



“Corporate Liability For Environment Damages: A Critical Review Of Legal Principles”

Nitesh Bhopte, Pramod Bansod

Assistant Professor, Institute of law and Legal Studies, SAGE University, Indore

Abstract:

India's fast industrialization has led to an increase in environmental deterioration, including soil, water, and air pollution. Consequently, it is now crucial to consider corporate accountability for environmental damage. The Water (Prevention and Control of Pollution) Act of 1974 and the Environmental Protection Act of 1986 are the two main pieces of legislation that hold businesses accountable for environmental harm. In India, even with a legal framework, it is still challenging to enforce corporate convictions for environmental damage. Pollution control agencies occasionally lack the funds required to carry out the Water (Prevention and Control of Pollution) Act, and public awareness of environmental issues and the legal foundation for environmental protection are both deficient. Citizens find it challenging to hold corporations responsible for environmental harm because there are insufficient enforcement resources and little public awareness. This paper looks at corporate accountability for environmental harm in India, the judiciary's role in the legal system, and the challenges of upholding the law.

Keywords: industrialization, environmental damage, Environmental Protection Act, enforcement resources, public awareness

Introduction

The rapid economic expansion of India has had an adverse effect on the environment. The nation contributes significantly to global air and water pollution, as well as greenhouse gas emissions. Since corporate operations often have a major impact on environmental harm, the idea of corporate responsibility for environmental damage has become a critical concern in this context. The Indian government has put in place a variety of legal frameworks to make companies responsible for environmental damage caused by their operations.

Enforcing corporate responsibility for environmental damage in India is extremely difficult even with the existence of the required legal framework. A major problem is the absence of efficient enforcement methods. The Water (Prevention and Control of Pollution) Act is to be enforced by State Pollution Control Boards, but financing issues often prevent them from doing so. Furthermore, there is often little deterrence because the fines imposed on companies that violate environmental rules are modest. It is also difficult for citizens to hold corporations accountable for environmental destruction due to a lenient legal system and a lack of public understanding of environmental issues.

Establishing corporate culpability for environmental harm is hampered by the many governments' agencies' lack of collaboration. A few government organisations, namely the SPCBs, the Central Pollution Control Board (CPCB), and the Ministry of Environment, Forests, and Climate Change (MoEFCC), are in charge of overseeing and enforcing environmental legislation. However, these organisations typically don't work together, which leads to ineffective enforcement and gaps in the regulations.

Objectives of the Research

Various objectives for the research are as follows-

- This study examines the legal system, courts, and the difficulties in putting these regulations into practice, in addition to corporate responsibility for environmental harm in India.
- The legal framework in India for corporate accountability for environmental harm is based on the Water (Prevention and Control of Pollution) Act of 1974 and the Environmental Protection Act of 1986. Current research will dig deep through the aspects of these acts.
- The legal basis for legislation pertaining to environmental protection and pollution prevention and control is established by the Environmental Protection Act. Research will present a study of this act.
- The Indian judiciary has been instrumental in holding corporations responsible for environmental damage by interpreting and enforcing the provisions of these Acts.

Environmental Liability of Corporations

Corporate Environmental Liability holds individuals and corporations accountable for protecting the environment. Stockholm Conference Principle 1 stated humans' "sincere responsibility" to protect and improve the environment. Following that, subsequent preparations have favoured emphasising the individual character of this duty, permitting the life of dignity and well-being.". The United Nations adopted a code of conduct for the conservation and preservation of worldwide natural habitats and resources with the "World Charter for Nature" on October 28, 1982. The code defined five "principles of conservation" to guide and assess all human actions that influence the environment. It went on to state that economic and social progress cannot be evaluated without considering environmental factors. The world charter for nature, for example, states that it is the responsibility of "each person to act following the terms set by the world charter." 'All persons must conserve and maintain the environment,' according to the draught principles on Human Rights

and the Environment. The global concern for environmental preservation has given rise to fresh insights. As Caldwell observed, "Neither the environment as a comprehensive and multidimensional ecological concept nor the biosphere as a planetary life support system was an object of popular international concern at the beginning of the twentieth century.". Although none of the above-mentioned treaties impose legally obligatory requirements for individuals as well as the corporates, they do justify utilising criminal responsibility to enforce international environmental law. It was realized only when the degree of accident and impact of the Bhopal gas leak disaster took place, The accident and the adversaries of the Bhopal gas leak incident, one of the worst industrial tragedies in human history, happened around two years before the Supreme Court evolved the rule of absolute liability and the environmentalists, the general public, social workers, and government institutions started thinking about the ingraining of new methods and measures to avoid similar tragedies in the future, in short taking all the measures of preparedness. Following that the court take into consideration that there was a need for active adjudication and administrating actions in favour of environmental preservations. However, the court cannot make quick verdicts concerning compensation to the victims of the tragedies like those of the Bhopal gas leak. Some of the cases which are important to take note of and are pronounced in a way to create a well-balanced weighing of responsibility and the liabilities of the corporates towards the protection and the preservation of the environment.

The concept of environmental jurisprudence, which holds corporations accountable, began with the case of M. C. Mehta v Union of India. The Supreme Court established absolute liability for harm caused by hazardous industries by interpreting article 32's power to issue directions and orders.

Indian Corporate Environmental Liability Framework

The Environmental Protection Act of 1986 and the Water (Prevention and Control of Pollution) Act of 1974 establish corporate liability for environmental harm in India. The Ministry of Environment, Forest, and Climate Change (MoEFCC) has created laws and regulations in addition to the CPCB and State Pollution Control Boards.

India's primary environmental protection law, the Environment Protection Act of 1986, aims to protect and enhance the environment by reducing risks to people, other animals, plants, and property. The Act gives the federal and state governments the power to enact laws that protect and enhance the environment and regulate and outlaw actions that damage it.

The Environmental Protection Act holds the company responsible for environmental damage caused by its activities. Section 5 requires everyone to prevent environmental pollution. Violators face imprisonment and fines under Chapter 7. The law also allows the federal and state governments to seek financial compensation for wrongdoers.

The 1974 Water (Prevention and Control of Pollution) Act gives the federal and state governments the power to set water quality standards and control the release of contaminants into water bodies. Fines and imprisonment are also included. The Water Act holds corporations accountable for environmental damage

caused by their operations. Section 24 of the Act allows state governments to seek compensation for violators' harm.

The CPCB and SPCBs publish guidelines to protect the environment and reduce pollution. These guidelines cover waste management for municipal and industrial use, air and water pollution reduction, and more. They also set business emissions and effluent limits and provide penalties for noncompliance.

The Environmental Protection Act of 1986 and the Water (Prevention and Control of Pollution) Act of 1974 establish corporate liability for environmental harm in India. These Acts require businesses to protect the environment and set penalties for noncompliance. The MoEFCC also develops rules and regulations.

Although a legal framework exists in India, corporate culpability for environmental damage is difficult to demonstrate. More enforcement and public awareness are needed.

The Judicial Role in Enforcing Corporate Environmental Liability in India

The judiciary supervises legislative and administrative acts and interprets and executes laws and regulations pertaining to business liability for environmental damage in India. This essay examines the judiciary's role in India's efforts to hold corporations accountable for environmental damage.

1. Legal Framework

Indian corporations are liable for environmental damage under the Environment Protection Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. The Central Pollution Control Board (SAP) and State Pollution Control Board (SPCB) have issued guidelines.

2. Court Decisions

The Supreme Court and High Courts have issued several landmark judgements that have had a major impact on environmental law in India. Some of these decisions are listed below:

- M.C. Mehta V/s Union of India**

In one of India's most significant environmental cases, the Supreme Court ordered Kanpur, Uttar Pradesh tanneries to close until they built sewage treatment plants to reduce pollution. The court also ordered the federal and state governments to establish a commission to control urban pollution.

- Vellore Citizens Welfare Forum v. Union of India**

Tanneries polluted Vellore, Tamil Nadu, so the Supreme Court banned tanning salons without a water treatment system and punished those who disobeyed. The court also ordered the federal and state governments to create hazardous waste guidelines.

3. Challenges

The Indian judiciary struggles to enforce corporate accountability for environmental harm despite a legal framework. Below are some of the major obstacles the judiciary must overcome to determine corporate culpability for environmental harm in India:

- **Lack of Resources**

Environmental cases require specialized knowledge and experience, making it difficult for judges to make wise decisions without the technical understanding needed to understand complex environmental issues.

- **Delayed Justice**

The Indian judiciary is known for its litigiousness, and environmental cases are no exception. Until the lawsuit is resolved, companies can continue to pollute, and delays in justice can worsen the environment. Victims may not pursue legal claims because they lack the financial resources to fight a protracted lawsuit.

- **Limited Penalties**

India's environmental sanctions are sometimes insufficient to deter polluters because compliance costs are often higher than fines and the legal system does not hold polluters accountable.

- **Regulatory Capture**

The CPCB and SPCBs, two Indian regulatory agencies that enforce environmental laws, have been accused of regulatory capture. Due to lax regulation and insufficient fines, firms are now able to pollute without consequence.

- **Limited Jurisdiction**

The judiciary can only hear cases that fall under its territorial purview, so businesses may be able to avoid legal responsibility by operating in areas with laxer environmental laws or establishing subsidiaries abroad. Despite a legal framework, Indian courts struggle to enforce environmental regulations due to a lack of funding, jurisdiction, delays in justice, weak sanctions, hijacking, and irregularity. The judiciary, executive, and parliament must work together to find solutions.

Impact of Corporate Social Responsibility on Environmental Protection in India

"Corporate social responsibility" (CSR) is the idea that companies have a responsibility to promote social progress and the long-term sustainability of the planet by accepting liability for their environmental impacts and taking precautions.

CSR in India is based on the Companies Act 2013, which requires companies meeting certain financial criteria to spend 2% of their net profit on CSR activities like environmental protection, natural resource conservation, and climate change mitigation.

Mandatory CSR in India has increased corporate investment in environmental protection measures, including buying renewable energy, reducing waste and pollution, and conserving natural resources. CSR programmes have also helped businesses strengthen stakeholder relationships, attract and retain talent, and improve their reputation and brand image.

One of the world's most polluted rivers, the Ganges, has seriously harmed both the environment and human health. Corporations like Tata Steel, Mahindra & Mahindra, and others have invested in Clean Ganga, one of India's most notable CSR initiatives.

Some critics argue that mandatory CSR doesn't address the root causes of environmental issues, so businesses may invest in token CSR initiatives to comply rather than genuinely caring about social and environmental issues.

Despite these objections, CSR has had a significant impact on environmental conservation in India. Businesses' environmental footprints have decreased, and sustainable growth has been supported by investments in environmental protection measures. Additionally, CSR has helped businesses strengthen their stakeholder relationships and reputation, which can help them remain sustainable over time.

The effectiveness of sanctions and fines in preventing Indian enterprises from environmental damage

Given India's massive environmental issues, including air and water pollution, deforestation, and climate change, corporate accountability is crucial. Penalties and fines are essential for enforcing environmental regulations and deterring corporations from polluting.

India's environmental laws and regulations aim to prevent and reduce corporate environmental harm. The Air (Prevention and Control of Pollution) Act, 1981, the Environment Protection Act, 1986, and the Forest (Conservation) Act, 1980 are among the most important.

Fines and penalties are essential for enforcing environmental laws and discouraging businesses from harming the environment. Financial fines can encourage businesses to comply with environmental laws and invest in strategies to reduce their environmental impact. They can also deter businesses from starting environmental harming actions.

There are several variables that can affect how well penalties and fines work to prevent businesses from harming the environment. If the fine is too low, companies may continue to engage in environmentally hazardous activities because they see it as a small cost of doing business. If the fine is too high, it may deter business.

Penalties and fines are effective when applied properly, but ineffective application can reduce their deterrent power. Environmental laws are rarely enforced in India, so businesses may think they won't be caught and punished.

Market pressures or regulatory gaps that allow businesses to pass the costs of their operations onto society may encourage firms to engage in environmentally destructive activities. Penalties and fines may not be enough in some cases to address the underlying incentives that motivate environmentally damaging behaviour.

Another issue with penalties and fines is the risk of unintended consequences. Small and medium-sized businesses (SMEs) may be disproportionately affected because they lack the funds to invest in environmental protection measures. This could deter SMEs from investing in environmentally beneficial activities, leading to larger firms taking over.

Penalties and fines can deter businesses from harming the environment in India, but their success depends on the severity of the penalty, the method used to enforce it, and the underlying incentives that motivate ecologically hazardous behaviour. Enforcement systems must be strengthened, the underlying causes of environmental harm must be addressed, and penalties and fines must be strengthened.

Comparative Analysis of Corporate Environmental Liability in India and Other Countries

Many nations have passed legislation to hold businesses accountable for their environmental impact. Comparing corporate liability for environmental impact between India and other nations can show the pros and cons of different legal systems and highlight development opportunities.

India's legal system for corporate liability for environmental harm is based on the Environment Protection Act of 1986 and many other laws and regulations. Businesses can be fined and held liable for any environmental damage they cause.

The legal structure for corporate accountability for environmental harm differs greatly in other nations. In the US, businesses may be subject to civil and criminal penalties, fines, and jail time for causing environmental harm through their operations.

The European Environmental Liability Directive and Emissions Trading System limit greenhouse gas emissions and allow companies to trade emission rights.

In India, criminal responsibility for environmental harm is only applicable when there is a demonstrated purpose to do injury or recklessness. In the US and some European nations, companies can be held criminally accountable for environmental harm caused by their operations, even if there is no demonstrated purpose to do injury or recklessness.

The deterrent effect of the legal system may be weakened by the fact that environmental offences in India typically carry smaller penalties and fines than in other nations. Environmental restrictions may also hinder the legal system's efficiency.

In contrast, the US and certain European countries have harsher penalties and fines for environmental offences, and environmental laws are more closely enforced. This may prevent corporations from environmentally harmful practices.

A comparison of corporate accountability for environmental harm in India and other nations shows the pros and cons of different legal systems and suggests strengthening environmental law enforcement, environmental offences, and criminal culpability. Additionally, more civil society and environmental protection should be involved.

Corporate Liability and The Right to A Healthy Environment in India

Corporate accountability for environmental harm is essential to protecting the right to a healthy environment, which the Indian Constitution guarantees. In recent years, there has been a growing awareness of the need to hold businesses accountable for their environmental impacts and ensure that their operations do not violate this right.

In recent years, India has made significant changes to corporate responsibility for environmental harm and the right to a healthy environment. The National Green Tribunal, a specialised court for environmental matters, recognised the right to a healthy environment as a fundamental right, which is one of the most important.

Finally, business culpability for environmental harm depends on social duty and legal accountability. In addition to respecting the right to a healthy environment, corporations have a duty to act in ways that reduce their negative environmental impacts and promote sustainable development. This requires a larger shift towards more socially conscious and environmentally friendly corporate governance.

Implications of the Research

CSR activities can help, but they shouldn't replace strict laws that hold businesses accountable for environmental damage. CSR activities often fail to address structural and systemic flaws that cause environmental problems. Corporate social responsibility has encouraged businesses to engage in sustainability plans, which has helped environmental protection in India. However, CSR should be combined with strong legislative frameworks and enforcement mechanisms to hold businesses accountable for their environmental impacts. India can support an all-encompassing plan that incorporates both corporate social responsibility and sustainability.

Corporate liability for environmental harm in India is complicated and requires a comprehensive strategy that considers legal, social, and environmental factors. As India's economy grows and industrialization accelerates, protecting everyone's right to a healthy environment will become increasingly important.

Conclusion

In conclusion, corporate responsibility for environmental harm is a major issue in India, where rapid industrialization and economic growth have caused serious environmental issues. The strict liability principle holds businesses accountable for environmental harm caused by their operations even if they have no malicious intent. Business culpability for environmental harm includes social duty and legal accountability. In addition to respecting the right to a healthy environment, corporations must act in ways that reduce their environmental impact and promote sustainable development. This situation requires a careful balance of corporate and public interests and an understanding of business's social and environmental impacts to balance the right to a healthy environment with the company's duty to repair environmental damage.

References

1. Kameri-Mbote, P. (2018). The development of environmental corporate liability in India: judicial activism or legislative innovation? *Journal of Environmental Law*, 30(3), 391-412.
2. Chaturvedi, S., & Sharma, S. K. (2019). Corporate liability for environmental harm in India: An analysis of legal and policy developments. *Journal of Cleaner Production*, 220, 481-489.
3. Kapoor, V., & Gupta, R. (2018). Corporate environmental liability in India: Legal perspectives and challenges. *Energy, Ecology and Environment*, 3(6), 350-361.
4. Pati, R. N. (2019). Corporate environmental liability and the role of judiciary in India: a critical review. *Journal of Environmental Science and Engineering*, 61(1), 1-10.
5. Singh, S. P., & Gupta, S. K. (2017). Corporate environmental liability in India: A review of legal and policy framework. *Journal of Cleaner Production*, 165, 1391-1399.
6. Pahuja, N., & Kandari, K. (2020). Corporate environmental liability and sustainable development in India: An appraisal. *Journal of Cleaner Production*, 242, 118500.
7. Ramesh, R. (2019). Corporate Liability for Environmental Harm: An Analysis of Indian Jurisprudence. *Asia Pacific Journal of Environmental Law*, 22(1), 1-22.
8. Gupta, R., & Kapoor, V. (2017). Corporate environmental liability in India: an overview. In *Environmental Sustainability from the Himalayas to the Oceans* (pp. 93- 102). Springer, Singapore.
9. Gokhale, R., & Banerjee, D. (2020). Corporate Liability for Environmental Damages in India: Jurisprudence and Future Course. In *Environmental Laws in India* (pp. 111-132). Springer, Singapore.
10. Hota, P. K., & Majhi, P. (2018). Corporate Environmental Liability in India: An Overview. In *Environmental Challenges and Governance: Diverse Perspectives from Asia* (pp. 157-174). Springer, Singapore.
11. "BHR Series: Environmental Harm and Corporate Liability," Mondaq, 2021
12. 1987 SCR (1) 819; AIR 1987 965
13. AIR 1996 SCC 647
14. 1996 AIR 1446 1996 SCC (3) 212 JT 1996 (2) 196 1996 SCALE (2)44
15. 1991 AIR 420 1991 SCR (1) 5 1991 SCC (1) 598 JT 1991 (1) 77 1991 SCALE (1)8