



# **“Corporate Liability And Environmental Accountability Of Industrial Waste Disposal In India: A Critical Review”**

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## **Abstract:**

Globally, corporate ecosystem liability has become a crucial concern, especially in emerging nations like India where environmental deterioration frequently results from industrial growth. The evolution of corporate ecological liability in India is examined in this study, with particular attention to the change from a risk-based strategy to one that places a higher priority on corporate responsibility. It examines the effects of important laws on corporate responsibility for environmental damage, such as the Companies Act (2013) and Environment Protection Act (1986). The paper draws attention to the difficulties in implementing these rules, the significance of court rulings, and the rising need for sustainability and corporate social responsibility (CSR) reporting. The study additionally assesses how well existing legislative frameworks promote sustainable business practices and pinpoints regulatory structural weaknesses. It also covers the functions of the judiciary, civil society, and government organizations in guaranteeing corporate compliance. In order to improve corporate environmental liability systems and strike a balance between environmental sustainability and economic development in India, the study concludes with recommendations for regulatory changes and capacity-building.

**Keywords:** Corporate liability, sustainability, environmental liability, regulatory framework, social responsibility, Waste Disposal

## 1. Introduction

In India, the issue of corporate environmental accountability has emerged as a significant problem, which is a reflection of an increasing understanding of the environmental effects that are caused by industrial activity. 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. In the end, environmental liability aims to ensure business responsibility and deterrence by warning corporations of the potential consequences, fines, or legal implications that could result from breaching environmental regulations [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. The chapters of the Indian Constitution that deal with the Guidelines of Government Policy as well as basic responsibilities are where the requirements for environmental preservation are laid out at length. While 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. Our constitution's preamble envisions a society based on socialist principles and protects individual dignity, which inevitably includes the right to a good quality of life and a clean environment [5]. Emphasizing corporate social responsibility (CER) is essential given implicit entitlement to an environment free of pollution under Article 21 of the Indian Constitution and Environment (safeguarding) Act, 1986, which both bind people as well as businesses to a constitutional duty. 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. This study aims to shed light on the current situation of corporate ecological responsibility in India by exploring the statutory and regulatory frameworks, significant court rulings, and new developments in sustainability reporting and CSR (corporate social responsibility) [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.

## 2. Regulatory Framework

India's regulatory system for factors related to the environment, society, and governance (ESG) is typified by a patchwork of laws covering several industries. These include the dangerous waste (Management, Handling, as well as Trans-boundary Movement) Rules of 2016, the Factories Act of 1948, the Environment Protection Act of 1986, Air (Prevention, Control, and Relief of Pollution) Act of 1981, and the Water (Prevention, Control, and Management of Pollution) Act of 1974. Furthermore, the Companies Act of 2013 and the Securities and Exchange Commission of India (Listing Requirements as well as Disclosure Requirements) Guidelines of 2015 establish a connection between ESG principles and corporate governance. The ESG environment is also shaped by laws pertaining to labour rights, including minimum wage, bonuses, gratuities, welfare programs, and health and safety standards, as well as Avoidance of money laundering legislation of 2002 and Protection of Corruption Law of 1988. 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. Water, air, and land, as well as their interactions with people, wildlife, plants, microbes, and property, are all included in the broad definition of the environment provided by Act to Protect the Environment of 1986. In addition, the Indian Constitution's chapter on fundamental obligations requires all citizens to protect the environment. Every Indian citizen has an obligation to preserve and improve the natural environment, which includes trees, water bodies, including wildlife, as well as to have compassion for all living things, according to Article 51-A (g) [10]. The basic liberties that are essential to each person's overall development and that are inherent simply by nature of being humans are guaranteed by the third part of Indian Constitution. 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]. According to the 21st article

of Constitution, no one may be stripped of their livelihood or personal freedom unless it is done so in accordance with the established legal process. The basic right to life, which includes right to living in an atmosphere free from fear of disease and infection, is contained in Article 21 of the Supreme Court's historic decision in *Maneka Gandhi v. Union Indian Republic* [12]. 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. The Supreme Court later upheld right of living in an environment free of pollution as a crucial part of basic right to life underlying the 21st article of Constitution in *M.C. Mehta v. Union Republic of India* [14] [15].

The Indian Constitution's Articles 19(1)(a) and 21 provide residents right to an adequate environment and a quiet life. The High Court of Kerala ruled in *PA Jacob v. Commissioner of Intelligence Kottayam* [16] that use of speakers or music amplifiers is not protected by the right to free speech, allowing Article 19(1)(a) to regulate noise pollution. 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].

Environmental litigation has increased due to the Constitution's Public Interest Litigation provisions included in Articles 32 and 226. Notable instances include the Dehradun region's limestone quarry closing. In the Dehradun Mining case [19] and *M.C. Mehta v. Union Republic of India* [20], safety measures were put in place at a chlorine facility in Delhi. The Court underlined in *Vellore Citizens Welfare Forum v. Union Republic of India* [21] the significance of the Polluter Pays Principle and the Precautionary Principle in attaining Sustainable Development [22]. More than two hundred laws pertaining to environmental preservation are part of India's extensive legal system. The prevention and regulation of commercial as well as urban pollution is the focus of numerous important national statutes [23]:

The Water Act of 1974 forbids the release of contaminants into water bodies in excess of certain limits and penalizes noncompliance. The 1988 amendments to the statute nearly match the 1986 EPA's requirements. It created the CPCB, which establishes guidelines for preventing and controlling water pollution. The CPCB and the corresponding state governments provide guidance to the SPCBs at the state level. The 1977 Water Cess Act: This law makes it easier for local governments and businesses to impose and collect a water use tax. Its goal is to increase the central and state boards' resources for preventing and controlling water pollution. The accompanying regulations, which were developed in 1978, specify requirements and standards for the installation of water consumption meters [24].

Air Act, 1981: This Act forbids the use of harmful fuels and substances, regulates actions to reduce air pollution, establishes ambient standards for air quality, and controls appliances that contribute to air pollution. The 1987 Air Amendments Act gives state and federal pollution boards the authority to handle

serious emergencies and collect costs from violators. It also underlines the authority to revoke approval for non-compliance with stipulated conditions.

Air Rules, 1982: Rules that follow specify how board meetings are to be conducted, the authority of presiding officials, how decisions are made, and how records are to be kept. The Wildlife (Protection) Act of 1972 creates biologically significant protected areas and offers protection to specified plant and animal species. It gives the federal and state governments the power to declare some regions national parks, wildlife sanctuaries, or closed zones. State authority over forestry de-reservation as well as use of wooded area for non-forest uses is limited by Act for the Conservation of Forests of 1980. Acts like National Environment Appealing Authority legislation 1997, which created a specific appellate authority to hear appeals pertaining to environmental penalties on business operations, have further contributed to the substantial development of India's legislative landscape regarding industrial safety and environmental protection. 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 central government can create an environmental relief fund to compensate victims of workplace injuries under Public Responsibility Insurance Act of 1991, which was revised in 1992. Additionally, a system for strict liability and the prompt settlement of disputes resulting from incidents involving hazardous substances is established by the National Environmental Tribunal Act of 1995. 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].

### **3. CER under Companies Act of 2013 along with Relevant Corporate Rules**

Corporate Social Responsibility (CSR), with a focus on corporate environmental responsibility, has gained prominence according to the Companies Act of 2013. The Act seeks greater disclosure and transparency through its disclose-or-explain obligation. The Act's Schedule VII lists CSR initiatives with a primary emphasis on communities. However, by highlighting a company's engagement with stakeholders and incorporating CSR into core activities, draft regulations propose that CSR should go beyond simple philanthropy. 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.

Directors must act in good faith to advance the company's goals for benefit of its board of directors, staff, shareholders, community, as well as the environment, as stated in subsection 166 of Company Act. Companies that satisfy certain requirements must set up a Corporate Social Responsibility (CSR) committee to supervise CSR policies and initiatives, as mandated by Section 135 of the Companies Act and Companies Rules, 2014. With board's report outlining pertinent CSR actions, these businesses are required to devote not less than 2% of their aggregate net income over the previous three fiscal years to CSR projects. [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 SEBI have recognized importance of 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].

#### **4. 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 emission of carbon through trading certificates of carbon credit. 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. By 2040, Wipro wants to meet all of its electrical needs in India with 100% renewable energy, and by 2040, it wants to have zero net greenhouse gas emissions.

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.

In keeping with Nestlé's pledge to lower carbon emissions in transportation, Green Line, India's top LNG-fueled heavy trucks logistics company, has partnered with Nestlé India to deploy sustainable logistics utilizing LNG-powered containers [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].

## 5. Civil liabilities under tort law

Indian environmental law has advanced significantly over the last 20 years, with constitutional courts laying the groundwork for environmental justice.

English law has historically influenced Indian tort law, which has mostly adopted its tenets. 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. Strict responsibility has been used in India in situations where property damage results from fire or water spills. However, Supreme Court has broadened this idea to establish absolute culpability in light of contemporary industrial society as well as its intrinsically risky behaviours [39].

Operations of **Sterlite Companies** (India), a division of Vedanta Resources, a London-based company established by Anil Agarwal in 1975, are at the centre of the Thoothukudi Sterlite [40] problem. Although the industry's main concentration is on manufacturing non-ferrous materials like copper, Aluminium, and zinc, it has a history of disregarding environmental standards. In 1998, 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. Because of controlling pollution violations, High Court recommended the shutdown of a facility in 2013, however the Supreme Court overturned this ruling. Rather, the court ordered Sterlite to reopen and punished it 100 crores, finding it fully responsible for environmental damage. This was the second time a firm was found to be accountable under sole responsibility for environmental damage, following the Oleum gas leak case [41]. The difficulties in holding businesses liable under tortious liability are highlighted by this ruling [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].



## 6. 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. 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. 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 emphasizes the significance of programs including Corporate Social Responsibility (CSR), which is mandated by Section 135 of the Companies Act of 2013 and calls on businesses to take action to safeguard the environment.

'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.

The **Bhopal Gas Leak Tragedy** 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 ongoing 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.

In the case of Sterlite Industries (I) Ltd v. Union of India & Ors., the court levied a substantial compensation amount based on the company's profit. Companies should also adhere to the recommendations of the 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. 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.

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.

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.

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.

## 7. 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. Legislative limitations on the use of self-monitoring data as proof in court add to the workload of SPCBs as well as deter businesses from carrying out truthful self-monitoring and reporting.

Permitting, monitoring, and inspection operations are overemphasized in the industry, especially in larger companies, which restricts regulatory programs to a major but non-dominant source of pollution. This ignores the significant cumulative pollution consequences from transportation, agriculture, municipal sources, and small to medium-sized businesses (SMEs), which together account for around 70% of industrial pollution.

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.

## 8. Conclusion

Economic tools are used as supplemental methods to encourage environmental compliance in India. These tools cover a range of tactics, including bank guarantees, water cess rebates, incentives for pollution control technology, and other financial incentives.

Based on a fundamental right to a clean environment, the Supreme Court of the country and a number of High Courts have led the way in enforcing environmental laws over the past 20 years through citizen-initiated litigation in the public interest (PIL). As a result of this court activism, courts handed down judgments requiring particular implementation actions that address specific situations as well as create new policies and procedures that have broad ramifications for regulatory bodies and regulated firms.

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.

PCBs carry out a number of actions to promote industry compliance, including: offering technical assistance and training; creating industry-specific reports that detail issues, compliance status, and options for prevention and control; disseminating the charter on corporate responsibility for environmental protection among the 17 groups of highly polluting industries, which promotes voluntary compliance above and beyond regulatory requirements; and starting awareness campaigns. The state officials' attempts to implement these policies are praiseworthy.

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. 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.

## **9. 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.

**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.

**Strengthening Consequences for Environmental Harm-** The judiciary, including the Supreme Court and High Courts, should impose significant penalties for environmental damage. **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. 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.

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.

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.



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