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Risk to responsibility: Corporate environmental liability in India

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Abstract

Corporate environmental liability has emerged as a critical issue globally, particularly in the context of developing countries like India where industrial growth often comes at the cost of environmental degradation. This paper examines the evolution of corporate environmental liability in India, focusing on the shift from a risk-based approach to one prioritizing corporate responsibility. It analyzes key regulations, including the Environment (Protection) Act, 1986, and the Companies Act, 2013, and explores their impact on corporate accountability for environmental harm. The study highlights the challenges in enforcing these regulations, the role of judicial decisions, and the growing emphasis on corporate social responsibility (CSR) and sustainability reporting. Additionally, the paper evaluates the effectiveness of current legal frameworks in encouraging sustainable corporate practices and identifies gaps in the regulatory structure. It also discusses the roles of government agencies, civil society, and the judiciary in ensuring corporate compliance. Finally, the paper proposes recommendations for policy reforms and capacity-building to enhance corporate environmental liability mechanisms, aiming to balance economic development with environmental sustainability in India.

Keywords: Corporate liability, sustainability, environmental liability, social responsibility, regulatory framework

Introduction

Corporate environmental liability has become a pressing concern in India, reflecting the growing recognition of the environmental consequences of industrial activities. With the rapid pace of economic development and industrialization, India faces significant challenges in balancing economic growth with environmental sustainability. As industries expand and modernize, there is a heightened risk of environmental degradation, pollution, and ecological damage. Environmental protection is deeply ingrained in our cultural heritage and traditions. Ancient texts like the *Atharvaveda* extol the importance of preserving nature, portraying Earth as a cherished paradise bestowed with the blessings of nature's abundance. It is our solemn duty to safeguard this paradise ^[1]. Environmental liability entails holding individuals or corporations responsible for the costs associated with harming the environment. Rooted in the "polluter pays principle," ^[2] it encompasses various forms of accountability, including compensation, remediation, fines, and compliance measures. These liabilities stem from a range of legal instruments at regional and international levels. By imposing environmental liability, corporations are incentivized to be proactive in preventing environmental harm and are compelled to rectify damage or provide restitution. Ultimately, environmental liability serves to ensure corporate accountability and deterrence by informing them of potential penalties, fines, or legal repercussions for violating environmental laws ^[3]. The protection and enhancement of the environment are enshrined as constitutional imperatives in India, reflecting the nation's commitment to the principles of a welfare State. Within the Indian Constitution, provisions for environmental protection are outlined in the chapters concerning Directive Principles of State Policy and Fundamental Duties. While the Constitution does not explicitly recognize the fundamental right to a clean and healthy environment, judicial activism in recent years has compensated for this absence, ensuring that environmental rights are upheld and safeguarded ^[4]. The Constitution of India enshrines principles aimed at the protection and preservation of nature, recognizing that life's enjoyment is intricately linked to environmental well-being. Understanding the constitutional provisions pertaining to environmental protection is crucial in fostering greater public involvement, promoting environmental awareness and education, and sensitizing individuals to the imperative of

preserving our ecology and environment. The Constitution of India is not static but dynamic, evolving over time to meet the changing needs of society and its provisions on environmental protection reflect this adaptability. The preamble of our constitution envisions a socialist society and upholds the dignity of the individual, inherently including the right to a decent standard of living and a pollution-free environment ^[5]. In light of the implied right to a pollution-free environment under Article 21 of the Constitution of India and the Environment (Protection) Act, 1986, both binding individuals and corporations to a constitutional duty, it is imperative to emphasize Corporate Environmental Responsibility (CER). India, initially a welfare state post-independence, shifted towards liberalization, privatization, and globalization post-1991, transitioning many public sector entities into private hands. As a result, instilling the concept of CER in every corporate entity becomes crucial to uphold social interests and ensure the preservation, protection, and sustainable management of the environment ^[6]. It must be mandatory duty for the corporations to undertake measures necessary balance environmental conservation and well-being of the society. Against this backdrop, this paper aims to examine the evolution of corporate environmental liability in India, tracing its trajectory from a risk-based approach to one emphasizing corporate responsibility. By delving into the legal and regulatory frameworks, landmark legal cases, and emerging trends in corporate social responsibility (CSR) and sustainability reporting, this paper seeks to provide insights into the current state of corporate environmental liability in India ^[7]. Enforcement standards utilized in many developing nations primarily consist of administrative, civil, or criminal measures ^[8]. Through a comprehensive analysis of existing mechanisms and emerging trends, this paper identifies gaps and opportunities for enhancing corporate environmental liability in India. It also proposes recommendations for policy reforms, stakeholder engagement, and institutional capacity-building to foster a more responsible and sustainable corporate sector.

Regulatory Framework

The regulatory framework governing environmental, social, and governance (ESG) considerations in India is characterized by a dispersed array of legislation spanning multiple sectors. These include the Factories Act, 1948, the Environment Protection Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974, and the Hazardous Waste (Management, Handling, and Trans-boundary Movement) Rules, 2016. Additionally, ESG principles intersect with corporate governance through the Companies Act, 2013, and Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Furthermore, the Prevention of Money Laundering Act, 2002, the Prevention of Corruption Act, 1988, and laws addressing labour rights, such as minimum wage, bonus, gratuity, welfare activities, health, and safety regulations, also contribute to shaping the ESG landscape. Although ESG considerations are addressed across these diverse legal frameworks, their integration remains fragmented, highlighting the need for a more cohesive approach to ESG regulation in India ^[9]. In the Indian context, the evolution of corporate environmental liability has been shaped by a complex interplay of regulatory frameworks, legal

precedents, and societal expectations. Legislative measures such as the Environment (Protection) Act, 1986, and the Companies Act, 2013, lay the foundation for environmental protection and corporate accountability. However, challenges remain in effectively enforcing these regulations and holding corporations responsible for environmental harm. The Environment (Protection) Act, 1986, defines the environment comprehensively, encompassing water, air, land, and their interrelationships with human beings, wildlife, plants, microorganisms, and property. Furthermore, the chapter on fundamental duties in the Indian Constitution imposes a duty on every citizen to safeguard the environment. Article 51-A (g) specifically states that it is the duty of every Indian citizen to protect and enhance the natural environment, including forests, lakes, rivers, and wildlife, and to show compassion towards all living creatures ^[10]. Part III of the Constitution of India guarantees fundamental rights that are indispensable for the holistic development of every individual, inherent solely by virtue of being human. Among these rights is the right to a clean and healthy environment, without which the development and fulfilment of one's potential would be hindered. Articles 21, 14, and 19 of this part have been instrumental in ensuring environmental protection ^[11]. Article 21 of the Constitution ensures that no individual can be deprived of their life or personal liberty except according to the established legal procedure. In the landmark Supreme Court case of *Maneka Gandhi v. Union of India* ^[12], within Article 21 lies the fundamental right to life, encompassing the right to a healthy environment free from the threat of disease and infection. The recognition of the right to live in a healthy environment under Article 21 was first established in the case of *Rural Litigation and Entitlement Kendra v. State* ^[13], commonly known as the Dehradun Quarrying Case. In this case, the Supreme Court halted illegal mining activities under the Environment (Protection) Act, 1986, addressing concerns related to environmental degradation and ecological balance. Subsequently, in *M.C. Mehta v. Union of India* ^[14], the Supreme Court affirmed the right to live in a pollution-free environment as an integral component of the fundamental right to life under Article 21 of the Constitution ^[15].

Under Article 19(1) (a) and Article 21 of the Constitution of India, citizens are guaranteed the right to a decent environment and peaceful living. In *PA Jacob v. The Superintendent of Police Kottayam* ^[16], the Kerala High Court clarified that the freedom of speech does not extend to the use of loudspeakers or sound amplifiers, allowing for the control of noise pollution under Article 19(1) (a). Article 19(1) (g) provides citizens with the fundamental right to engage in any profession or business, subject to reasonable restrictions. This includes the obligation not to conduct businesses that pose health hazards to society. The Supreme Court, in *Cooverjee B. Bharucha v. Excise Commissioner, Ajmer* ^[17], emphasized the need to balance environmental protection with the freedom to conduct business ^[18].

Public Interest Litigation under Article 32 and 226 of the Constitution has led to a surge in environmental litigation. Notable cases include the closure of limestone quarries in the Dehradun region Dehradun Quarrying case ^[19] and the installation of safeguards at a chlorine plant in Delhi in *M.C. Mehta v. Union of India* ^[20]. In *Vellore Citizens Welfare Forum v. Union of India* ^[21], the Court emphasized the importance of the Precautionary Principle and the Polluter

Pays Principle in achieving Sustainable Development ^[22].

India boasts a comprehensive legal framework encompassing over two hundred laws dedicated to environmental protection. Among these, several key national statutes target the prevention and control of industrial and urban pollution ^[23]:

Water (Prevention and Control of Pollution) Act, 1974: This law prohibits the discharge of pollutants into water bodies beyond specified standards and imposes penalties for non-compliance. The act, amended in 1988, aligns closely with the provisions of the EPA, 1986. It established the CPCB (Central Pollution Control Board), which sets standards for water pollution prevention and control. At the state level, the SPCBs (State Pollution Control Boards) operate under the direction of the CPCB and respective state governments.

Water (Prevention and Control of Pollution) Cess Act, 1977: This legislation facilitates the levy and collection of a cess on water consumed by industries and local authorities. Its objective is to bolster the resources of central and state boards for water pollution prevention and control. The accompanying rules, formulated in 1978, define standards and requirements for installing meters to monitor water consumption ^[24].

Air (Prevention and Control of Pollution) Act, 1981: This Act sets ambient air quality standards, regulates activities to mitigate air pollution, prohibits the use of polluting fuels and substances, and oversees appliances contributing to air pollution. The Air (Prevention and Control of Pollution) Amendment Act, 1987, empowers central and state pollution boards to address grave emergencies and recover expenses from offenders. It also emphasizes the power to revoke consent for non-compliance with prescribed conditions.

The Air (Prevention and Control of Pollution) Rules, 1982: These rules delineate procedures for board meetings, presiding officers' powers, decision-making processes, and record-keeping methods.

The Wildlife (Protection) Act, 1972: This act provides protection to listed species of flora and fauna and establishes ecologically significant protected areas. It grants authority to central and state governments to designate areas as wildlife sanctuaries, national parks, or closed areas.

The Forest (Conservation) Act, 1980: This law restricts state powers concerning forest de-reservation and the use of forest land for non-forest purposes. Further the legislative landscape in India concerning environmental protection and industrial safety has seen significant development through acts such as the National Environment Appellate Authority Act, 1997, which established a dedicated appellate authority for hearing appeals related to environmental restrictions on industrial operations. The Factories Act of 1948, with its 1987 amendment, delineates hazardous processes within 29 categories of industries, emphasizing the importance of special care to prevent health impairment and environmental pollution. The Public Liability Insurance Act of 1991, amended in 1992, empowers the central government to establish an environmental relief fund for compensating victims of industrial accidents. Furthermore, the National Environment Tribunal Act of 1995 establishes a mechanism for strict liability and the expedited resolution of cases arising from accidents involving hazardous substances. These legislative measures underscore India's commitment to ensuring both environmental protection and industrial safety, with provisions for legal recourse, compensation, and deterrence against environmental harm ^[25].

Corporate Environmental Liability under Companies Act 2013 and Corporate Laws

The Companies Act of 2013 has brought Corporate Social Responsibility (CSR) into the spotlight, emphasizing corporate environmental responsibility. Through its disclose-or-explain requirement, the Act aims for increased transparency and disclosure. Schedule VII of the Act outlines CSR activities, highlighting communities as a central focus. However, draft rules suggest that CSR should extend beyond mere philanthropy by emphasizing a company's relationship with stakeholders and integrating CSR into core operations. This implies a broader scope for CSR, encompassing not just community welfare but also stakeholder engagement and sustainable business practices. Section 134 (3) (m) of the Companies Act mandates that the board's report include information regarding energy conservation efforts.

According to Section 166 of the Companies Act, directors are obligated to act in good faith to further the company's objectives for the benefit of its members, employees, shareholders, the community, and the environment. Section 135 of the Companies Act, along with the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires companies meeting specified criteria to establish a Corporate Social Responsibility (CSR) committee responsible for overseeing CSR policies and activities. These companies must allocate at least 2% of their average net profits over the last three financial years towards CSR initiatives, with the board's report detailing relevant CSR activities ^[26].

Section 166(2) of the Indian Companies Act imposes a statutory duty upon directors to protect the environment, expanding their fiduciary responsibilities beyond solely acting in the best interests of the company ^[27]. This shift reflects the evolving corporate landscape towards social accountability and environmental responsibility. The Supreme Court, in the *Tata Mystery Case* ^[28], highlighted this evolution, emphasizing directors' duty to promote the company's objectives for the benefit of its members while also safeguarding the environment.

Although the term 'environment' is not explicitly defined in the Companies Act, the Supreme Court has indicated that it encompasses the interrelationship between water, air, land, and various living organisms, as outlined in the Environment (Protection) Act, 1986.

Failure to comply with these duties, including environmental protection, can result in fines under section 166(7) of the Companies Act. Moreover, shareholders concerned about directors prioritizing profits over environmental conservation can seek recourse through the National Company Law Tribunal under section 241 of the Act, alleging conduct prejudicial to public interest. The Tribunal holds significant powers, including the authority to suspend the company's board during proceedings, as demonstrated in relevant cases ^[29]. The business judgment rule serves as a crucial safeguard for directors when their commercial decisions come under scrutiny in court. This principle holds that as long as directors act in good faith, with due diligence, and in the honest belief that their actions serve the company's best interests, they are protected from liability.

In India, although there have been relatively few reported cases where the business judgment rule has been invoked, these instances highlight its recognition by both adjudicating

and regulatory authorities. For example, the National Company Law Tribunal (NCLT) and the Securities and Exchange Board of India (SEBI) have acknowledged the importance of the business judgment rule in assessing corporate decisions. However, there remains a question regarding whether the business judgment rule can effectively shield directors against allegations of breaching statutory directorial duties. While Indian case law has not directly addressed this issue, insights can be drawn from international precedents. For instance, in the *Client Earth* action, despite allegations of statutory duty violations by Shell's directors, the High Court upheld the business judgment rule as a valid defence^[30].

Overall, while the application of the business judgment rule in the context of statutory directorial duties in India awaits further clarification, international jurisprudence suggests that it can serve as an effective shield against such allegations, providing directors with a measure of protection when making commercial decisions in good faith^[31].

Government agencies and regulatory bodies

SEBI, the regulatory body governing securities in India, updated its framework for green debt securities in February 2023 to align with international standards and prevent green washing. The amendments expanded the scope of green debt securities to include categories such as pollution prevention, circular economy products, blue bonds for sustainable water management, yellow bonds for solar energy, and transition bonds for sustainable operations transition. Issuers are now required to adhere to guidelines to prevent green washing, ensuring funds raised are used for intended objectives and reporting any misutilization to investors.

In a separate move, the Reserve Bank of India (RBI) introduced the Green Deposit Framework in April 2023, allowing scheduled commercial banks and deposit-taking non-banking financial companies to accept green deposits. These deposits are earmarked for environmentally beneficial projects, with the RBI providing a list of eligible activities and excluded ones. To ensure transparency and protect depositors, entities raising green deposits must have board-approved policies for issuance and allocation, along with financing frameworks for deploying proceeds. Additionally, they need to conduct annual third-party verification and impact assessments. This framework aims to promote sustainable finance while safeguarding investor interests and preventing green washing. The government aims to establish the Indian Carbon Market by introducing a national framework to reduce greenhouse gas (GHG) emissions by pricing carbon emissions through the trading of carbon credit certificates. To this end, the Carbon Credit Trading Scheme, 2023 was officially announced by the Government on 28 June 2023. The implementation of the Indian Carbon Market will occur gradually, in phases^[32].

Several corporations in India are actively pursuing Environmental, Social, and Governance (ESG) initiatives: Infosys and TCS are committed to achieving carbon neutrality and reducing their carbon footprint as part of their net-zero emission vision for 2030. Wipro aims to fulfil all its electricity requirements in India using 100% renewable energy by 2030 and strives to achieve net-zero greenhouse gas emissions by 2040.

Larsen & Toubro has set ambitious goals to attain water neutrality by 2035 and carbon neutrality by 2040^[33]. To support these objectives, in June 2023, it converted a USD

150 million term loan into a sustainability-linked loan with Bank of America, with interest rates tied to the company's sustainability targets.

Dr. Reddy's has reached 100% waste neutrality in plastic by FY23 and targets to become a water-positive company by 2025, transitioning to 100% renewable power by 2030^[34].

Indian companies such as Tech Mahindra, Wipro, and Infosys are included in the Dow Jones Sustainability World Index, reflecting their strong ESG performance globally.

Green Line, India's leading LNG-fuelled heavy trucking logistics firm, has collaborated with Nestlé India to implement sustainable logistics using LNG-powered containers, aligning with Nestlé's commitment to reducing carbon emissions in transportation^[35].

Uber introduced *Uber Green* in select Indian cities from June 2023, enabling passengers to request electric vehicle rides. This initiative involves partnerships with Indian companies in EV vehicles, financing, and charging infrastructure.

HDFC Bank's 'Sustainable Livelihood Initiative' has financed over 7.6 million rural households and provided vocational training to over 850,000 individuals.

Reliance Industries aims to achieve carbon neutrality by 2035 and is investing INR 75,000 crore (~USD 9.37 billion) to establish a fully integrated new energy manufacturing ecosystem in Jamnagar, tapping into climate-related opportunities^[36].

Civil liabilities under tort law

Over the past two decades, Indian environmental law has witnessed significant development, with constitutional courts establishing foundational principles for environmental justice.

The law of torts in India, historically derived from English law, has largely followed its principles. However, modifications have occurred to address the unique conditions prevailing in India. Common law principles such as nuisance, negligence, strict liability, trespass, and other remedies for tort form the basis for modern environmental torts remedies^[37]. The principle of strict liability, originating from the case of *Ryland's v. Fletcher*^[38], constitutes a private law mechanism concerning environmental hazards. It dictates that an individual who brings hazardous materials onto their land is responsible for any damage caused if these materials escape, regardless of fault. In India, strict liability has been applied in cases involving the escape of water or fire causing damage to property. However, in the context of modern industrial society and its inherently dangerous activities, the Supreme Court has expanded this principle to establish absolute liability^[39].

The *Thoothukudi Sterlite*^[40] issue revolves around the operations of Sterlite Industries (India), a subsidiary of London-based Vedanta resources, founded by Anil Agarwal in 1975. Despite its primary focus on producing non-ferrous metals like copper, aluminium, and zinc, the industry has long been associated with flouting environmental regulations. In 1998, the National Environmental Engineering Research Institute (NEERI) submitted a damning report on Sterlite, citing failures to comply with safety regulations, unauthorized production, groundwater contamination, tampering with air monitors, toxic gas leaks, and unauthorized location placement. Despite these findings and a Madras High Court order for factory closure, Sterlite

managed to sway authorities, clearing all charges in a subsequent NEERI survey. In 2013, the High Court ordered factory closure due to pollution control violations, but the Supreme Court reversed this decision. Instead, the court fined Sterlite 100 Crores, holding it absolutely liable for environmental harm while ordering its reopening. This marked the second instance, after the *Oleum gas leak case* [41], where a company was held liable under absolute liability for environmental damage. This decision underscores the challenges in holding companies accountable under tortious liability [42].

Absolute liability holds individuals accountable for any harm caused by hazardous activities, regardless of precautions taken. Despite the endorsement of strict liability in environmental statutes, the Supreme Court has consistently referenced the principle of absolute liability. For instance, in the *Sterlite Industries v. Union of India case* [43], the Supreme Court cited the *Oleum gas leak case* [44] and imposed a compensation order of 100 Crores against Sterlite Industries for damages caused [45].

Criminal Liability

The evolution of corporate criminal liability in the twentieth century marks a significant shift in legal doctrine, influenced by common law principles and the doctrine of respondent superior. Initially met with resistance due to the perceived lack of *mens rea* in corporations, courts gradually developed principles to hold corporations accountable for criminal actions committed by their agents. Despite scepticism, about applying criminal law to abstract entities, the trend in developed nations is towards establishing equitable systems of criminal justice that encompass corporations as well [46]. In recent years, there has been a significant surge in the reporting of environmental crimes. For example, in India, there was a staggering 78% increase in environmental law violations in 2020, with a recorded total of 61,767 cases. Despite this spike in reported incidents, achieving convictions remains a formidable challenge. In the period from 2019 to 2021, out of 1,737 environmental law cases brought to trial in India, only 39 resulted in successful convictions [47]. To tackle this issue, governments are exploring avenues to bolster their environmental law frameworks by easing the criteria necessary for imposing criminal liability for environmental offenses. For an extended period, environmental law predominantly entailed civil liability, with minimal emphasis on criminal repercussions. However, the escalating environmental crises and resultant harm to ecosystems have prompted a shift in global attitudes. Numerous countries have responded by enacting a multitude of offenses within their environmental legislation [48]. In August 2022, the National Crime Records Bureau in its Annual Crime in India Report for 2021, revealing a rise in environment-related offenses compared to the previous year. In the landmark case of *Salomon v. Salomon*, a corporation was established as a distinct legal entity from its shareholders, directors, agents, and employees. However, historical analysis of corporate law jurisprudence suggests that this separation is often exploited to shield individuals behind corporate wrongdoing. This underscores the importance of initiatives like Corporate Social Responsibility (CSR) under Section 135 of the Companies Act, 2013, urging companies to take steps to protect the environment [49].

'The piercing of the corporate veil' refers to situations where courts disregard limited liability and hold directors or shareholders individually liable for a company's debts. This approach is crucial not only to identify those responsible for offenses but also to address crimes committed under the guise of corporate identity. Thus, effective legislation targeting environmental crimes is essential to ensure corporate accountability. George Town public policy review [50].

The Bhopal Gas Leak Tragedy [51] of December 1984 remains a dark chapter, especially concerning criminal prosecution, primarily due to the challenges in apprehending the perpetrators. However, the Supreme Court of India made its stance clear by overturning its previous order that had dismissed all criminal proceedings. The court asserted that the earlier decision was flawed as it violated established principles for withdrawing prosecutions. In a subsequent curative petition under Article 137 of the Indian Constitution, the court acknowledged the perpetuation of irreversible injustice and the need to recall the judgment. Notably, in connection with the Bhopal Gas Leak, several individuals involved in the management of Union Carbide Corporation were sentenced to two years' imprisonment for various offenses under the Indian Penal Code. Additionally, the LG Polymer Gas Leak incident of 2020 has also come under intense scrutiny, with on going criminal proceedings initiated under several sections of the Indian Penal Code. LG Polymers, involved in the manufacture, storage, and import of hazardous chemicals, is listed in the Hazardous Chemical Rules of 1989 [52].

In the case of *Sterlite Industries (I) Ltd v. Union of India & Ors.* [53], the court levied a substantial compensation amount based on the company's profit. Companies should also adhere to the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), which offer comprehensive guidelines for disclosing climate-related risks. A more stringent regime for climate risk disclosure should be integrated into TCFD Recommendations to ensure companies provide accurate and transparent information.

The Supreme Court's ruling in the *case of Iridium India Telecom Ltd. v. Motorola Inc.* [54] underscores the importance of attributing liability to parent companies rather than solely relying on vicarious liability. Therefore, careful examination of how conglomerates utilize concepts like limited liability and separate legal entities to evade legal accountability is crucial [55].

The imperative for stringent legislation to curb environmental offenses is underscored by global environmental priorities and regulatory mandates towards a carbon-neutral economy. Leading indices like the S&P 500 ESG Index evaluate companies based on environmental, social, and governance (ESG) criteria, influencing investor decisions. India's commitment to the Mission 2070 Net Zero underscores its dedication to a green revolution spanning five decades [56].

The repercussions of poor environmental performance are evident in investor and consumer backlash. Notably, in 2019, Quantum Advisors and Quantum Mutual Fund divested from a key engineering and Construction Company due to governance issues and its failure to conduct an independent environmental risk assessment for the Mumbai Coastal Road project. Undertaking such risk assessments is critical not only for workplace safety but also for identifying and mitigating potential risks effectively. The growing

significance of sustainability practices is evident in the rise of ESG funds, which have gained traction globally and in India^[57].

Efforts to link finance, environment, and social issues date back to 2008 with a notification from the Reserve Bank of India (RBI) on Corporate Social Responsibility, Sustainable Development, and Non-Financial Reporting. Despite such initiatives, industrial corporations remain primarily responsible for environmental degradation, as highlighted by reports from the Department of Environment and Forests, Pollution Boards, and judicial rulings. However, prosecuting corporations for environmental offenses remains challenging due to their complex organizational structures and the difficulty in establishing *mens rea*, or criminal intent. Consequently, the gravity of corporate environmental criminal liability remains limited, with civil remedies often failing to deter profit-maximizing entities. To address this, environmental damage must be valued more significantly, and *mens rea* should be interpreted liberally to hold perpetrators of environmental crimes accountable. Effective legislation and stringent enforcement mechanisms are crucial to ensuring justice and deterring corporate environmental malpractice^[58].

Challenges and limitations

The existing regulatory framework lacks the necessary flexibility to address continuous non-compliance with environmental regulations, particularly in cases where violations do not immediately impact the environment severely. Punitive measures available for non-compliance have proven ineffective due to rigid procedures and inadequate penalties that fail to reflect the full economic and environmental consequences of the violations.

State Pollution Control Boards (SPCBs) are grappling with significant resource constraints in handling citizen complaints, with some states receiving over a thousand complaints annually. Additionally, citizens' access to environmental information, ensured by the Right to Information Act, is hindered. PCBs often lack the resources to organize available information or may be unwilling to share certain data with the public, including consent applications, permissions, and inspection reports. Legal restrictions on using self-monitoring data as evidence in legal proceedings create additional burdens on State Pollution Control Boards (SPCBs) and discourage industries from conducting accurate self-monitoring and reporting.

There is an overemphasis on permitting, monitoring, and inspecting activities within the industry, particularly larger industries, which limits regulatory programs to a significant but not dominant pollution source. This neglects the substantial cumulative pollution impacts from Small and Medium-sized Enterprises (SMEs), municipal sources, transportation, and agriculture, which collectively contribute approximately 70 percent of industrial pollution^[59].

SPCB staffs disproportionately allocate their time to issuing consents, often with unjustifiably short validity periods, at the expense of their compliance monitoring and enforcement responsibilities.

Conclusion

In India, economic instruments serve as supplementary measures to incentivize environmental compliance. These instruments encompass various strategies such as rebates on water cess, bank guarantees, subsidies for pollution control

equipment, and other fiscal incentives.

Over the past two decades, the Supreme Court of India and several High Courts have been at the forefront of environmental law enforcement through citizen-initiated public interest litigation (PIL), grounded in the constitutional right to a healthy environment. Through this judicial activism, courts have issued orders mandating specific implementation measures that not only address individual cases but also establish new policies and practices with far-reaching implications for both regulated entities and regulatory bodies^[60].

The Nuclear Liability Bill has sparked considerable controversy due to its provisions aimed at limiting total liability in the event of a nuclear accident. Notably, the bill prohibits victims from directly suing suppliers and restricts their ability to seek compensation solely from operators. Additionally, it imposes a cap on the amount operators can recover from suppliers. In light of the aftermath of the Bhopal tragedy, there is a pressing need for a robust compensation mechanism, and any imposition of liability caps should be deemed unconstitutional^[61].

To facilitate industry compliance, PCBs engage in various activities, such as: conducting training and providing technical assistance; producing industry-specific reports that highlight issues, compliance status, and preventive/control options; distributing the charter on corporate responsibility for environmental protection among the 17 categories of highly polluting industries, encouraging voluntary compliance beyond regulatory standards; and launching awareness campaigns^[62]. These measures are commendable efforts on part of the state authorities.

The escalating concern over widespread environmental degradation has spurred global efforts toward conservation and protection. To cultivate environmental consciousness among the masses, education serves as a pivotal tool for fostering awareness of environmental issues. However, the existing plethora of laws, regulations, and bureaucratic structures, while extensive, may still fall short in adequately addressing the complexity of environmental challenges. Balancing the need for regulation with concerns about resource allocation prompts questions about the allocation of India's wealth, energy, and intellect. Excessive legal complexity can itself contribute to pollution, underscoring the importance of maintaining flexibility in environmental laws to adapt to evolving scientific understanding and technological advancements. While scientific knowledge continuously evolves, societal awareness of environmental laws remains crucial for effective pollution prevention and control, both within industrial sectors and communities^[63].

It is important to emphasize that the liability mechanism is inherently linked with other crucial tools for preventing and addressing environmental damage, including administrative and criminal laws. There exists potential for greater utilization of administrative financial penalties, such as fines, as a substitute for criminal prosecution. Hence, the key lies in finding an optimal balance between administrative, civil, and criminal enforcement measures, aiming for a synergistic relationship where these various instruments complement each other effectively. Dr. Michael G. Faure, Environmental Liability of Companies Policy Department for Citizens' Rights and Constitutional Affairs. Directorate-General for Internal Policies PE 651.698- May 2020.

Suggestions for Enhanced Implementation of Environmental Laws

Revision of Existing Environmental Provisions: It is crucial to align all current environmental regulations with the National Green Tribunal Act of 2010. Environmental cases often entail multidisciplinary issues that require the jurisdiction of the National Green Tribunal (NGT), which imposes penalties significantly higher than previous environmental laws. Adherence to the NGT's directives is essential. Furthermore, the implementation of the Draft Chemicals (Management and Safety) Rules is necessary to ensure companies assist the newly established National Chemical Authority (NCA) in disclosing information about chemicals in the market and their associated hazards^[64].

Establishment of a Regulatory Authority: A regulatory body must be established to monitor corporate environmental practices in conjunction with the National Green Tribunal. The Central Pollution Control Board (CPCB) has mandated that industries categorized as highly polluting install continuous online emission/effluent monitoring systems. Additionally, it should be compulsory for State Pollution Control Boards (SPCBs) to publicly disclose data from their Continuous Emission Monitoring Systems (CEMS) to assess compliance within their jurisdictions^[65].

Strengthening Consequences for Environmental Harm- The judiciary, including the Supreme Court and High Courts, should impose significant penalties for environmental damage^[66]. **Accountability of Parent Companies:** Parent companies, overseeing the majority of a subsidiary's operations, should be held responsible for any offenses committed by the subsidiary through the doctrine of "piercing or lifting of the corporate veil." Despite limited liability in terms of stock investments, parent companies ultimately reap the profits generated by subsidiaries. It is unjust to absolve parent companies of responsibility for their subsidiaries' crimes^[67]. Craft a policy and offer operational guidance mandating regulated industries to furnish bank guarantees for compliance schedules negotiated and included within directives issued by regulatory boards^[68].

Develop policies and guidance to support the implementation of compliance and enforcement programs at zonal offices and State Pollution Control Boards (SPCBs), ensuring timely distribution and organization of such resources^[69].

Increase direct funding from both central and state governments to Pollution Control Boards (PCBs) is essential to address vacancies with qualified personnel and bolster technical capabilities such as laboratories, computer hardware, and transport. This move aims to reduce over-reliance on fees, ensuring a stable funding source and aligning incentives for PCB staff.

Introduce a public disclosure program to harness public pressure on polluters by publishing compliance information. This program, modelled after successful initiatives in other Asian countries, would rate industrial polluters based on self-reported and inspection data, fostering compliance, transparency, and public accountability.

Enhance information management capabilities by implementing a standardized system for collecting, managing, and sharing compliance data at both national and state levels. Leveraging successful models from states like Andhra Pradesh, this system would streamline administrative processes, improve data quality, and increase

transparency by allowing public access to information. Establish performance management systems in collaboration with states to prioritize, plan, and evaluate compliance and enforcement programs. By defining national performance indicators and leveraging Maharashtra's experience as a pilot, this initiative aims to enhance accountability and enable proactive strategies for compliance and enforcement by PCBs^[70].

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