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Beyond the Polluter's Price: Corporate Environmental Liability, the National Green Tribunal and the Duties of Directors in India

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Abstract—Indian courts built the law of corporate environmental liability faster than Parliament did, and the result is a body of doctrine that is demanding in principle and uneven in practice. This paper traces how absolute liability, the polluter pays principle and the precautionary principle passed from Supreme Court judgments into the National Green Tribunal Act, 2010, and then asks whether company law takes over where those doctrines stop. Using a doctrinal method and a comparative look at the United States, the United Kingdom and the European Union, it argues that the system prices harm better than it prevents it. Compensation formulae are predictable but modest, limitation rules disadvantage victims of latent harm, and the personal exposure of directors depends on statutory deeming provisions and not on the general duty in section 166 of the Companies Act, 2013. The paper closes with five reforms aimed at moving liability from the balance sheet of the firm to the decisions of those who run it.

Index Terms—absolute liability, corporate governance, directors' duties, environmental compensation, National Green Tribunal, polluter pays principle

I. INTRODUCTION

On the night of 2–3 December 1984 methyl isocyanate escaped from a pesticide plant in Bhopal. For the company the litigation ended in a settlement of USD 470 million, approved by the Supreme Court in 1989 without any adjudication of fault [1]. For Indian law it began a question that is still being answered: when a firm creates a risk that ordinary people can neither insure against nor avoid, on what terms should it answer for the harm?

Four decades later the answer has three layers. The first is judicial. From the early 1980s the Supreme Court read a right to a healthy environment into Article 21 and then fashioned liability rules for enterprises without waiting for legislation. The second is institutional: the National Green Tribunal Act, 2010 gave those rules a specialist forum, a statutory mandate and a power to award compensation. The third lies inside the corporation, where the Companies Act, 2013 and the securities regulator's reporting rules put environmental questions before boards. Each layer has been studied on its own [2], [3], [4]. Fewer accounts ask whether the three fit together.

This paper argues that they fit imperfectly, and that the misfit has a pattern. Doctrine sets a demanding standard of liability for the enterprise. The Tribunal converts that standard into money through formulae that are administrable but modest. Company law reaches the individuals who actually decide only through narrow doors. The outcome is a system that is better at pricing harm after the event than at changing decisions before it.

The method is doctrinal. Primary sources are decisions of the Supreme Court and the Tribunal and the statutes in their current form; secondary sources are monographs and articles on Indian environmental adjudication. Foreign material is used only where it clarifies a specific Indian gap. No empirical data on the recovery of compensation are used, so statements about enforcement are offered as propositions to be tested and not as findings.

II. CONSTITUTIONAL AND JUDICIAL FOUNDATIONS

A. A right that became a duty

The Constitution as framed said little about the environment. Article 48A and the fundamental duty in Article 51A(g) were added in 1976 [5], and they might have stayed exhortations had the Supreme Court not read them into Article 21. In *Ratlam* the Court ordered a municipality to build drains, treating a public nuisance as a failure of public duty [6]. In *Subhash Kumar* it held that the right to life includes the enjoyment of pollution-free water and air [7].

Two consequences matter for what follows. Because the right is constitutional, a petitioner may go directly to the Supreme Court under Article 32 and obtain remedies that no civil court could grant [8]. And a right needs a bearer of the correlative duty. In cases of industrial harm that bearer is the enterprise as much as the State, so the decisions that follow amount to a search for the right rule for allocating the duty. The same reasoning now reaches climate harm, with Articles 14 and 21 read to include a right against its adverse effects [9].

B. Absolute liability

Bhopal had shown the inadequacy of fault-based liability, and the Court's first doctrinal answer came in M.C. *Mehta*, the Oleum Gas Leak case [10]. Oleum had escaped from a fertiliser unit in Delhi in December 1985, and the question was whether the English rule in *Rylands v. Fletcher* [11], with its exceptions for an act of God or of a stranger, should govern. The Court declined to import the rule with its exceptions. An enterprise engaged in a hazardous or inherently dangerous activity owes the community an absolute and non-delegable duty, and must compensate for any harm regardless of the care it took. The Court added a second proposition that has outlived the first: compensation must bear a relation to the magnitude and capacity of the enterprise, because otherwise it would not deter [10].

Three observations are in order. The rule was announced in a writ proceeding and not in a tort action, so its reach in ordinary civil suits has been tested less often than its reputation suggests. The capacity-based measure of compensation has a punitive logic, and it sits uneasily beside later formulae tied to fixed indices. And the Bhopal settlement, reached without a finding on liability, showed how far practice could fall short of doctrine [1], [12].

C. Polluter pays and precaution

If absolute liability answered accidents, continuing pollution needed a different answer. In *Enviro-Legal Action*, which concerned chemical units that had poisoned the groundwater of a Rajasthan village, the Court held that those who profit from hazardous production must bear the cost of repairing the damage, and it ordered the cost of remediation to be recovered from the units [13]. Months later *Vellore Citizens' Welfare Forum* declared the precautionary principle and the polluter pays principle to be part of the environmental law of the country, and placed on the proponent of an activity the burden of showing that it is benign [14].

The *Taj Trapezium* case carried the logic to industries operating in an ecologically fragile zone [15]. *Sterlite* applied it to a large operator, imposing Rs. 100 crore even as the Court set aside a closure order [16]. In *Common Cause*, a case on illegal mining in Odisha, the Court ordered recovery of the full value of ore taken in breach of the law [17]. Table I collects these propositions.

TABLE I. DOCTRINAL FOUNDATIONS

Doctrine	Authority	Core proposition
Absolute liability	*Mehta* (1987) [10]	Hazardous enterprise liable without exceptions; compensation scaled to its capacity
Polluter pays	*Enviro-Legal Action* (1996) [13]	Polluter bears the cost of restoring the damage
Precaution	*Vellore* (1996) [14]	Proponent must show the activity is benign
Gain-based recovery	*Common Cause* (2017) [17]	Value of illegally extracted ore recoverable in full

III. THE STATUTORY ARCHITECTURE

A. Sectoral statutes and the penal route

Parliament's contribution after Stockholm was a set of sectoral statutes: the Water Act, 1974, the Air Act, 1981 and the umbrella Environment (Protection) Act, 1986 [18]. Their enforcement model was administrative and criminal, resting on consent to operate, inspection, directions and prosecution. Each contains a provision on offences by companies under which every person who was in charge of, and responsible to, the company for the conduct of its business at the time of the offence is deemed guilty unless he proves lack of knowledge or due diligence [18]. That deeming rule is the most direct route from the company to its managers, and Part V returns to it.

The criminal route has been narrowing. The Jan Vishwas (Amendment of Provisions) Act, 2023 replaced the imprisonment-based punishment in the 1986 Act with monetary penalties imposed by an adjudicating officer [19]. The stated rationale, that criminal sanctions for regulatory lapses had become a source of harassment and had produced few convictions, deserves a hearing. But decriminalisation moves the burden of deterrence onto the civil side, and so onto the adequacy of compensation and penalty formulae.

B. No-fault statutory relief

The Public Liability Insurance Act, 1991, a post-Bhopal statute, imposes no-fault liability on the owner of a hazardous undertaking for death, injury or damage arising from an accident, requires the owner to carry insurance, and creates an Environmental Relief Fund [20]. The idea is sound but its footprint is small, because it answers accidents involving hazardous substances and not the chronic contamination that is the commoner form of corporate harm.

C. The Tribunal

The National Green Tribunal Act, 2010 is the pivotal statute. Section 14 gives the Tribunal jurisdiction over civil cases raising a substantial question relating to the environment under the enactments in Schedule I. Section 15 lets it order relief and compensation to victims, restitution of property and restoration of the environment, within five years of the cause first arising. Section 17 places liability on the person responsible on a no-fault footing, and section 20 binds the Tribunal to sustainable development, the precautionary principle and the polluter pays principle [21]. Procedure is relaxed by section 19, orders go on appeal directly to the Supreme Court under section 22, and section 26 punishes non-compliance with fines that may reach Rs. 25 crore for a company [21].

Two features stand out. The mandate converts doctrine into command: what the Supreme Court called a rule of Indian environmental law is now something the Tribunal must apply. And the remedial vocabulary of restoration and restitution is wider than the damages of a civil court. Whether practice has used that vocabulary as fully as the statute allows is an empirical question, and the next Part considers it only by way of illustration.

IV. QUANTUM, LIMITATION AND THE "PAY-AND-POLLUTE" PROBLEM

The central difficulty is quantification. Section 15 lists the heads of relief but no method of assessing them, and experience has supplied a formula. The Central Pollution Control Board's 2019 methodology, now applied routinely by the Tribunal and State boards, computes environmental compensation as the product of a pollution index for the industrial sector, the number of days of violation, a monetary factor, a scale factor and a location factor [22].

Formulae of this kind have real virtues. They tell regulators and firms in advance what non-compliance costs, they limit arbitrariness and they speed disposal. They also have limits. A formula built on a sector index prices the violation and not the damage, so two plants of equal scale that differ greatly in ecological harm may pay the same. It also raises a question that the Supreme Court's capacity-based approach did not: should the payment bear any relation to what the firm gained by postponing its treatment plant? An award below that gain is a rational operating cost, which is precisely the outcome the restorative reading of the polluter pays principle is meant to exclude [13], [14].

Limitation is a second difficulty. The five-year period in section 15 runs from the date on which the cause of compensation first arose [21]. For a cancer cluster downstream of a discharge, or aquifer contamination that surfaces years after the discharge, the cause first arises on a date the victim cannot know. A discovery rule of the kind familiar in toxic-tort law elsewhere would fit such harm better.

Collection is a third. Compensation is a debt that must be recovered, and the penal powers of section 26 are only as strong as the machinery that enforces them. The Yamuna floodplain festival case shows the tension: the Tribunal allowed a large event to proceed as a fait accompli and imposed environmental compensation afterwards [23]. Whatever the merits on the facts, a sequence in which the harm is permitted and then priced is hard to reconcile with a principle meant to deter.

V. THE CORPORATE LAW DIMENSION

A. The corporate form

Liability that attaches to the enterprise lands on the company, and the company is a legal person with limited assets. Where the polluting unit is a subsidiary or a special-purpose vehicle, the capacity-based measure in *Mehta* is only as deep as the pocket of the entity before the court. Indian courts have not yet developed a settled doctrine for reaching the parent, and the Bhopal settlement left the question undecided [1]. The logic of *Mehta* already points to the answer, since the "enterprise" is the economic unit that creates and profits from the risk. Courts should say so expressly.

B. Directors

Section 166(2) of the Companies Act, 2013 requires a director to act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment. Section 166(3) adds a duty of due and reasonable care, skill and diligence [24]. The provision is striking for a company statute, yet it has had little visible effect in environmental cases.

Two reasons stand out. The duty is owed to the company, and the Act offers no clear way for an affected community to enforce it; the oppression remedy belongs to members and not to neighbours. And the Supreme Court is cautious about director liability in general: directors are not vicariously liable for the company's offences unless a statute says so, and the company must itself be before the court [25], [26]. In practice, then, the exposure of directors turns on the deeming provisions described in Part III-A, which ask who was in charge and responsible, and not on section 166. That is a thin foundation when decisions about pollution-control expenditure are taken at board level.

C. CSR and reporting

Section 135 requires companies above the statutory thresholds to form a CSR committee and to spend at least two per cent of average net profit of the preceding three financial years on Schedule VII activities, which include environmental sustainability [24], [27]. The obligation is real but must not be mistaken for environmental liability. A company that plants trees under Schedule VII while discharging untreated effluent has satisfied the first and violated the second, and no tribunal should entertain an argument that sets one against the other.

Disclosure has moved faster. The securities regulator required the top thousand listed entities by market capitalisation to file a Business Responsibility and Sustainability Report, then added a BRSR Core of key indicators subject to assurance and issued industry standards for it in December 2024 [28]. Reporting makes environmental performance a matter of public record and so of securities-law accountability. Its weakness is that disclosure of an outcome does not show whether the board knew of the risk. Reports describe results; they rarely describe oversight.

VI. COMPARATIVE PERSPECTIVES

The United States met the problem of historical contamination with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which imposes strict, joint and several liability on current and past owners and operators and on those who arranged for disposal [29]. *Bestfoods* confirmed that a parent is not liable merely because it owns a subsidiary, but may be liable where it operated the facility itself [30]. In England, *Vedanta Resources v. Lungowe* held that a parent can owe a duty of care to those affected by a subsidiary's operations where it has taken over or shared in the management of the activity [31]. The European Union has moved from the Environmental Liability Directive of 2004, built on the polluter pays principle and public enforcement [32], to the Corporate Sustainability Due Diligence Directive of 2024, which asks large companies to identify and address adverse environmental impacts along their chains of activities, although its scope and timetable have been under revision [33].

Three lessons carry over. Liability should follow control and not formal ownership. A statutory standard is easier to administer than a judicial doctrine applied case by case. And duties placed on the firm to prevent harm are a complement to compensation, not a substitute for it.

VII. GAPS AND PROPOSALS

Four gaps follow from the analysis. Between standard and sanction, absolute liability is demanding but compensation is calculated after the harm. Between enterprise and individual, directors' duties are stated broadly and enforced narrowly. Between disclosure and oversight, reports record outcomes without showing who decided. And between doctrine and data, nobody can say with precision how much compensation ordered is in fact recovered.

Five proposals respond. First, the formula figure should be treated as a floor and not a ceiling: the Tribunal should be encouraged to assess actual damage, add any gain from non-compliance that can be shown, and pair payment with a supervised, time-bound restoration order. Second, section 15 should be read, or amended, so that limitation runs from discovery of the harm in cases of latent injury. Third, the entity that controls a hazardous activity should be answerable alongside the operator for compensation orders, whether by statute or by a clear judicial statement of enterprise liability.

Fourth, boards of companies in hazardous sectors should be required to report environmental orders, compensation and pending proceedings in the board's report, and it should be clarified that approving an environmental disclosure falls within the duty of care in section 166(3). Fifth, the Central Pollution Control Board and the Tribunal should publish annual figures on compensation ordered and recovered, which would turn the present debate into one that can be tested.

VIII. CONCLUSION

Indian law has been more generous to the environment than its critics allow and less effective than its admirers claim. The doctrines of absolute liability, polluter pays and precaution are firmly settled, and the Tribunal has given them a statutory home. What remains is integration. Until company law ties the duties of those who decide to the liability of the firm they run, and until the price of harm is set by reference to damage and gain and not by index alone, the system will continue to produce compensation after the event instead of care before it.

This study has limits that should be stated plainly. It is confined to reported decisions and statutes and does not examine orders of individual benches or State-level practice, where enforcement is likely to differ. It does not measure whether compensation orders are complied with, which is why the fifth proposal asks for data. A systematic review of Tribunal orders over a fixed period, coded for the heads of compensation awarded and the amounts actually recovered, is the natural next study, and it would test several of the propositions advanced here.

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