



Chapter 4 - Corporate Environmental Contraventions: Assessing the Efficacy of Regulatory Measures

Sanchita Jain

Student

Amity Law School, AUUP, Noida

Abstract - Abstract: Ecosystems, local communities, and the sustainability of the planet are seriously threatened by environmental crime, which includes illegal activities that take advantage of, harm, or trade natural resources for financial gain. This essay examines the idea of environmental crime, covering its definition, offenders, and reasons for committing it. It explores the issue of corporate greenwashing and looks at the negative effects of corporate ecological crime on society and the environment. The study also examines the repercussions of ignoring environmental responsibilities, prominent cases of environmental crimes, methods for determining corporate culpability, and suggestions for improving environmental legislation to prosecute these offenses successfully. The chapter also offers an introduction that emphasizes the significance and ramifications of environmental crime and sets the scene for comprehending it. It talks about the serious repercussions of ignoring environmental responsibilities and stresses how quickly these problems must be resolved. To further highlight the scope and gravity of the issue, the chapter also looks at well-known instances of environmental infractions. The chapter also examines methods for determining corporate culpability for environmental offenses, taking into mind the difficulties in making businesses answerable for their deeds. The legal frameworks and difficulties involved in prosecuting corporate environmental offenders are covered. In order to successfully prevent and discourage environmental crimes, the chapter concludes with recommendations for strengthening environmental legislation and enforcement procedures. In order to prevent environmental crime and advance sustainable development, it highlights the significance of cooperation between governments, law enforcement agencies, non-governmental organizations, and enterprises.

keywords - Environment Violation, Corporate Liability, Neglecting Environmental Responsibility

4.1 Introduction

Even though there is no globally accepted definition of “environmental crime”, it is generally considered to refer to all unlawful acts that affect the environment while benefiting individuals, groups, or businesses through the exploitation, damage, trade, or extortion of resources, including, but not limited to significant crimes and international organized crime, according to the UNEP and INTERPOL.

However, The UN Convention on Transnational Organized Crime acknowledges the need for a broader understanding by not defining global organized crime or outlining the kinds of conduct that may fall under

it. This permits the treaty to be implemented for novel and emerging forms of crime. Still, it defines a network of organized crimes.¹

Generations ago, criminal organizations started committing environmental crimes among other crimes, driven by big profits and light punishments. Before resorting to crime to take benefit of weaknesses in their line of work, many of these criminals had prior experience in the legal industry. A network of individuals, some with specific expertise, participates in illegal activities, akin to other forms of serious and coordinated crime. Environmental crimes are greatly aided by legal and economic operations such as those involved in industrial manufacturing, disposal of waste, the trade in flora and fauna, or the manufacturing and shipping of fuel.²

Green offences and ecological crimes are common terms used to describe environmental crimes. Environmental criminality is on par with other major crimes in modern society. The main motivation for ecological crime, with rare exceptions and violations of numerous international treaties, is gain. Its traits—coordinated networks, laundering of funds, bribery, porous borders, unauthorized immigration, and the exploitation of the underprivileged—are all too common.

Criminals who target wildlife exhibit the same brutality as any other group, using strategies like physical assault, homicide, human rights violations, coercion, and impunity. There is no doubt that environmental criminality occurs in several foreign development initiatives. There is a connection between environmental violations and serious worldwide issues, such as those that are addressed by the Millennium Development Goals (MDGs), which are aimed at “affecting growth, safety, peace, and human rights.”

A few of these issues have been debated for a while. On the other hand, law enforcement agencies worldwide have recently started to acknowledge the part that organized crime networks play in environmental crimes. A rising number of illicit loggers and wildlife traffickers are part of organized gangs that plunder natural resources and destroy habitats, putting vulnerable species and ecosystems in jeopardy. Some people lose their livelihoods as a result of these groupings.³

It is estimated that environmental crime is among the most profitable criminal activities globally, with yearly illegal revenues ranging from 110 to 281 billion US dollars. The amount of money lost to environmental crime globally in 2016 ranged from 76 billion to 218 billion euros, and this sum has since gone up. The World Bank estimates that in 2019, illicit forestry, unreported fishing, and animal trafficking cost the US economy between \$1 and \$2 trillion annually. Criminal networks that profit from environmental crimes lose millions of dollars annually in Europe alone.

As these crimes are seen as “victimless” and low on the scale of priority, administrators and police typically fail to respond to them appropriately. In actuality, society as a whole is impacted. For instance, illegal harvesting has a role in the deforestation that occurs. Deforestation strips forest people of essential sources of livelihood and is a major contributing factor to environmental concerns like floods. It also accounts for up to one-fifth of the total emission of greenhouse gases, which is a significant contribution to global warming. The depletion of the ozone layer, which results from the illegal trade of ozone-depleting compounds such as the refrigeration molecules chlorofluorocarbons (CFCs), is the cause of skin cancer and cataracts.⁴

Environmentalists and members of the public sector refer to the unscrupulous practices of large corporations as “corporate greenwashing.” Under the pretence of concern for the environment, it’s a kind of oversight of reputation. Another form of reputation-washing that includes a connection to the UN is called “blue-washing.” It simply means that, with the aid of funds allocated to marketing campaigns, the corporate violator of environmental regulations would emerge as the greatest environmental benefactor.

Environmentalist Kenny Bruno claims that the world’s top annihilator of ozone is accountable for taking the lead in ozone prevention. Where is the idea that those who pollute the environment should pay for their actions, or do they bear some of the cost? Claiming to be feeding the hungry, a huge agrochemical company trades in a harmful pesticide that is outlawed. A petrochemical corporation pretends to be a recycling organization while using waste from one hazardous process as raw material for another hazardous process.

¹ Available at: <https://financialcrimeacademy.org/what-is-an-environmental-crime/> (Last Visited – 05 February 2024).

² *Ibid.*

³ *Id.* at 1.

⁴ *Ibid.*

Under the pretence of a sustainable forest development project, large multinational corporations (MNCs) take wood from virgin rainforests and replace it with transplanted monocultures.⁵

In essence, greenwashing is a tactic used to deceive regulators and citizens about sustainability projects that businesses are involved in. These games are played with regulators, and the object of being compliant is to first portray a favorable image before breaking any rules or regulations. For instance, a company with several production facilities might show rigorous adherence to regulations and win the trust of the authorities.

They have additionally earned the confidence of the community through their company's social responsibility efforts. Wearing this clothing would allow for the passing of many more units without being checked or with very little checking. The business even pays the official, thereby creating a new channel for illegal conduct. In 2013, a modification to the Companies Act established provisions for Corporate Social Responsibility, even in India.⁶

Corporate ecological crime refers to illegal actions taken by corporations that harm the environment. These crimes often entail actions that contravene environmental laws and regulations, resulting in harmful effects on ecosystems, human health, and natural resources. Such transgressions can take many forms, from pollution and illegal waste disposal to hazardous material misuse.⁷ The primary features of corporate ecological crimes are:

- **Pollution:**⁸

1. Air Pollution: Corporations that release pollutants such as sulphur dioxide, nitrogen oxides, and particulate matter contribute to smog, acid rain, and respiratory problems. Greenhouse gas emissions, particularly CO₂, contribute to climate change.

2. Water pollution: occurs when industrial effluents, chemicals, or untreated wastewater are discharged into water bodies, contaminating water supplies. This can endanger aquatic life, disturb ecosystems, and jeopardize the quality of drinking water for downstream towns.

3. Soil Pollution: Dumping dangerous substances or improperly disposing of industrial waste can contaminate soil, reducing soil fertility and posing agricultural dangers.

- **Illegal Waste Disposal:**⁹

1. Hazardous Garbage: Companies may improperly dispose of hazardous garbage, such as chemicals, heavy metals, and electronics. This raises significant environmental problems since these compounds can seep into the land and groundwater.

2. Improper Dumping: Illegal dumping, whether on land or in water bodies, can result in the accumulation of pollutants, harming ecosystems and posing health concerns to both wildlife and humans.

- **Abuse of Resources:**

1. Deforestation: The illegal removal of trees for wood or agricultural purposes adds to habitat loss, disturbs ecosystems, and heightens the risk of biodiversity loss.

2. Overfishing: Excessive and illegal fishing activities reduce fish populations, alter marine ecosystems, and endanger the livelihoods of communities that rely on fisheries.

3. Unregulated Mining: Mineral extraction without legal permission can destroy habitat, cause soil erosion, and contaminate water sources, resulting in long-term environmental devastation.

⁵ Kenny Bruno, "The World of Greenwash" *Corp Watch*, available at: <https://www.corpwatch.org/article/world-greenwash> (Last Visited - 03 February 2024).

⁶ The Companies Act, 2013 (Act 18 of 2013), s. 135.

⁷ Muskan Sethi, "Corporate Criminal Liability With Respect To Environment" *International Journal for Legal Research and Analysis*, Vol. 02 (2022), available at: <https://www.ijlra.com/paper-details.php?isuurl=corporate-criminal-liability-with-respect-to-environment-by-muskan-sethi-#:~:text=%5B%5D%20The%20term%20'corporate,posters%20thereby%20ruining%20the%20area>. (Last Visited – 05 February 2024).

⁸ Available at: <https://education.nationalgeographic.org/resource/pollution/> (Last Visited – 05 February 2024).

⁹ Available at: <https://www.hechayward.com/companies-dumping-illegally/> (Last Visited – 05 February 2024).

- **False Reporting:**

1. Misleading Environmental Reports: Corporations may falsify or present incorrect information in environmental reports submitted to regulatory agencies. This can include underestimating the magnitude of emissions, pollutant discharges, or environmental damage, which misleads both authorities and the public.
2. Omission of Key Information: Failing to disclose material facts in environmental reports, such as pollution events or noncompliance, is a dishonest practice that impedes regulatory scrutiny.

- **Noncompliance with Environmental Law:**¹⁰

1. Emission Requirements: Corporations may fail to meet specified pollution emission requirements, causing air quality to deteriorate and jeopardizing public health.
2. Water Quality Violations: Failure to follow water quality regulations can lead to water contamination, damaging aquatic ecosystems and endangering human health.
3. Waste Management Techniques: Failure to follow approved waste management practices, such as recycling and correct disposal, adds to environmental damage and creates issues for waste treatment facilities.

Corporate environmental criminal behavior has far-reaching effects on ecosystems, biodiversity, and local populations. Governments and regulatory authorities around the world work to combat such transgressions by implementing tough environmental laws, conducting inspections, and imposing penalties on firms found guilty of environmental infractions. Furthermore, public knowledge and pressure from environmental advocacy organizations play an important role in holding firms accountable for their environmental actions.

Efforts to prevent and address corporate environmental crime combine legal measures, regulatory frameworks, and corporate responsibility programs. This involves promoting transparency, sustainable business practices, and the use of environmentally friendly technologies in the corporate sector.

4.2 Neglecting Environmental Responsibility: Consequences Uncovered

A corporation is a juridical entity, or an institution with legal personality. The firm is governed by many individuals, including promoters, those in charge of incorporation, and the board of directors. These organizations share responsibility for the company's activities. Corporations bear greater responsibility and obligation to society than individuals.¹¹

The idea of societal responsibility for companies has been put up to highlight this strategy. In the 1940s, the notion that corporations had a social duty first surfaced. A novel question was posed to jurists across the globe.¹² Businesses were responsible for defining CSR and identifying their specific social responsibilities. CSR is now widely recognized and integrated into company governance worldwide. CSR does not include charity or humanitarian activities conducted by the businesses.¹³ CSR has historically been seen as an ethical duty as opposed to a legally mandated requirement. In India, corporate social responsibility has typically featured Gandhian trustees and philanthropy.¹⁴

¹⁰ Smita Pandey Mishra, "Why industries Still Don't Take Environmental Laws Seriously?" available at: <https://www.linkedin.com/pulse/why-industries-still-dont-take-environmental-laws-smita-pandey-mishra> (Last Visited – 05 February 2024).

¹¹ Tatjana Chahoud, Johannes Emmerling, et al., *Corporate Social and Environmental Responsibility in India - Assessing the UN Global Compact's Role* (2007), available at: https://www.idos-research.de/uploads/media/Studies_26.pdf (Last Visited - 05 February 2024).

¹² Ketan Swaraj Nair, "An Analysis of Corporate Environmental Crime and its Regulatory Framework" *International Journal of Legal Science and Innovation*, Vol. 2 (2020), available at: <https://www.ijlsi.com/wp-content/uploads/An-Analysis-of-Corporate-Environmental-Crime-and-its-Regulatory-Framework.pdf> (Last Visited - 05 February 2024).

¹³ United Nations Industrial Development Organization, What is CSR, available at: <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr> (Last Visited - 05 February 2024).

¹⁴ Ritu Kumar and Viraal Balsari, "Altered Images: The 2001 State of Corporate Responsibility in India Poll. Understanding & Encouraging Corporate Responsibility in South Asia" (2001), available at: https://www.researchgate.net/publication/301560766_Altered_Images_The_2001_State_of_Corporate_Responsibility_in_India_Poll_Understanding_Encouraging_Corporate_Responsibility_in_South_Asia_-_Update_1 (Last Visited - 05 February 2024).

The Companies Act 2013 superseded earlier laws. India was the first nation to enact a law that called for corporate social responsibility, and the UK followed suit.¹⁵ A Company Social Responsibility Committee of the Board must be established by companies with a total asset value of at least 500 crore, a turnover of at least 1000 crore, or a net profit of at least 5 crore, as per Chapter 5 of the act. This committee manages the 2% CSR allocation made by the corporation based on its average net revenue for the preceding three years.¹⁶

Schedule 7 of the Act outlines specific activities that businesses can incorporate into their corporate social responsibility plans. These activities include but are not limited to, ending hunger and poverty, advancing gender equality and education, maintaining the ecological equilibrium along with sustainability in ecosystems, advancing technological advancements, and safeguarding the nation's cultural heritage.¹⁷

Interestingly, the government has tried to impose distinct obligations on businesses to ensure environmental safety beneath the guise of company environmental responsibility (CER) or enterprise social commitment (ESC), even though the Act's Schedule specifically mentions sustainability of the environment, preservation of natural resources, and safeguarding of flora and fauna. A prominent example of this can be found in the Draft EIA Notification, which states that CER is "part of the Ecosystem Management Strategy in which the venture's endorser is compelled to wear out specific tasks for environment protection near the endeavor based on the problems raised over the public interaction and/or social need based evaluation conducted during the EIA research."¹⁸

One might contend that companies should be forced to make clear and distinct investments in environmental protection to achieve sustainable growth. However, in reality, this has led to a duplication of efforts towards the same objective, confusing firms. The purpose of this essay is to investigate if there has been effort duplication as a result of the implementation of distinct CER in Indian firms, as well as the history of this practice.

Before starting a new venture, expanding an existing project, modernizing an existing task, or changing the product mix, the industrial sectors listed in the **Environment Impact Assessment** Notification 2006, that have a direct ecological footprint are obligated to apply for prior environment clearance (EC) from the **Ministry of Environment, Forest and Climate Change (MoEFCC)**.

The project proponent (PP) must comply with several limitations before the Ministry will award an EC. These requirements fall into two categories: general criteria and particular conditions. If the PP fails to meet these requirements, the EC may be revoked. When awarding EC, the MoEFCC places particular requirements on the applicant, including corporate environmental responsibility that must be limited to the affected areas surrounding the suggested venture and based on local needs. Since CER is allowed at the time of EC, it is thought that CER operations that are a component of the project ought to be carried out in combination with the project instead of after reaching net profits. The researcher believes that CER and CSR costs ought to be handled differently and reimbursed in various ways.¹⁹

Corporate environmental responsibility is defined as firms' ethical commitment to protect natural resources from environmental degradation. This suggests that firms' environmental role is to design a watertight strategy that encompasses several measures aimed at lowering energy consumption, promoting recycling initiatives, and adopting eco-friendly manufacturing techniques. Furthermore, many organizations fail to grasp that, while encouraging sustainability in business may be more expensive, it also provides numerous benefits that can help to accelerate the company's growth.²⁰

To back this up, a recent study found that more than one-third of the population is willing to pay more for more environmentally friendly products or services. GenZ (39%) and Millennials have the biggest share of the population, followed by GenX (31%), and Baby Boomers (26%), who are willing to pay more for products that align with their sustainability ideals. Along with profitability, encouraging sustainability can

¹⁵ Subhashis Gangopadhyay, *Spending for Society*, The Telegraph online, (2016) available at: <https://m.telegraphindia.com/opinion/spending-for-society/cid/1446603> (Last Visited – 05 February 2024).

¹⁶ The Companies Act, 2013 (Act 18 of 2013), s. 135.

¹⁷ The Companies Act, 2013 (Act 18 of 2013), sch. 7.

¹⁸ The Draft Environment Impact Assessment Notification – 2020, S. 3(16).

¹⁹ Venancio D'Costa, Astha Ojha, *et.al.*, "Corporate Social Responsibility v. Corporate Environment Responsibility: Duplication of Efforts for Same Objective" *SCC Blog*, (2022) available at: https://www.sconline.com/blog/post/2022/02/07/corporate-social-responsibility-v-corporate-environment-responsibility/#_ftn9 (Last Visited – 06 February 2024).

²⁰ Available at: <https://crowjack.com/blog/strategy/ethical-issues-in-workplace/neglect-of-environmental-responsibility#What-is-environmental-responsibility-of-businesses> (Last Visited – 06 February 2024).

help the company establish a strong reputation for demonstrating environmental stewardship while earning profits. As a result, in order to compete in today's world, companies must embrace the green movement.²¹

However, in order to maximize profits, many corporations have a negative impact on the environment in some form. Neglecting company responsibilities has far-reaching consequences that go beyond environmental degradation to include societal impacts, public health problems, and negative effects on the corporation itself, but compliance with these obligations remains elusive.

- **Damages to the environment:**

i. ***Industry's role in Climate Change***

Businesses release many greenhouse gases that hurt the environment during the manufacturing process before delivering the end product to customers. Since the Industrial Revolution, CO₂ levels have increased by more than 40% and are presently greater than they have been in the previous 800,000 years. Even though many companies are implementing various programs to minimize greenhouse gas emissions, more work must be done to reduce levels and safeguard the climate worldwide.²²

ii. ***Overexploitation of Natural Resources.***

Natural resources are the foundation of any product or supply chain in any industry; therefore, maintaining these natural resources is critical to the earth's continued operation. However, many businesses are failing to manage the earth's natural resources, and as a result, every firm throughout the world will bear the consequences in the future. According to the World Wide Fund for Nature (WWF), if humanity continues to over-exploit natural resources in the same way they do now, it will take 2.5 planets to meet demand in 2050.²³

iii. ***Increased Pollution***

Numerous classic environmental challenges, such as dumping industrial waste into bodies of water, reckless tree cutting to establish new industries, and increasing greenhouse gas emissions, are the responsibility of numerous enterprises worldwide.²⁴

iv. ***Massive Waste Generation***

Waste generation has been one of the most pressing issues in the world. And corporations are mostly responsible for generating massive amounts of waste each year. To demonstrate, 13 tons of hazardous garbage damaging the environment and humanity are produced every second, which can add up to 400 million tons each year. Furthermore, it is worth noting that the building industry is the largest generator, accounting for nearly 90% of all waste produced worldwide. The numerous sorts of garbage produced by various industries are listed below²⁵:

- *Chemical waste* refers to various toxic chemical remnants that, when disposed of, harm the environment. The chemical industry, paper manufacturing, paint manufacturing, and pharmaceutical industries are among the most significant contributors.

- *Solid wastes* include paper, cardboard, scraps, and metals. As previously noted, the construction industry is one of the greatest contributors to solid waste generation, along with the packing, metallurgy, and printing industries.

- *Toxic and Hazardous waste* includes nuclear waste, radioactive waste, and explosive waste are some of the most prevalent types of toxic and hazardous waste produced by many businesses. The leather and textile sector is the largest producer of toxic and hazardous waste.

- *E-waste* is a term used to describe several abandoned electronic or electrical trash materials. The electronics and appliance business is one of the major contributors to electronic trash creation.

²¹ *Ibid.*

²² Available at: <https://crowjack.com/blog/strategy/ethical-issues-in-workplace/neglect-of-environmental-responsibility#major-environmental-problems> (Last Visited – 06 February 2024).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

- *Surgical waste*- Syringes, gloves, and any other sort of trash generated by the medical business are considered medical waste. Hospitals, laboratories, the pharmaceutical sector, clinical testing facilities, and the veterinary business generate the most surgical waste.

- **Damages to the society:**

- i. Failure to implement sustainable methods promotes a variety of social issues. Income inequality is exacerbated as marginalized groups endure the price of environmental deterioration and resource depletion. Racial and gender disparities remain, with vulnerable groups being disproportionately affected by pollution and decreasing living circumstances.²⁶
- ii. Additionally, socially conscientious businesses reap direct financial rewards. According to a Glassdoor survey, 76% of job searchers value a diverse workplace when choosing a company. This leads to increased innovation in the workplace, which incorporates diverse perspectives and social awareness, resulting in better consumer involvement.²⁷

- **Damages to public health:**

There are several ways in which the environment affects our health. Numerous studies have examined the connection between environmental risks and human health, and the results indicate that these risks can significantly affect human well-being, either directly through exposure to dangerous substances or indirectly through disruption of ecosystems that support life. The World Health Organization (WHO) believes that environmental factors that may be prevented contribute to over thirteen million fatalities annually, even if the exact role that environmental variables play in the development of illnesses and morbidity is unknown.

According to the report, external factors also contribute to 23% of all fatalities (premature mortality) and 24% of the worldwide burden of illnesses (lost healthy life years). The ecological cause of diseases is approximately fifteen times greater in developing countries than in developed ones because of disparities in being subjected to climate hazards along with access to healthcare services.²⁸

- **Damages to the corporation:**

- i. **Loss of Goodwill**

Companies that ignore ESG principles face serious brand harm in an age of increased social consciousness. Consumers, investors, and employees are increasingly scrutinizing company behavior, and any perceived disregard for sustainability can result in public outrage, boycotts, and unfavorable media attention. A strong ESG management system enables businesses to address environmental and social issues proactively, thereby protecting their brand and retaining stakeholder trust.²⁹

- ii. **Compliance with Regulations**

Globally, governments are implementing more stringent regulations to tackle environmental and social concerns. Infractions of these rules may lead to heavy fines, legal disputes, and damage to one's reputation. By keeping companies ahead of evolving compliance standards, an ESG and sustainability management system reduces the chance of non-compliance and the fines that follow.³⁰

- iii. **Profitability**

Ignoring ESG factors can be detrimental to a company's financial performance. ESG concerns are becoming more and more important in investors' decision-making, and businesses that do poorly in this area may find it difficult to secure funding or advantageous loan terms. Conversely, companies that place a high priority on environmental sustainability and ethical behavior usually see improvements in long-term economic viability, lower borrowing costs, and better availability of resources.³¹

²⁶ Available at: https://blog.emeraldbe.com/new_blog/the-high-cost-of-ignoring-sustainability-a-wake-up-call-for-business-leaders (Last Visited - 06 February 2024).

²⁷ *Ibid.*

²⁸ Kyriaki Remoundou and Phoebe Koundouri, "Environmental Effects on Public Health: An Economic Perspective" *International Journal of Environmental Research and Public Health* (2009), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2738880/> (Last Visited – 07 February 2024).

²⁹ Dangers of Ignoring Corporate Responsibility, available at: <https://charitymiles.org/corporate-responsibility/> (Last Visited – 07 February 2024).

³⁰ The Risks of Neglecting ESG and Sustainability Management and Reporting Systems, available at: <https://www.linkedin.com/pulse/risks-neglecting-esg-sustainability-management-reporting> (Last Visited – 07 February 2024).

³¹ *Ibid.*

iv. **Supply Chain Interruptions**

Companies that ignore ESG factors in supply chain management face interruptions and inefficiency. Suppliers with poor environmental or social standards may suffer regulatory action or reputational damage, causing supply chain interruptions. Implementing an ESG management system allows businesses to examine and monitor their suppliers' sustainability performance, lowering the risk of supply chain interruptions and maintaining business continuity.³²

v. **Attracting and Holding Talent with Skill**

Employees who are concerned about environmental issues are increasingly searching for positions that align with their ideals. Businesses that don't have a robust ESG management system may find it difficult to draw in and keep top personnel, especially from a younger demographic who place a high value on social obligation and sustainability. Companies that make sustainability and ESG policy investments can enhance their employer brand, draw in quality candidates, and create a positive work environment.³³

vi. **Trial and Legal Concerns**

Neglecting ESG principles can subject businesses to legal risks and lawsuits. Failure to address environmental concerns, workplace safety, or ethical standards can lead to legal action, fines, and reputational harm. Implementing an ESG management system aids in the identification and mitigation of potential legal issues, as well as assuring compliance with applicable laws and regulations.³⁴

4.3 Cases of Corporate Environmental Catastrophes

Corporations have come under increased criticism in recent decades for their involvement in catastrophic environmental disasters with far-reaching effects for ecosystems, communities, and public health. Despite advancements in environmental rules and corporate responsibility initiatives, cases of catastrophic environmental harm caused by business negligence or malfeasance continue. These tragedies serve as a sobering reminder of the critical necessity for strong supervision, responsible business behavior, and accountability in environmental protection. The following are prominent examples of environmental catastrophes caused by corporate behavior –

a. **Bhopal Gas Tragedy, 1984³⁵ -**

On the night of December 2-3, 1984, a considerable amount of methyl isocyanate gas leaked from Union Carbide Corporation's (UCC) pesticide plant in Bhopal, Madhya Pradesh, India.

The gas leak killed thousands of people in just a few days, with estimates ranging from 3,800 to over 16,000 dead. Many more people sustained serious injuries and long-term health issues. The surrounding environment was severely polluted, harming soil, water, and air quality.

Investigations indicated that the tragedy was caused by a combination of reasons, including inadequate safety measures, poor maintenance, and operational carelessness. Key factors highlighted included malfunctioning equipment, a lack of emergency readiness, and inadequate human training.

The incident sparked legal battles and compensation claims against UCC, which eventually settled with the Indian government for \$470 million in 1989. However, the settlement amount was generally condemned as inadequate given the magnitude of the tragedy and its long-term ramifications.³⁶

b. **Oleum Gas Leak, 1986³⁷ –**

In 1985, a catastrophic catastrophe occurred at Sri Ram Food and Fertilizers' pesticide production plant in Delhi, India. The incident entailed a huge explosion and subsequent fire at the facility, which caused extensive damage to the plant and adjacent surroundings. The explosion and fire at the Sri Ram Food and Fertilizers company resulted in several casualties and injuries to workers and adjacent people. The incident produced considerable alarm and disturbance in the

³² *Supra* note 29 at 10.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Union Carbide Corporation vs Union Of India Etc.*, 1990 AIR 273.

³⁶ Edward Broughton, "The Bhopal disaster and its aftermath: a review", available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1142333/#:~:text=On%20December%203%201984%2C%20more,death%20fo%20many%20thousands%20more> (Last Visited – 07 February 2024).

³⁷ *M.C. Mehta And Anr vs Union Of India & Ors.* AIR 1987 SUPREME COURT 1086.

area, with claims of property damage and environmental contamination from dangerous chemicals released into the air and soil.

The explosion and fire at the Sri Ram Food and Fertilizers plant were caused by a mix of causes such as inadequate safety precautions, inappropriate chemical handling, and equipment malfunction. Investigations uncovered failures in safety regulations and the company's incompetence in assuring the safe running of the pesticide manufacturing facility.

The Sri Ram Food and Fertilizers issue spurred legal action and regulatory scrutiny. Authorities are investigating to find accountability and make responsible parties accountable for the accident. Affected individuals and communities filed lawsuits against the corporation, seeking compensation for damages, injuries, and loss of livelihood.

Furthermore, the tragedy sparked calls for better enforcement of safety standards and greater control of industrial establishments that handle hazardous products. The Sri Ram Food and Fertilizers case serves as a sharp reminder of the significance of prioritizing safety measures and following to regulatory standards in sectors that handle hazardous substances in order to avoid similar tragedies and safeguard public health and safety.³⁸

c. Vizag Gas Leak, 2020³⁹ -

A gas leak happened at the LG Polymers chemical plant in Visakhapatnam, Andhra Pradesh, on May 7, 2020. The leaking gas, styrene, is used to make polystyrene polymers.

The gas leak killed at least 12 people and affected thousands more residents in the nearby villages. Many people had respiratory problems, nausea, and eye irritation. The incident sparked fear and resulted in mass evacuations in the impacted districts.

According to investigations, the gas leak occurred as a result of safety system failures and inadequate storage tank maintenance during the COVID-19 lockdown period, when the plant was not working at full capacity.⁴⁰

The incident spurred a review of safety measures in chemical factories across India, resulting in heightened regulatory monitoring and stricter enforcement of industrial safety norms.

d. Ennore Oil Spill, 2017⁴¹ -

On January 28, 2017, the MT Dawn Kanchipuram and MT BW Maple collided near the Kamarajar Port in Ennore, Tamil Nadu, resulting in an oil spill.

Approximately 74,000 litres of furnace oil seeped into the Bay of Bengal, harming coastal habitats, mangroves, and marine life. The leak harmed the local fishing economy and created an environmental risk to the region.

Authorities began clean-up activities to limit the spill and reduce its environmental damage. However, the incident sparked worries about marine safety and the need for stronger laws to avoid similar mishaps in the future.⁴²

e. Sterlite Copper Plant Pollution, 2018⁴³ -

Vedanta Limited's Sterlite Copper factory in Thoothukudi, Tamil Nadu, was accused of environmental pollution and health dangers as a result of its operations. The facility was accused of emitting pollutants such as sulfur dioxide and heavy metals into the atmosphere and water, causing health problems for residents and environmental damage in the surrounding areas.

The pollution charges provoked massive protests by local communities and environmental organizations, who requested that the factory be closed due to health and environmental concerns. In May 2018, following

³⁸ Oleum Gas Leak Case, available at: <https://lawbhoomi.com/oleum-gas-leak-case/#:~:text=The%20Oleum%20Gas%20Leak%20Case,situated%20in%20Kirti%20Nagar%2C%20Delhi>. (Last Visited – 07 February 2024).

³⁹ *LG Polymers India Private Limited v. Andhra Pradesh Pollution Control Board & Ors.*, 2020.

⁴⁰ Available at: <https://www.scconline.com/blog/post/2020/06/03/vizag-gas-leak-rs-50-cr-deposited-by-lg-polymers-to-be-appropriated-towards-its-part-liability-in-restoration-of-environment-and-compensation-to-victims-erring-officers-of-andhra-authorities-need/> (Last Visited – 07 February 2024).

⁴¹ *R.Renu Karthick vs The Inspector General Of Coast Guard*, 2018.

⁴² Available at: <https://indianexpress.com/article/cities/chennai/ennore-creek-oil-spill-chennai-tamil-nadu-fishermen-9073977/> (Last Visited – 07 February 2024).

⁴³ *Tamil Nadu Pollution Control Board vs Sterlite Industries (I) Ltd.* AIR 2019 SUPREME COURT 1074.

violent clashes between demonstrators and police, the Tamil Nadu government ordered the permanent shutdown of the Sterlite Copper factory, citing environmental infractions and public safety concerns.⁴⁴

f. **Baghjan Oil Well Fire, 2020**⁴⁵ –

On May 27, 2020, a blowout and subsequent fire happened at an oil well owned by Oil India Limited in Baghjan, Assam. The fire burned for more than five months, causing extensive environmental damage to neighbouring marshes, woodlands, and wildlife habitats. The tragedy also resulted in the displacement of thousands of local inhabitants who were evacuated for safety reasons.

Oil India Limited launched steps to limit the fire and reduce its environmental impact. However, problems such as the well's isolated position and the varied terrain hampered containment efforts, causing environmental harm and community dislocation.⁴⁶

4.4 Assessing Corporate Liability within the Legislative Framework

Environmental deterioration is becoming a worldwide concern. Three anti-pollution laws have been passed by India, a country that supports environmental awareness around the world: the Environment (Protection) Act, 1986⁴⁷, the Air (Prevention and Control of Pollution) Act, 1981⁴⁸, and the Water (Prevention and Control of Pollution) Act, 1974.⁴⁹ Both natural and legal individuals are now considered potential environmental contaminants under these rules, and breaking the required environmental standards can result in criminal penalties.⁵⁰ Individuals are, nevertheless, subject to a sufficient and noticeable amount of obligation; this is not the case for businesses. There are far too few corporate duties to reduce their hazardous environmental practices.

Large, international corporations continue to degrade the environment because it has not been able to stop them.⁵¹ The penalties imposed by various laws differ from one another. This leads to conflict and prevents such enactments from working effectively. Businesses exploit this discrepancy, committing crimes that result in light punishments. The power to prosecute environmental offenders and stop additional environmental damage rests with Pollution Control Boards and Environment Protection Agencies.⁵²

The Madras High Court had compelled Sterlite Industries to close its copper factory in Tuticorin, and the Supreme Court instructed Sterlite Industries to deposit a hundred million rupees as damages.⁵³ These Boards are incapable of doing their duties because of political interference. Since MNCs, TNCs, and domestic businesses contribute significantly to the nation's economic growth, political groups are reluctant to bring charges against them.

This weak legislative response has been corrected numerous times by the State's judicial branch, but it has limitations of its own. Only in a few situations has criminal liability for environmental offences been enforced. On the other side, since the founding of the National Green Tribunal, environmental cases have been resolved effectively and expeditiously. It has helped to safeguard, preserve, and conserve the environment, particularly natural resources.⁵⁴

Our legal system's shortcomings are illustrated by the historic Bhopal tragedy. This is the biggest case of corporate crime. This illustrates that the determination of individuals to implement and enforce the law is

⁴⁴ Available at: [https://www.legalserviceindia.com/legal/article-5942-m-s-sterlite-industries-india-ltd-v-s-tamil-nadu-pollution-control-board.html#:~:text=Lawyers%20in%20India-.M%2Fs%20Sterlite%20Industries%20\(India\)%20Ltd%20v%2Fs.Tamil%20Nadu%20Pollution%20Control%20Board&text=Facts%20of%20the%20case%3A,order%20dated%2029th%20March%202013](https://www.legalserviceindia.com/legal/article-5942-m-s-sterlite-industries-india-ltd-v-s-tamil-nadu-pollution-control-board.html#:~:text=Lawyers%20in%20India-.M%2Fs%20Sterlite%20Industries%20(India)%20Ltd%20v%2Fs.Tamil%20Nadu%20Pollution%20Control%20Board&text=Facts%20of%20the%20case%3A,order%20dated%2029th%20March%202013) (Last Visited – 07 February 2024).

⁴⁵ *Bonani Kakkar v. Oil India Limited & Ors.* 2021.

⁴⁶ Available at: <https://lawbeat.in/news-updates/assam-bhagjan-oil-well-fire-supreme-court-stays-ngts-order-formulating-committees-look> (Last Visited – 07 February 2024).

⁴⁷ The Environment (Protection) Act, 1986 (Act 29 of 1986).

⁴⁸ The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981).

⁴⁹ The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974).

⁵⁰ Vijay Kumar Singh, "Criminal Liability of Corporations-An Environmental Perspective", available at: <https://deliverypdf.ssrn.com/delivery.php?ID=61800903112512209412109808510112712311701105201604209006410500010124070088000025092041039044052007031061095081029005120123014008053029080082124092006003116024113025091013021069108104016104031028127097084107100011103076091011002113097082089117094092067&EXT=pdf&INDEX=TRUE> (Last Visited – 07 February 2024).

⁵¹ Indrajit Dube, "Environmental Jurisprudence: Polluter's Liability", *LexisNexis Butterworths* (2007) at p. 140, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3360346 (Last Visited – 08 February 2024).

⁵² *Supra* note 7 at 3.

⁵³ *Supra* note 44 at 14.

⁵⁴ The National Green Tribunal Act, 2010 (Act 19 of 2010).

just as important as the legislation itself, making it merely one-half of the story. All of the allegations against Union Carbide's subsidiary had to be included in a single case, according to the Indian government. The prosecution's assertion of deliberate killing directed at Union Carbide and the officials was dropped. Criminal law in India was found to be wholly insufficient and was mostly disregarded in favor of civil lawsuits. Simply put, the Indian government lacked the guts to take on Union Carbide and its attorneys in US civil courts or Indian civil/criminal courts. Thus, in terms of corporate criminal responsibility, Indian criminal law is still far from matured.⁵⁵

Criminal responsibility is based on actus reus and mens rea, which are synonymous with guilty act and guilty mentality. The challenge with placing criminal culpability on businesses is demonstrating a guilty mind.⁵⁶ The judiciary has refrained from discussing the application of mens rea to enterprises, citing inappropriate cases for discussion. The court found in the 2005 case of *Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.*⁵⁷, that companies are subject to criminal law and may be held liable for their actions, which may result in significant fines. The idea of lifting the corporate veil allows executives, officials on the Board of Directors, and so on to be imprisoned under criminal law even though the corporation has no mind or body of its own. This is because these individuals are the corporation's governing minds.⁵⁸

Section 58 of the Wild Life (Protection) Act of 1972⁵⁹, **section 47** of the Water (Prevention and Control of Pollution) Act of 1974⁶⁰, **section 40** of the Air (Prevention and Control of Pollution) Act of 1981⁶¹, **section 16** of the Environment (Protection) Act of 1986⁶², **section 16** of the Public Liability Insurance Act of 1991⁶³, and **section 27** of the National Green Tribunal Act of 2010⁶⁴ discuss the liability of companies for offences committed under various environmental laws. The environmental law encompasses the principles of **strict, absolute, and vicarious liability**. The environmental laws provide a general and standard definition for the company. The term "company" refers to a body corporate and encompasses firms or other associations of individuals.

Each individual (who was directly in control and accountable to the firm for the conduct of the business at the time) is considered culpable along with the corporation if the organization commits an ecological crime, according to the various provisions. They might so be charged with a crime and punished. It continues by stating that any executive, supervisor, secretary, or official who permits, complicitises, or fails to prevent the firm's offense shall also be held liable with the business.

They bear the burden of disapproving it since they are widely assumed to be guilty. They may argue for informational gaps or a lack of diligence. In such cases, the accused must prove that the company's violations of environmental legislation happened without his or her knowledge and that even after learning of the violations, he or she took reasonable steps to stop them from happening. They must show that they took all reasonable precautions, not just that they adhered to the standard of care.⁶⁵ Everyone must follow the law with freedom, reason, and diligence.

4.5 Recommendations for Improving Environmental Protection with Stringent Legislation and Accountability Standards

India needs to implement appropriate laws and hold businesses responsible for failing to disclose climate risks. India has to quickly amend the Companies Act, 2013 to take into account the many countries around the world that have implemented mandatory climate disclosure laws. Here are some pointers to assist businesses in adhering to environmental regulations.

Alter Existing Environmental Regulations:

⁵⁵ *Supra* note 52 at 16.

⁵⁶ Ananya Agarwal, "Redefining Corporate Criminal Liability with respect to Environmental Crimes" *International Journal of Legal Science and Innovation* Vol. 3 (2020).

⁵⁷ *Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.*, AIR 2005 SC 2622.

⁵⁸ *Supra* note 50 at 15.

⁵⁹ The Wild Life (Protection) Act, 1972 (Act 53 of 1972) s. 58.

⁶⁰ The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974) s. 47.

⁶¹ The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981) s. 40.

⁶² The Environment (Protection) Act, 1986 (Act 29 of 1986) s. 16.

⁶³ The Public Liability Insurance Act, 1991 (Act 6 of 1991) s. 16.

⁶⁴ The National Green Tribunal Act, 2010 (Act 19 of 2010) s. 27.

⁶⁵ *Supra* note 55 at 16.

To comply with the 2010 National Green Tribunal Act, all current environmental regulations must be updated. Considering that Section 26(1) of the NGT Act accommodates far harsher punishment measures than previously enacted environmental regulations, the National Green Tribunal (NGT) must decide transdisciplinary issues in environmental litigation. In addition, the Central Pollution Control Board Report dated May 30, 2019⁶⁶, and the NGT's instructions in *Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors.* (2017)⁶⁷ for creating an environmental compensation framework must be adhered to.

The Draft Chemicals (Management and Safety) Rules⁶⁸ also need to be put into effect to guarantee that businesses assist the recently established National Chemical Authority (NCA) in completing information gaps regarding the number of chemicals that are currently on the Indian market or that are being considered for placement, as well as in exchanging information regarding potential safety risks.⁶⁹

Make Parent Organizations Responsible:

As parent enterprises oversee the majority of a subsidiary's business operations, they are accountable for the transgressions the affiliated company commits under the theory of "removing or raising the corporate veil." Subsidiary profits are eventually held by parent businesses, which bear little responsibility for the stock deposited in the subsidiary. It is a flagrant insult to society to absolve a parent firm of responsibility for the crimes perpetrated by its subsidiary.⁷⁰ The Supreme Court held in *Iridium India Telecom Ltd. v. Motorola Inc.* (2010)⁷¹, that attribution—rather than vicarious liability—is the presumption of culpability in cases without statute or common law exceptions.

Establish a Regulatory Agency:

It is necessary to set up a regulatory body to keep an eye on business environmental initiatives and collaborate with the National Green Tribunal. All businesses that fall in the seventeen categories of extremely polluting sectors have been directed by the CPCB to set up a continuous online emission/effluent surveillance system under **Section 5** of the EPA and to make sure that the information is linked to the servers of the State Pollution Control Boards (SPCB)/Pollution Control Committees (PCC). Similarly, to examine compliance within their jurisdiction, all SPCBs are required to make their Continuous Emission Monitoring Systems (CEMS) statistics publicly available.⁷²

Identifying the biggest environmental concerns in the industry:

Different industries face different environmental challenges. As a result, the first step that firms must take is to identify the environmental concerns that are relevant to their industry and then implement particular plans of action to address each environmental problem. For example, in the quick-service restaurant industry, single-use plastics will pose a significant environmental challenge. On the contrary, the transportation industry significantly contributes to greenhouse gas emissions. As a result, an examination of the environmental issues unique to each business is required.⁷³

Making Minor Alterations:

'Small drops make an ocean'; with that in mind, companies can make simple efforts in the office to help the environment. Small efforts such as decreasing paper waste, replacing non-recyclable items with recyclable materials, and turning off superfluous electrical devices can help to improve the issue.⁷⁴

Fostering Sustainability:

It is critical that organizations have clear and comprehensive sustainability strategies that include targets for the next five to 10 years. Businesses should establish targets for clean and green energy based on their industry's primary environmental challenges.

⁶⁶ MoEFCC, CPCB of India, National Green Tribunal Act, Annual Report 2017-18.

⁶⁷ AIR ONLINE 2017 SC 245.

⁶⁸ Draft Chemicals (Management and Safety) Rules, 20xx.

⁶⁹ Available at: <https://gppreview.com/2022/12/12/criminal-liability-of-corporations-in-india-an-environmental-perspective/> (Last Visited – 09 February 2024).

⁷⁰ *Ibid.*

⁷¹ AIR 2011 SUPREME COURT 20.

⁷² *Supra* note 69 at 18.

⁷³ Available at: <https://crowjack.com/blog/strategy/ethical-issues-in-workplace/neglect-of-environmental-responsibility#measure-to-deal-with-environmental-responsibility> (Last Visited – 09 February 2024).

⁷⁴ *Ibid.*

Goals include eliminating single-use plastics, lowering plastic packaging, addressing climate change, and achieving net-zero greenhouse emissions.

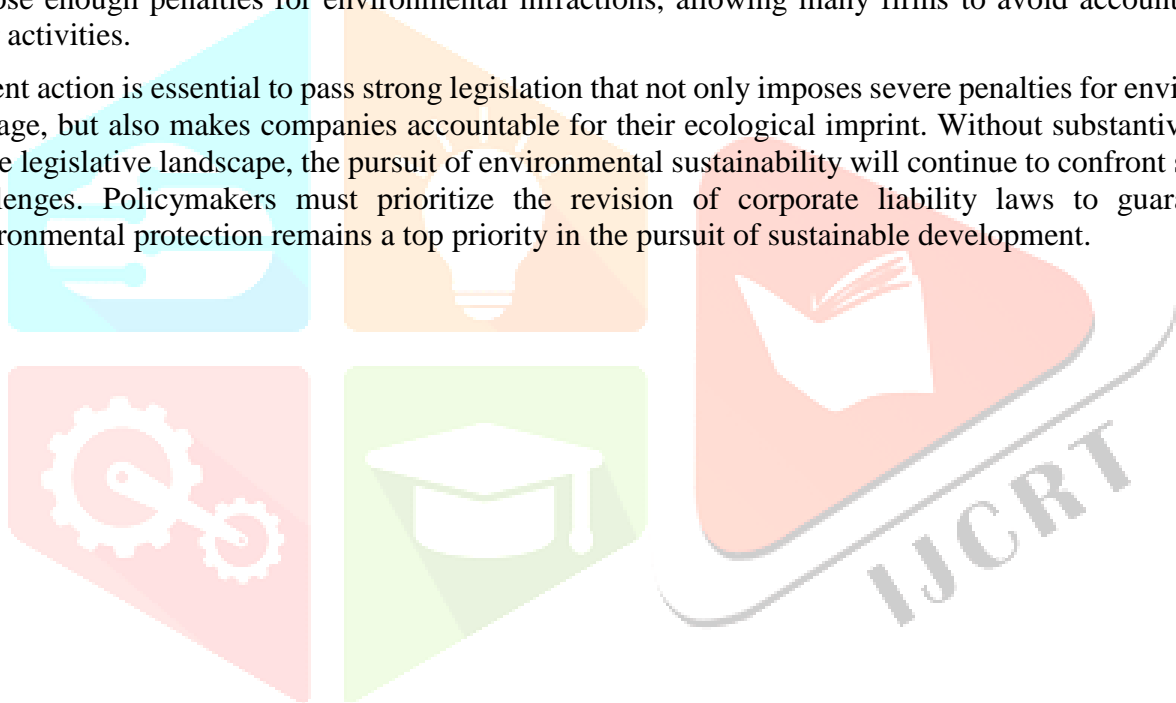
Having stated that, organizations must take proactive and decisive action to encourage sustainability in raw materials, operating procedures, and packaging. Furthermore, it is critical that firms train their staff to adopt sustainable habits and promote environmental stewardship at both the organizational and individual levels. Strong mentorship programs can be quite effective in building a sustainable business.⁷⁵

Increasing R&D Investments:

Businesses must focus on technical advances that can provide the same efficiency in a more sustainable and environmentally responsible manner. To do this, they must constantly innovate and conduct substantial research and development to create more opportunities for sustainable business practices. For example, based on extensive research and development, the car sector is now transitioning to electrification to solve the critical issue of pollution and depleting fossil resources. To make sustainability more possible and actionable, corporations must commit more cash to research and development of novel and promising alternatives.⁷⁶

To summarize, while progress has been made in identifying ideas for improving environmental protection and corporate responsibility, it is clear that significant legislative reforms are required to make corporations truly accountable for the harm they cause to the environment. The existing legal system frequently fails to impose enough penalties for environmental infractions, allowing many firms to avoid accountability for their activities.

Urgent action is essential to pass strong legislation that not only imposes severe penalties for environmental damage, but also makes companies accountable for their ecological imprint. Without substantive changes to the legislative landscape, the pursuit of environmental sustainability will continue to confront significant challenges. Policymakers must prioritize the revision of corporate liability laws to guarantee that environmental protection remains a top priority in the pursuit of sustainable development.



⁷⁵ *Ibid.*

⁷⁶ *Ibid.*