

## “Critical Analysis of the Corporate Liability in Environmental Harm”

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### **Abstract**

Corporate liability for environmental harm has become a crucial area of legal and regulatory focus as environmental damage continues to impact global ecosystems and public health. Corporate liability plays a pivotal role in addressing environmental harm by holding businesses accountable for their impact on the environment. Therefore, the idea of corporate liability for environmental damage has become important. The legal frameworks and principles governing corporate responsibility for environmental degradation. It explores the evolution of corporate liability from traditional tort law to contemporary regulatory approaches, including strict liability, negligence, and statutory obligations. The most important legislation that makes corporate liable for the environmental harm are the Environmental Protection Act 1986, the Water (Prevention and control of pollution) Act 1974 and the companies Act, 1956. The companies can be held liable for the environmental damages with or without intentions. In India the enforcement of the corporate liabilities remains difficult, even with the existence of the legal framework. There is an inadequate from people's understanding of environmental issues and the legislative problem with protection of environment.

**Keywords:** Corporate Liability, Environmental law, Ecosystem, Environmental Protection Act (1986), Water Act (1974), and Company Act, 1956.

### **1. INTRODUCTION**

Protecting the environment is both a duty and an opportunity. Over the past century, humanity has significantly harmed and exploited the natural world for economic gain and immediate needs. In India, rapid industrialization and business expansion have positioned the country prominently in the global economy. However, this progress has come at the expense of the nation's environmental stability. As urbanization brings new opportunities, it should not lead to further environmental degradation. The issue of environmental destruction has been a concern for decades, with nature's quality steadily declining and natural resources being depleted. Corporations are legally required to safeguard the environment, based on the principle that those who have the power to cause harm should take necessary precautions and actions to prevent it. Environmental liability operates on two levels: it enforces the 'polluter pays principle,' where the responsible party must bear the cost of damage, and it provides incentives for potential polluters to avoid causing environmental harm.

The Environmental Protection Act establishes the legal framework for pollution prevention and control, as well as environmental protection standards. This legislation grants both federal and state governments the power to enhance environmental quality and impose penalties on

violators. Specifically, the Water (Prevention and Control of Pollution) Act prohibits the release of pollutants into water bodies, holding corporations liable for environmental damages caused by their activities.

The Indian judiciary has been instrumental in interpreting and enforcing these laws, ensuring that companies are held accountable for environmental harm, even if it was accidental or caused by third parties such as suppliers or subcontractors. Additionally, courts have mandated that businesses must actively work to protect the environment to avoid liability for future damages.

Despite this legal framework, enforcing corporate responsibility for environmental damage remains a significant challenge in India. One major issue is the ineffective enforcement mechanisms. The State Pollution Control Boards, responsible for implementing the Water Act, often struggle due to insufficient funding. Moreover, the fines imposed on companies violating environmental regulations are frequently too small to serve as a real deterrent. Public awareness of environmental issues is also limited, and the legal system's laxity makes it difficult for citizens to hold corporations accountable.

Another obstacle is the lack of coordination among various government agencies. Environmental laws are overseen by multiple bodies, including the State Pollution Control Boards, the Central Pollution Control Board (CPCB), and the Ministry of Environment, Forest, and Climate Change (MoEFCC). However, these agencies often work in isolation, leading to ineffective enforcement and regulatory gaps.

There is a significant overlap between liability and regulatory approaches to environmental protection. Compliance with regulatory standards does not automatically exempt a party from liability, while failing to meet these standards does not always result in liability. Therefore, it might be necessary to use a combination of both systems, employing them in a complementary manner to address externalities effectively. When both liability and regulation are used together, courts may rely on tort liability as a temporary measure when regulatory approaches prove insufficient. Once regulatory measures have been implemented, courts should then address any conflicts between preventative and reactive (ex post) approaches. Ideally, the combination of these legal systems should involve regulatory authorities setting minimum standards, while courts consider these standards when awarding damages, especially when regulations alone are not enough to fully address the risk of harm. In cases where the liability system falls short, regulatory standards can help mitigate potential harm. Thus, an effective integration of liability and regulation should motivate parties to adopt precautionary measures to minimize the risk of environmental damage.

## **2. ENVIRONMENTAL LAW SYSTEM IN INDIA**

In India, the Constitution delineates the distribution of powers between the federal and state governments. Parliament can legislate for the entire country, whereas state legislatures are limited to laws within their own territories. Article 246 of the Constitution categorizes

legislative subjects into three lists: Union, State, and Concurrent. In the Concurrent List, central laws take precedence over state laws, though state laws can prevail if they receive presidential assent. Additionally, the Constitution allows the central government to enact laws on state subjects with the consent of the respective states.

Following the 1972 UN Conference on Environment and Human Development in Stockholm, India amended its Constitution by adding Articles 48A, 51A(g), and 253. These amendments provided the foundation for the enactment of the Prevention and Control of Pollution Act, 1981 (Air Act), and the Environmental Protection Act, 1986.

## **2.1 Environmental legislation**

The Water Act of 1974 (Amended in 1988): This was the first significant law in India aimed at preventing the discharge of untreated domestic and industrial pollutants into rivers and lakes. Such discharges can render water unsuitable for drinking, agriculture, and aquatic life. To enforce this, the Act established pollution control boards at both central and state levels, which set and monitored standards for factories. The state boards have the authority to grant or deny permissions for new and existing factories, and can even shut down operations or cut off utilities if necessary to enforce standards.

The Air Act of 1981 (Amended in 1987): This Act aims to control and reduce air pollution. Its enforcement mechanisms are similar to those of the Water Act but also include provisions for managing noise pollution.

The Environmental Protection Act, 1986 (EP Act): The EP Act serves as comprehensive legislation designed to safeguard and enhance the environment. It consolidates the principles of the Air and Water Acts and addresses environmental disasters by regulating the handling and use of hazardous waste. The EP Act empowers the government to create rules and regulations for environmental protection, including setting national standards, managing hazardous substances, regulating industrial locations, preventing accidents, and collecting environmental data. It also allows the establishment of specialized regulatory agencies for specific environmental concerns, such as coastal resource protection.<sup>1</sup>

## **2.2 Enforcement of Environmental Laws**

Enforcement of environmental laws in India involves not only pollution control boards at both federal and state levels but also the Supreme Court and state high courts through a mechanism known as public interest litigation (PIL). To understand the role of PIL, it is helpful to first review the structure of the Indian judicial system.

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<sup>1</sup> P. M. Prasad, 'Environmental Protection: The Role of Liability System in India' (2004) 39(3) Economic and Political Weekly 257–269.

**Supreme Court:** The Supreme Court is the highest court in India, with both original and appellate jurisdiction<sup>2 3</sup> It introduced the concept of PIL, which is unique to the Indian legal system. PIL allows any individual or group to seek judicial relief against government actions or inactions. The Court can issue a writ of mandamus, compelling the government or its agencies to fulfill their legal obligations.

**High Courts:** Each state in India has its own high court, established under the Indian Constitution. These high courts also possess writ jurisdiction under Article 226 of the Constitution.

**PIL and Indian Courts:** PILs were adopted in India to enhance public access to justice. Under this system, a simple letter to the court can be treated as a petition, and legal aid may be provided to represent the petitioner. The concept of PIL was first utilized by Justice Krishna Iyer in 1976 in the case of *Mumbai Kamgar Sabha vs Abdulbhai*<sup>4</sup>. The term "public interest litigation" was formally used in *Fertilisers Corporation Kamgar Union vs Union of India*<sup>5</sup>, and the concept was firmly established in the case of *S.P. Gupta vs Union of India*.<sup>6</sup>

**Courts and Environmental PILs:** This study examines the use of PILs<sup>7</sup> in the Supreme Court and the Andhra Pradesh High Court to enforce environmental laws from 1990 to 1999. It includes an analysis of the number and types of cases filed, the court's decisions, whether expert opinions were sought, the duration from filing to resolution, and whether court orders were implemented. Data is collected on cases related to air, water, and other environmental issues, and is categorized based on outcomes. These outcomes include: (i) Cases decided in favor of the complainant, (ii) Complaints withdrawn, (iii) Cases decided against the complainant, and (iv) Cases dismissed on technical grounds. This data helps in understanding the filing and disposal rates, the types of cases addressed, and the efficiency of the judicial process in environmental matters.

The interrelationship between business and environment. The term "environment" encompasses various elements in our surroundings, including rivers, lakes, mountains, plains, and natural resources. This environment serves multiple purposes for communities, such as providing livelihoods, supporting settlements, facilitating business activities, and increasing income sources. An organization cannot function effectively without considering its environment. The Brundtland Report (World Commission on Environment and Development, 1987), commissioned by the United Nations, similarly asserts that economic development and

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<sup>2</sup> It also has an advisory role when it advises the president of India whenever a reference is made to the court.

<sup>3</sup> It is under Article 32 of the Constitution that the court derives its original jurisdiction.

<sup>4</sup> 1 (1976) 3 SCC 832: AIR 1976 SC 1455

<sup>5</sup> 2 (1981) 2 SCR 52: AIR 1981 SC 344

<sup>6</sup> 3 AIR 1982 SC 149.

<sup>7</sup> We restrict our study to PIL cases because the private suits against environmental pollution are negligible, and it is very difficult to access the data on private.

environmental protection can be aligned, but achieving this requires significant changes in global economic practices.

The concept of sustainable development challenges industries to improve production quality by using resources more efficiently and generating minimal waste. Today's organizations have multifaceted responsibilities, not only to produce goods and services that meet consumer needs but also to ensure environmental protection and conservation at every stage of their operations. Business activities can impact the environment in various ways, leading to different types of pollution such as air, water, marine, land, and noise pollution. Environmental degradation is often a result of industrialization, particularly when environmental protection regulations are weak or poorly enforced. The environmental movement began in the 1960s, emphasizing corporate responsibility towards environmental protection as a key aspect of social responsibility. Public concern grew following major environmental disasters, such as the toxic exposure incident at Love Canal, the Union Carbide gas leak in Bhopal, the Chernobyl nuclear meltdown, and oil spills like those from Exxon Valdez and Dow Chemicals. In response, some corporations began adopting ethical codes and Corporate Social Responsibility (CSR) principles.<sup>8</sup>

To manage environmental impact and respond to public pressure, many corporations implemented self-regulating codes and policies. Independent auditors regularly review these environmental management policies, certification programs, and self-monitoring practices, often involving voluntary participation. Alongside CSR, concepts like the Triple Bottom Line (emphasizing people, planet, and profits), Stakeholder Theory, Environmental Management Systems (EMS), Life Cycle Assessments (LCA), and biomimicry gained prominence in the 1990s. These movements have influenced corporate culture and management practices by placing greater emphasis on environmental concerns<sup>9</sup>. This global shift towards environmental protection has transformed business practices, driven by both opportunistic and market-driven motivations.

### 3. UNDERSTANDING ENVIRONMENTAL HARM

Environmental harm manifests in various ways, including the loss of wetlands, river pollution, and the degradation of land and water resources, as well as atmospheric pollution. These issues lead to adverse consequences such as climate change, global warming, and rising sea levels. The impacts of environmental harm can be both direct and indirect. Direct effects occur simultaneously with the harmful action and at the same location, while indirect effects,

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<sup>8</sup> *Ibid.*

<sup>9</sup> 'What Does "Corporate Environmental Responsibility" Mean?' (Corporations & Environmental Responsibility: A Weekend of Lectures, Analysis & Discussion) <<http://www.andrew.cmu.edu/course/99-522/ejbackground.html>> accessed 28 February 2025.

although not immediate, are foreseeable outcomes of the initial action. Environmental pollution poses threats to human health, wildlife, the atmosphere, water cycles, land, and soil.

Measuring environmental harm is challenging under current regulations because it is difficult to quantify and often involves several limitations. Environmental offenses are typically complex and multi-faceted, making them hard to assess with existing frameworks. A detailed study or observations made by prominent institutions pertaining to the regional common offences are to be taken into consideration for identifying environmental harm or crime. The risk levels of environmental harm can be either measured by science-based risk level or by Indigenous knowledge and technology level.<sup>10</sup>

### **3.1 Forms of Environmental Crime**

Environmental crimes vary widely in their nature and the harm they inflict. They range from littering and improper disposal of radioactive materials to hunting out of season, deliberate dumping of hazardous substances into storm drains or water bodies, and theft of plants, animals, and natural resources. Some environmental crimes have clear and immediate victims, such as when industrial firms release toxic chemicals that pollute water wells, directly affecting local residents. Other environmental crimes have more diffuse impacts, affecting countless individuals potentially far from the original site of the crime. For instance, pollutants released into the air can drift over great distances, leading to increased respiratory issues and degrading air quality.

Certain environmental crimes can have catastrophic immediate effects. A notable example is the 1984 incident where Union Carbide Corporation accidentally released methyl isocyanate and hydrogen cyanide gases into the atmosphere from its plant in Bhopal, India. According to the Indian government, this disaster resulted in the deaths of 3,329 people and severely injured around 20,000 others.

Environmental crimes can impact entire populations or nations. As natural resources are considered to belong to the people of a nation, their theft or destruction affects the collective welfare. Increasingly, these crimes cross international boundaries, prompting countries worldwide to regulate or ban a range of activities. These include the trade of endangered species, illegal fishing practices, biopiracy, the movement of hazardous waste, and substances that deplete the ozone layer. A variety of international conventions and treaties address these issues, including the Convention on International Trade in Endangered Species (CITES), the Basel Convention on hazardous waste transportation, the International Maritime Organization's Marine Pollution Convention, the 1987 Montreal Protocol on ozone-depleting substances, the

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<sup>10</sup> Walters R, 'Crimes against Nature: Environmental Criminology and Ecological Justice' (2010) 50 British Journal of Criminology 391.

1998 Rotterdam Convention on hazardous chemicals, and the 2001 Stockholm Convention on Persistent Organic Pollutants.<sup>11</sup>

### **3.2 Environmental Responsibility and path to Sustainable Accountability**

Humans are obligated to preserve the environment from any kind of exploitation and abuse according to some universal rules for environmental safeguards found in environmental law. Legal protections for the environment and methods for identifying specific violations are, however, in their early stages. Moreover, to this day, no all-encompassing law has been passed that specifies, in broad strokes, how to address the many legal issues surrounding environmental protection.

The environment is in bad shape because of the proliferation of polluting industries and other associated pursuits. The environment has gone from being a foundation of comfort and delight to a source of diseases, and this much is certain. The depletion of Earth's water, soil, and air has highlighted the need for new regulations backed by the law. Protecting and preserving the environment requires stringent adherence to these regulations. Also, those who disobey these standards will have to pay the price for their conduct, which might include criminal charges and punishments. Concerning the harmful effects of water, air, and soil pollution on Earth, these laws seek to create and specify criteria based on scientific investigations and study. In addition, they might be used as a starting point for thinking about ways to lessen the impact of the problem.

As environmental damage is sometimes intangible and hard to define, it is difficult to measure it under current standards. The burden of proof and the identification of the perpetrator of the crime might be heavy. Investigating environmental crimes requires looking at in-depth research and observations made by respected organizations that concentrate on typical area transgressions. Both scientific methods and methods that include indigenous knowledge and technology may be used to evaluate the risks of environmental impact. You can learn a lot about how activities could affect the environment and how bad the damage might be using any of these approaches. The concept of environmental responsibility may be studied from both an accounting and a legal standpoint.

Liability, in the context of accounting, is the expected monetary loss due to current obligations. Liability is defined by accounting firms as the risk of future economic loss or the commitment to supply services. To handle the financial consequences and duties related to environmental degradation, it is essential to understand environmental responsibility from a legal and accounting standpoint. One may unilaterally impose responsibility or have it willingly agreed into as a contractual obligation. The legal system has been very clear about what constitutes culpability and who is liable to pay it. The "polluter pays principle" is the foundational concept of environmental liability; it states that individuals or entities responsible for environmental

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<sup>11</sup> Bell S and others, '8. Environmental Crime and Enforcement' [2017] Environmental Law.

damage should bear the financial burden of repairing or replacing it. Statutes, laws, ordinances, declarations, and treaties at the state, federal, and international levels may all place environmental duties on firms. To address environmental challenges and ensure that businesses are held responsible for their activities, these legal instruments set up frameworks and standards.

The criminal and civil systems both deal with environmental responsibilities. When businesses damage the environment, individuals, communities, and organizations may seek redress via civil law. These statutes provide procedures for holding businesses financially liable for the harm they do to the environment, with a particular emphasis on tort claims. In contrast, criminal laws deal with more severe instances of environmental destruction when companies' deliberate or careless acts cause substantial harm to the environment. Responsible business personnel may face fines, penalties, or even jail time as a consequence of criminal charges. It is clear that holding companies accountable for their environmental effect is important, since environmental responsibilities have been included into both civil and criminal law. The goals of these regulations are to discourage irresponsible actions, encourage more conscientious ones, and hold businesses financially accountable for any harm they do to the environment. Compliance, remediation, fines and penalties, compensation, damages for natural resources, punitive damages, and so on are all forms of environmental responsibilities.

The fundamental goal of environmental liability is to make companies more conscious of their impact on the environment and to have them take responsibility for their activities. Companies may be compelled to take action to fix or undo environmental harm as a result of environmental liability, which holds them responsible for their activities. Compensation, fines, penalties, or charges may also be levied on them to rectify the environmental damage that was created. Companies are made aware of the possible legal consequences, including fines, penalties, or even jail time, for breaking environmental regulations via environmental responsibility. It discourages companies from breaking the law and encourages them to implement policies that protect the environment and its inhabitants.

#### **4. THE WAY FORWARD**

An internalization of the negative externalities resulting from international commercial operations may be achieved by effective liability systems, which in turn provide economic incentives for prospective polluters to minimize risks to the legal interests at stake. This internalizing impact might fill a need in situations where there aren't enough clear environmental norms, which is especially helpful in multinational environments. This becomes clear when environmental issues develop due to interconnected causes, occur in diverse regions and industries, are not adequately addressed by international instruments, and state authorities are unable to ensure thorough control and enforcement of environmental laws.

But there is another moral role of environmental responsibility that deserves attention alongside this economic one: Environmental and climatic impacts, harm, and expenses associated with



globalized business and consuming practices are the focus of liability lawsuits. Global justice principles are at stake in the debate over who is accountable for preventing and compensating for environmental harm in global value chains, and how that compensation ought to be structured. In liability cases, the parties involved (plaintiffs, defendants, and courts) work together to establish standards that make these broad ideas about environmental dangers more concrete and controllable.

By no means is the purpose of this analysis of environmental responsibility's theoretical possibilities to imply that environmental liability has already achieved this potential *de lege lata*. To be effective, environmental liability regulation must satisfy a number of theoretical requirements, and there are numerous possible constellations in which alternative regulatory tools might be more appropriate for protecting the environment. The next chapters go further into these prerequisites, examining them from various legal perspectives and drawing parallels to three critically significant areas of environmental liability: geoengineering, climate change litigation, and regulation of the supply chain.

In these real-world contexts in particular, recent dramatic shifts in the law highlight the need to examine corporate responsibility for cross-border environmental damage more closely from a policy and a legal standpoint.