjudicatory bodies to undertake roles like the National Green Tribunal (NGT).

Achieving sustainable development will require a corporate responsibility regime that appropriately balances the demands of environmental protection against the optimum for economic growth and opportunity. Environmental tort law could be a powerful agent in achieving the loaded constitutional promise of a clean and healthy environment through Article 21, if it can be reinforced and developed in a timely and systematic manner.

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