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# **CODIFYING ACCOUNTABILITY: CORPORATE ENVIRONMENTAL CRIME AND THE LIMITS OF INDIAN LEGAL SYSTEM**

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## **ABSTRACT**

Industrial production is a mainstay of economic growth in India; however, the externalities of industrial activities are becoming less tenable. Industrial pollution continues to cause damage to air, water, and land resources and cause substantial damage to public health, despite a comprehensive statutory framework and regulatory bodies. The main tools of enforcing environmental regulations are civil, administrative, and quasi-criminal penalties under various statutes such as the Water Act, the Air Act, and the Environment Protection Act. However, these legislations have not been effective in holding corporate polluters accountable. The aim of corporates addressing environmental damage is mere regulatory compliance and not criminal culpability. Moreover, penalties are seen merely as a business expense rather than a deterrent. The Bharatiya Nyaya Sanhita 2023 is a new opportunity to re-examine the issue of corporate criminal liability; however, it does not provide a codified framework for environmental crimes by corporations.<sup>1</sup>

At the same time, the regulatory environment of the stock market has introduced enhanced environmental reporting requirements through the SEBI Business Responsibility and Sustainability Reporting (BRSR) regime, BRSR Core, and green debt guidelines to prevent greenwashing of corporate practices. Although this is a positive development, it does not provide a framework of corporate criminal liability for environmental damage.

This paper is a critique of India's constitutional and statutory framework on environmental law, the development of corporate criminal liability, and the lacunae of the existing framework. It compares the efficacy of the disclosure-based governance regime with the absence of codified environmental crimes within the general criminal law framework. It draws on lessons from the United States experience of environmental crimes and advocates a codified

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<sup>1</sup> The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023 (India), <https://www.indiacode.nic.in/handle/123456789/20062>

framework of corporate environmental crimes, attributability of crimes to corporations, sentencing based on corporate gain and environmental damage caused, and a holistic approach to the interrelation of criminal law, securities law, and environmental law.

**Keywords:** Corporate criminal liability, Environmental harm, Bharatiya Nyaya Sanhita, SEBI BRSR, Greenwashing

## **I. Introduction**

Industrialisation has played a central role in India's growth since the liberalisation of the Indian economy, and its environmental consequences have been significant, which is evident from the increasing environmental pollution, ranging from air and water pollution to the mismanagement of hazardous wastes and industrial accidents. While there are over 200 environmental laws, rules, and notifications in the Indian legislative framework, there has been an ineffective implementation of the same, which has resulted in a disconnect between the legal regime and environmental realities.

The current structure of corporate environmental liability is largely governed by specialized laws like the Water Act, Air Act, Environment Protection Act, which grant power to pollution control boards to issue directions, closure orders, and impose financial penalties, and certain provisions of the Companies Act relating to director liability and corporate social responsibility. These structures are largely regulatory and administrative in nature and are not designed to impose significant criminal sanctions on juridical persons responsible for large-scale environmental damage or non-compliance.

The recent reform process of the Indian criminal laws resulting in the enactment of the Bharatiya Nyaya Sanhita, replacing the Indian Penal Code has neither provided for a separate chapter on environmental offenses and nor any clear guidelines on corporate environmental liability except for provisions related to corporate offenses of fraud.<sup>2</sup> This is inconsistent with the constitutional provisions that protect the right to life, which includes environmental protection, and the judicial approach that has always emphasized strict and absolute liability for hazardous activities.

Concurrent developments in Indian corporate governance have put sustainability-linked

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<sup>2</sup> Bharatiya Nyaya Sanhita, 2023, No. 45 (India), <https://www.indiacode.nic.in/handle/123456789/20062>.

obligations driven by the securities regulator. SEBI has replaced the earlier Business Responsibility Report with the Business Responsibility and Sustainability Report, thereby making comprehensive environmental, social, and governance reporting mandatory for the top one thousand companies by market capitalization for the financial year 2022-2023.<sup>3</sup> More recently, SEBI has launched the BRSR Core, which is more granular and assurance-based. While currently applicable on a comply-or-explain basis to the top 150 companies, it is expected to be made mandatory to these companies. Concurrently, SEBI has strengthened its Green Debt Securities framework to prevent Greenwashing by including detailed Do's and Don'ts, more disclosure, and the requirement of third-party review of the use of proceeds and impact reporting.<sup>4</sup>

The paper argues that, while these developments mark a quantum leap in environmental governance, they cannot compensate for the absence of codified corporate criminal liability. The main argument is that India must adopt a comprehensive approach to corporate criminal liability by which environmental degradation caused by corporate activities is characterized as a crime with the support of principles of attribution, a sentencing structure, and significant interplay between environmental regulators, the criminal justice system, and the securities regulator.

## II. Constitutional and Statutory Foundations of Environmental Protection

### II.A. Constitutional framework

While the Constitution does not expressly provide for a fundamental right to a clean and healthy environment, the courts have consistently held the right to life and liberty under Article 21 to be linked with the right to a clean and pollution-free environment. The Supreme Court in the case of *Subhash Kumar v. State of Bihar* held that the “right to life” under Article 21 of the Constitution means the right to enjoy pollution-free water and air.<sup>5</sup>

Further, the Directive Principles of State Policy under Articles 48A and 51A(g) are also

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<sup>3</sup> Sec. & Exch. Bd. of India [SEBI], *Business Responsibility and Sustainability Reporting by Listed Entities*, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021), [https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities\\_50096.html](https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html).

<sup>4</sup> SEBI, *Dos and Don'ts Relating to Green Debt Securities to Avoid Occurrences of Greenwashing*, Circular No. SEBI/HO/DDHS/DDHS-RAC-POD-1/P/CIR/2023/023 (Feb. 3, 2023), [https://nsearchives.nseindia.com/web/sites/default/files/inline-files/SEBI\\_Circular\\_03022023\\_1.pdf](https://nsearchives.nseindia.com/web/sites/default/files/inline-files/SEBI_Circular_03022023_1.pdf).

<sup>5</sup> *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598, 601 (India)

indicative of the same. Article 48A, which was added by the Forty-Second Constitutional Amendment, states, “The State shall endeavour to protect and improve the environment and to safeguard forests and wildlife and to secure the conservation of rivers and waterways for the purpose of interstate navigation and flood control.”<sup>6</sup> Article 51A(g), which was also inserted by the same amendment, states, “It shall be the duty of every citizen of India who is also a citizen of India by birth to protect and improve the natural environment and to have compassion for living creatures.”<sup>7</sup>

Further, through the institution of PILs, the Supreme Court and the High Courts have also interwoven the right to life and liberty with the right to a clean and pollution-free environment.<sup>8</sup> The Supreme Court has held that the arbitrariness and reasonableness of the decisions made by the Government under Articles 14 and 19 of the Constitution need to be examined while deciding issues related to pollution.<sup>9</sup>

## II.B. Core Environmental Legislation

India has a body of environmental protection laws that has been largely in place since the Stockholm Conference on the Human Environment in 1972 and the Bhopal gas tragedy in 1984.

There are three main laws that dealing with industrial pollution.

The Water (Prevention and Control of Pollution) Act of 1974 provides for the prevention and control of water pollution. It prohibits the discharge of ‘Polluting Matter’ into water in excess of certain standards and establishes central and state pollution control boards empowered to grant or refuse consent, issue directions, to order closure, and to prosecute offenders.<sup>10</sup>

The Air (Prevention and Control of Pollution) Act of 1981 follows a similar scheme to the Water Act in dealing with the prevention and control of air pollution, setting up boards that are empowered to set standards, regulate, and control the use of fuels and appliances.<sup>11</sup>

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<sup>6</sup> INDIA CONST. arts. 48A, 51A(g), added by The Constitution (Forty-Second Amendment) Act, 1976.

<sup>7</sup> Id.

<sup>8</sup> *M.C. Mehta v. Union of India (Oleum Gas Leak)*, (1987) 1 SCC 395, 407-08 (India); *S.P. Gupta v. Union of India*, 1981 Supp SCC 87, 196-98 (India).

<sup>9</sup> *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, 658-59 (India)

<sup>10</sup> WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974, No. 6, §§ 25-26, 33A, 41-43 (India).

<sup>11</sup> AIR (PREVENTION & CONTROL OF POLLUTION) ACT, 1981, No. 14, §§ 21-22, 31A (India).

The Environment Protection Act of 1986, enacted following the Bhopal gas tragedy. It is a comprehensive law conferring broad powers on the central government to protect and improve the environment.<sup>12</sup> It empowers the central government to make rules for standards for emissions or discharge, environmental impact assessment, management of hazardous substances, and the location of industries, among other things, and to provide for offenses in respect of contravention of the provisions of the Act or any rule or direction made thereunder, punishable by imprisonment and fine, and provides for liability of persons in charge of a company in the case of offenses committed by a body corporate.<sup>13</sup>

### III. Corporate Criminal Liability and Bharatiya Nyaya Sanhita

#### III.A. Evolution of Corporate Criminal Liability

The traditional common law concept of crime and the requirement for a mental element have raised difficulties in the imposition of criminal liability upon corporate entities, as they have been perceived as unable, in a literal sense, to form a mens rea. In India, companies have traditionally been perceived as entities that fall within the realm of civil liability, while criminal liability has been imposed upon natural persons, including directors, officers, and employees.

However, over time, judicial decisions have recognized that corporate entities can be held liable for the commission of offences that require a mental element by employing concepts that attribute the mental element of the directing mind to the company. In the decision in *Standard Chartered Bank v Directorate of Enforcement*, the Supreme Court held that companies can be prosecuted and punished for the commission of offences that mandate a punishment of imprisonment and fine, although imprisonment itself cannot be imposed, and that corporate entities cannot claim immunity merely because the statute prescribes a custodial sentence.<sup>14</sup>

Despite the progressive development in the law, difficulties have been raised with regard to the effective enforcement of criminal liability upon corporate entities, including difficulties with regard to the investigation process, proof, and the imposition of innovative sentencing options in corporate crime. In the environmental sphere, company prosecutions for pollution offences have resulted in low fines or prolonged litigation, with very low instances of deterrent

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<sup>12</sup> ENVIRONMENT (PROTECTION) ACT, 1986, No. 29, §§ 3(1), 5, 15-17 (India).

<sup>13</sup> Supra note 12.

<sup>14</sup> *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530, 545-46 (India)

sentencing.

### **III.B. Scope and Silences of Bharatiya Nyaya Sanhita**

The Bharatiya Nyaya Sanhita was enacted with the intention of superseding the colonial-era Indian Penal Code and moving forward with the reform of substantive criminal law. The statute reiterates the general rules by which “every definition of an offence, every penal provision, and every illustration” is construed “in accordance with the general explanations” found in the initial sections.<sup>15</sup> It also recognizes the capability of “companies, associations, and bodies of persons” to commit crimes. It also defines some corporate crimes such as fraud and falsification of accounts. For instance, under the Sanhita, cheating and related offenses are addressed under Section 318. It recognizes fraudulent practices carried out through corporate entities.

Despite these developments, the Bharatiya Nyaya Sanhita has not included any separate chapter on “environmental offenses.” It has not included any provisions specifically addressing “corporate environmental crimes” or “corporate vicarious liability” for environmental offenses. The offenses included under the Bharatiya Nyaya Sanhita, which can be applicable in pollution-related offenses such as “public nuisance” and “negligence,” are mostly designed for natural persons.<sup>16</sup> The offenses are not provided with any sentencing guidelines for large corporations responsible for widespread yet subtle ecological damage. According to the summary of the Bharatiya Nyaya Sanhita provided by an independent research body, the Bharatiya Nyaya Sanhita “expands the definition of organized crime and introduces new offenses,” but it “has not addressed the issue of environmental crimes and climate change-related offenses.”<sup>17</sup> This is in direct contrast with the “constitutional status” given to “environmental protection” and the “jurisprudential developments” recognizing “environmental degradation” as an “infringement of fundamental rights.” The current state of the Bharatiya Nyaya Sanhita has created a fragmented legal framework dealing with corporate-related environmental offenses.

## **IV. SEBI, ESG Regulation and Disclosure Centred Accountability**

### **IV.A. Business Responsibility and Sustainability Reporting**

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<sup>15</sup> Bharatiya Nyaya Sanhita, 2023, No. 45, (India), <https://www.indiacode.nic.in/handle/123456789/20062>.

<sup>16</sup> *Id.*

<sup>17</sup> PRS Legislative Research, *Summary of Bharatiya Nyaya Sanhita*, 2023, [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2023/Bharatiya\\_Nyaya\\_Sanhita,\\_2023.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2023/Bharatiya_Nyaya_Sanhita,_2023.pdf).

The securities regulator has become a prominent site to develop expectations around corporate environmental performance. In May 2021, a circular was released by the Securities and Exchange Board of India (SEBI) introducing Business Responsibility and Sustainability Report (BRSR) as a new concept of sustainability reporting for listed entities.<sup>18</sup> The circular was released with the authority vested in SEBI under Section 11 of the SEBI Act, in association with the Listing Obligations and Disclosure Requirements Regulations. It replaced the previous concept of the Business Responsibility Report and aligned Indian disclosure practices with international best practices.

The top listed entities were mandated to disclose information on their performance with respect to the nine principles of the National Guidelines on Responsible Business Conduct.<sup>19</sup> It includes essential indicators giving detailed environmental disclosures such as energy and water consumption, air pollutant emission, greenhouse gas emission, waste generation, progression towards a circular economy, biodiversity, etc.<sup>20</sup> It also includes a narrative reporting of environmental and social issues, risks, opportunities, mitigation strategies, financial impact, etc. along with the integration of sustainability and financial reporting.<sup>21</sup>

The BRSR filing was mandated on a voluntary basis for the financial year 2021-2022 and on a mandatory basis for the financial year 2022-2023 for the top one thousand listed entities based on the market capitalization.<sup>22</sup> However, from the perspective of environmental crimes, the BRSR acts as a tool for greater transparency. It does not criminalize environmental crimes.

#### **IV.B. BRSR Core and Assurance of ESG Data**

In recognizing the issue of data quality and the risk of superficial sustainability reporting, the Securities Exchange Board of India (SEBI) has introduced an enhanced framework under BRSR Core. Starting with the financial year 2024-25, the top 150 listed companies based on market capitalization are encouraged to use the BRSR Core reporting framework on a voluntary basis.<sup>23</sup> The mandatory use of the BRSR Core framework by these companies would come into

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<sup>18</sup> Supra note 3.

<sup>19</sup> Nat'l Guidelines on Responsible Bus. Conduct (NGRBC), Ministry of Corp. Affairs, Annex. to SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (2021);

<sup>20</sup> *SEBI's New ESG Disclosure Norms: What Companies Must Know in 2025*, NMA LEGAL (2025), <https://nma.legal/%F0%9F%93%B0-sebis-new-esg-disclosure-norms-what-companies-must-know-in-2025/>.

<sup>21</sup> Id.

<sup>22</sup> Supra note 3.

<sup>23</sup> SEBI, *BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain*, Circular No.

effect the following financial year. The focus is on a reduced list of key performance indicators that require reasonable assurance by an external assurance provider. The indicators are carbon emissions, energy efficiency, water intensity, waste management, supply chain practices, and social data.<sup>24</sup>

The purpose of the BRSR Core framework is to improve the overall quality of sustainability data and reduce the risk of greenwashing by ensuring the accuracy of the figures disclosed. It also introduces the concept of phased supply chain thresholds, which require companies to report emissions and other data for an increasingly large percentage of their supply chain.<sup>25</sup> However, while false and misleading disclosure of ESG data can lead to securities laws violations and can also form the basis of shareholder suits, the approach remains disclosure-based rather than offense-based.<sup>26</sup> This means that corporate entities which externalize environmental costs while ensuring disclosure requirements are met can escape criminal liability for the underlying environmental offense.

#### **IV.C. Green Debt Securities, Greenwashing and Investor Protection**

In concert with these disclosure requirements, the Securities and Exchange Board of India (SEBI) has significantly amended the existing framework for green debt securities. Circulars introduced in February 2023 set out detailed guidelines on what is permissible and what is not permissible for issuers of green debt securities, in order to ensure that there is no greenwashing, or making false or misleading claims about the sustainability of a product, service, or operation.<sup>27</sup> When read in conjunction with the regulations governing the issue and listing of non-convertible securities, these circulars require issuers of green debt securities to specifically identify green projects, disclose environmental objectives, and report on key performance indicators.<sup>28</sup>

Further, these amendments to the SEBI guidelines on green debt securities are in line with the

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SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 (July 12, 2023), [https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain\\_73854.html](https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html).

<sup>24</sup> Id.

<sup>25</sup> Supra note 23.

<sup>26</sup> *Regulatory Initiatives on ESG Disclosure Requirements in India*, S&R ASSOCIATES (May 20, 2025), <https://www.snrlaw.in/wp-content/uploads/2025/05/SR-Insights-Regulatory-Initiatives-on-ESG-Disclosure-Requirements-in-India.pdf>. ; Supra note 20.

<sup>27</sup> Supra note 4. SEBI, *Revised Disclosure Requirements for Issuance and Listing of Green Debt Securities*, Circular No. SEBI/HO/DDHS/DDHS-POD1/P/CIR/2023/023 (Feb. 6, 2023), [https://nsearchives.nseindia.com/web/sites/default/files/inline-files/SEBI\\_Circular\\_03022023\\_1.pdf](https://nsearchives.nseindia.com/web/sites/default/files/inline-files/SEBI_Circular_03022023_1.pdf).

<sup>28</sup> Id.

global standards for green finance and require issuers of green debt securities to engage the services of independent third-party reviewers or certifiers to verify alignment with environmental objectives and use of proceeds, both before and after the issuance of green bonds.<sup>29</sup> Observers' analysis suggests that these changes are expected to boost investor confidence in green bonds issued by corporations in India, thereby supporting India's energy transition by addressing concerns of greenwashing.<sup>30</sup>

These developments by SEBI demonstrate a commitment to intervening substantively to influence corporate environmental conduct, including through disclosure, taxonomy, and supervision of labelled financial instruments. These are formed by the broader rationale of capital markets regulation, protection of investors and to maintain fair, efficient, and informed capital markets. However, the SEBI developments do not establish any criminal offense in relation to environmental harm, nor do they establish a broader set of general principles of criminal law, including those addressing egregious pollution by corporations, as a crime against society and the environment.

## V. Judicial Innovation and Environmental Doctrines

### V.A. Public Interest Litigation and Procedural Innovations

The Indian judiciary has been a proactive in environmental governance, particularly through public interest litigation. In the Indian Supreme Court a liberal interpretation of locus standi has been followed since the late 1970s and early 1980s, allowing public-spirited individuals and organizations to institute court proceedings on behalf of the affected members of the public, which has been a key factor in uncovering industrial pollution and administrative inaction.<sup>31</sup> In the case of *S. P. Gupta v. Union of India*, the Indian Supreme Court has adopted a broad view of 'locus standi' that has been followed for the initiation of environmental public interest litigation by non-governmental organizations and members of the public.<sup>32</sup>

The Indian courts have also been active in the development of new procedures, such as 'continuous mandamus,' which has enabled the courts to monitor the execution of court

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<sup>29</sup> Id.

<sup>30</sup> *Indian Capital Market Regulator's Updated Green Debt Guidelines Unlocking Potential*, IEEFA (Sept. 17, 2025), <https://ieefa.org/resources/indian-capital-market-regulators-updated-green-debt-guidelines-unlocking-potential>.

<sup>31</sup> *S.P. Gupta v. Union of India*, 1981 Supp SCC 87, 210 (India)

<sup>32</sup> Id. At 196-210.

directions over time,<sup>33</sup> and ‘epistolary jurisdiction,’ which has enabled the courts to treat letters and telegrams as writ petitions for the purpose of providing access to justice for marginalized sections of the public who are unable to afford the process for court proceedings.<sup>34</sup> This has been followed, for example, in the Ganga pollution litigation for the purpose of monitoring the execution of pollution control directions.

### **V.B. Substantive Doctrines Shaping Corporate Environmental Liability**

However, some of the most prominent principles set by the Supreme Court of India include:

The polluter pays principle, established in the case of *Vellore Citizens Welfare Forum v. Union of India*, in which the court held that the polluters should bear for paying the costs of preventive and curative measures, with environmental compensation proportionate to the degree of harm caused.<sup>35</sup> In the above case, the Supreme Court held polluting tanneries liable to pay compensation for the ecological damage and bear the costs of the same.<sup>36</sup> This is an example of the application of the polluter pays principle to corporate entities.

The precautionary principle, as established in *A P Pollution Control Board v. M V Nayudu*, holds that the burden of proof rests with the industrialist to prove that the activities of the industry would not result in environmental damage.<sup>37</sup> This principle has been applicable to the review of environmental clearance of industrial projects, and it has been more difficult for corporations to escape responsibility by citing the uncertainty of the effects of certain activities.

The public trust doctrine, as established in *M.C. Mehta v. Kamal Nath*, holds that resources such as rivers, forests, and lakes should be treated as public trust resources and should not be allowed to be diverted for private use.<sup>38</sup> The absolute liability of industries, as established in the *Oleum gas leakage case*, holds that industries involved in hazardous activities should be held absolutely liable for damage to the environment, regardless of the precautions taken.<sup>39</sup> The principles established in the aforementioned cases can be considered to be of great use in establishing a criminal law framework.

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<sup>33</sup> *M.C. Mehta v. Union of India (Ganga Pollution)*, (1988) 1 SCC 471

<sup>34</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, 812 (India)

<sup>35</sup> *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, 669-71 (India).

<sup>36</sup> *Id.*

<sup>37</sup> *A.P. Pollution Control Bd. v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, 731-33 (India).

<sup>38</sup> *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388, 403-06 (India).

<sup>39</sup> *M.C. Mehta v. Union of India (Oleum Gas Leak)*, (1987) 1 SCC 395, 407-08 (India).

## V.C. The Role of the National Green Tribunal

The role of the National Green Tribunal has been significant in creating expectations about corporate environmental performance. In classification cases involving river pollution, industrial emissions, and vehicular pollution, the Tribunal has awarded compensatory damages, ordered closure, and the adoption of cleaner technologies to the offending corporations.<sup>40</sup> In cases involving major industrial polluters, the Tribunal has emphasized the importance of corporations not being allowed to rely on government permits to engage in environmentally detrimental practices, where such practices are in violation of law or constitutional mandates.<sup>41</sup>

This is notwithstanding the fact that the Tribunal has made some very valuable contributions to the administration of environmental laws in India. The fact remains that the Tribunal works within a civil jurisdiction framework and its directives have to be executed through executive agencies. The lack of seamless coordination between the Tribunal and the criminal justice system points to the fact that even egregious environmental law violations exposed during the course of NGT proceedings may not result in criminal proceedings against corporate entities and their officers.<sup>42</sup>

## VI. Structural Challenges in Enforcing Corporate Environmental Liability

### VI.A. Capacity Constraints and Institutional Fragmentation

Empirical studies on the functioning of pollution control boards have revealed a number of deficiencies: the qualifications and strength of staff employed by the boards; the availability and utilization of lab facilities; the equipment needed for monitoring; and the large number of vacancies, which affect the functioning of the boards.<sup>43</sup> For example, a technical officer is supposed to monitor a vast range of industrial units in one state.

Judicial and academic studies on the functioning of pollution boards also reveal the marked differences between states with regard to financial autonomy and the overall functioning of the

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<sup>40</sup> *Vardhaman Ka Paper & Ka Board Mills v. Union of India*, NGT Appeal No. 17/2013 (India) (ordering closure); *Paryavaran Suraksha Samiti v. Union of India*, O.A. No. 101/2014 (India) (damages).

<sup>41</sup> *Id.*; *Sterlite Copper (India) Ltd. v. Union of India*, NGT Appeal No. 8/2013 (India).

<sup>42</sup> Gaurav Puri, *The Contours of Corporate Criminal Liability for Environmental Wrongs*, HPNLU J. ENV'T & DISASTER MGMT., at 22-25 (n.d.).

<sup>43</sup> CENTRE FOR SCIENCE & ENV'T, *STATE OF INDIA'S ENVIRONMENT: POLLUTION BOARDS* 45-67 (2020).

boards. For example, some boards do not even possess basic lab equipment needed for testing effluents and other industrial emissions.<sup>44</sup> Yet another factor is the fragmentation of the functioning of the boards into several ministries and agencies.<sup>45</sup> For example, environmental issues, pollution control, occupational safety, land use regulation by local authorities, and company disclosures all require the functioning of different agencies.

### **VI.B. Weakness of Command-and-Control Regulation**

Environmental regulations in India generally follow a command-and-control approach in which the regulator sets uniform standards for emission or effluent quality and grants permission for operation or denies permission based on conformity to these standards.<sup>46</sup> However, the literature on compliance behaviour suggests that this approach is overly rigid and idealistic in nature, as the norms prescribed are generally set at levels that may prove to be technically difficult to meet for many industrial units, particularly small-scale units, thereby leading to non-compliance.<sup>47</sup>

Enforcement of environmental regulations in India is passive in nature and usually takes place in response to public complaints or in the aftermath of major catastrophes.<sup>48</sup> The penalties prescribed in pollution-related laws in India are relatively small in comparison to the potential benefits of non-compliance.<sup>49</sup> Additionally, the process of prosecution in India is long and drawn out, with considerable time lapse between the filing of charge sheets and the actual conviction or acquittal of the defendant.

This environment of weak enforcement results in a situation in which a cost-benefit analysis leads industries to weigh the benefits of non-compliance against the costs of non-compliance.<sup>50</sup> The criminological theory of corporate crime suggests that if the costs of detection and penalties for non-compliance are relatively small, economic actors may rationally choose non-compliance, particularly in a competitive environment where cost savings are critical.<sup>51</sup>

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<sup>44</sup> *Down to Earth, Pollution Control Boards: Ailing Guardians* (Mar. 15, 2022).

<sup>45</sup> ENV'T POL'Y & L. ADVISORY COMM., *INSTITUTIONAL FRAGMENTATION IN ENV'T GOVERNANCE* 12-18 (Gov't of India 2023).

<sup>46</sup> WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974, No. 6, § 25 (India).

<sup>47</sup> Ann Harrison et al., *When Do Firms Go Green? Comparing Command and Control Regulations with Price Incentives in India*, NBER Working Paper No. 21763, at 15-20 (2015).

<sup>48</sup> CENTRE FOR SCIENCE & ENV'T, *supra* note 42, at 72-78.

<sup>49</sup> ENV'T (PROTECTION) ACT, 1986, No. 29, § 15(1) (India) (max. penalty ₹1,00,000).

<sup>50</sup> Harrison, *supra* note 46, at 22-25.

<sup>51</sup> Siddhant Nayak, *Corporate Criminal Liability in India: Evolving Trends and Case Law*, INDIAN J.

## VI.C. Conceptual and Evidentiary Difficulties in Criminal Prosecution

The application of traditional principles of criminal law with regard to environmental offenses committed by corporations is a complex situation. As the complexity and dispersiveness of corporations continue to expand, the ability of law enforcement agencies to pinpoint individuals who may be held accountable for environmental offenses becomes increasingly difficult.

Furthermore, the causation requirements for establishing environmental offenses may be complex from a scientific standpoint. For example, establishing causation with regard to the effects of the emission or effluent discharge from a particular industrial facility may require complex expert testimony from epidemiological and ecological experts, which may not be feasible for the law enforcement agencies to procure.<sup>52</sup> This has given rise to a judicial unwillingness to address environmental offenses through the criminal law, despite the availability of provisions with regard to environmental offenses.<sup>53</sup>

Within the above context, the failure to develop a codified body of rules with regard to corporate environmental offenses under the broader framework of the criminal law has given rise to a pragmatic approach with regard to addressing environmental offenses through settlement and financial consequences rather than the application of the criminal law.

## VII. Comparative Insights on Corporate Environmental Crime

This assertion is supported by comparative practice, which shows that a large number of countries have clearly recognized the concept of corporate environmental crime through the enactment of provisions into their respective criminal statutes, with some using a strict liability approach with severe penalties for environmental offenders.<sup>54</sup> For example, the United States has the Clean Air Act and the Clean Water Act, which prescribe criminal consequences for corporations and individuals who wilfully or negligently breach the permits and emission requirements under the acts, with severe penalties and a possibility of imprisonment for individuals.<sup>55</sup> Additionally, the Comprehensive Environmental Response, Compensation, and

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INTEGRATED RES. L., vol. V, issue IV, at 18 (2025).

<sup>52</sup> Puri, *supra* note 42, at 28-30.

<sup>53</sup> *Id.* At 30-32.

<sup>54</sup> Rachel A. Van Cleave, *Corporate Criminal Liability for Environmental Crimes*, 18 J. NAT. RESOURCES & ENVTL. L. 227 (2003).

<sup>55</sup> Clean Air Act, 42 U.S.C. §§ 7413(c), 7414 (2023); Clean Water Act, 33 U.S.C. §§ 1319(c), 1365 (2023).

Liability Act (the Superfund Act) prescribes strict joint and several liabilities on those who wilfully or negligently cause the release of hazardous substances into the environment, with enforcement methods covering both civil and criminal consequences.<sup>56</sup>

Furthermore, the environmental enforcement practices of the United States have increasingly adopted the use of plea agreements and deferred prosecution agreements, including monetary sanctions, corporate compliance, external monitoring, and corporate restoration. An evaluation of the effectiveness of corporate crime control strategies has indicated that the use of such tools, including credible monitoring and individual prosecution, has the capacity for significant deterrent effects, especially for large corporations that are sensitive to reputational damage.<sup>57</sup>

Other countries, including the United Kingdom, Canada, and Australia, have tested the establishment of corporate environmental crime, including gross negligence of environmental protection duties, corporate manslaughter of industrial fatalities, and ecocide, which has been identified as an emerging type of serious environmental damage.<sup>58</sup> Although it is necessary for consideration of the application of other countries' legislation, it has been noted that the codification of corporate environmental crime under general criminal law is both conceptual and practical.

## VIII. Towards Codified Corporate Environmental Crime in India

### VIII.A. Defining Corporate Environmental Offences

One of the preliminary measures to improve accountability lies in the clear articulation of provisions of the law relating to corporate environmental offenses. This may be achieved either through an alteration of the Environment Protection Act and other sectoral laws, or through the incorporation of a separate chapter in the Bharatiya Nyaya Sanhita. Offenses may include major environmental damage caused by the violation of standards for emission and effluent levels, destruction of equipment for pollution control, falsification of information relating to environmental monitoring, and operation of a business or factory in spite of well-known,

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<sup>56</sup> Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675 (2023).

<sup>57</sup> Miriam A. Cherry & Judith Welch Laabs, *Corporate Criminal Liability for Environmental Violations*, 92 NOTRE DAME L. REV. 1365, 1398-1402 (2017).

<sup>58</sup> Corporate Manslaughter and Corporate Homicide Act, 2007, c. 23 (UK); Criminal Code, R.S.C. 1985, c. C-46, § 217.1 (Can.); See Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (ALRC Report 129, 2015).

critical environmental risks to life, health, and the environment.<sup>59</sup>

This range of offenses may extend to include negligent, reckless, and intentional offenses depending on the nature of the penalties prescribed. In certain hazardous industries dealing with considerable quantities of toxic and explosive materials, the concept of absolute liability for major catastrophes may be considered, and this concept may align with the risk profile of these activities and with the dominant judicial principles.<sup>60</sup>

### VIII.B. Attribution of Liability and Sentencing Principles

An attempt at codification would also require the identification of corporate mens rea and actus reus. This can be achieved by recognizing the corporation's act through the agency of its senior management, thereby aligning with the intent of the management.<sup>61</sup> Another method would be to assess the fault of the corporation, which would require the assessment of the organization's policies to determine the adequacy of the policies.<sup>62</sup>

The following elements should be present in the sentencing guidelines for corporate environmental offenses:

The fine should be calculated on the basis of the turnover/profit generated by the environmental offense, as well as the extent of environmental damage, ensuring that the fine is not trivial compared to the corporation.<sup>63</sup> A range of sentencing options should be available to the court, such as environmental clean-up measures, investments in cleaner technologies, community development programs in the affected areas, and the appointment of monitors to oversee the corporation for a given period.<sup>64</sup> Disqualification of the directors/managing members responsible for the environmental offense should also be considered.

To this end, a policy on the sentencing of corporate environmental crimes needs to be formulated. This policy should be based on the sentencing policies of other jurisdictions and the judicial precedents set by the courts and the National Green Tribunal on environmental

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<sup>59</sup> See Model Bill for the Prevention of Pollution of Major Rivers, Lakes and Land, MINISTRY OF ENV'T & FORESTS (Gov't of India 2009).

<sup>60</sup> *M.C. Mehta v. Union of India (Oleum Gas Leak)*, (1987) 1 SCC 395, 407-08 (India).

<sup>61</sup> *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530, 539-42 (India); *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74, 88 (India).

<sup>62</sup> Nayak, *Supra* Note 51, at 12-15.

<sup>63</sup> U.S. SENTENCING GUIDELINES MANUAL § 8C2.4 (2023) (gain/loss-based fines).

<sup>64</sup> *Id.* § 8C2.5(b).

compensation.<sup>65</sup>

### **VIII.C. Integrating SEBI's ESG Regime with Criminal Accountability**

The rising trend in Environmental, Social, and Governance (ESG) reporting in the Securities and Exchange Board of India (SEBI) regime could be used to build a link between securities law and criminal environmental liability. An effective model in this regard could be the following: “The intentional misstatement or concealment of material environmental liabilities in the Business Responsibility and Sustainability Report (BRSR), BRSR Core, or green debt could be considered a criminal offense in securities law that attracts higher penalties and requires reporting to environmental law enforcement authorities and criminal prosecution agencies.”<sup>66</sup>

On the flip side, in the event that a corporation is found guilty in a court of law for environmental crimes, information regarding such criminal environmental activity could be mandatorily disclosed in sustainability reports and securities offering documents, allowing investors to factor in criminal environmental activity in their investment decision-making processes.<sup>67</sup> SEBI could also consider incorporating environmental criminal records in assessing the fitness and propriety of key managerial personnel and controlling shareholders in securities law.<sup>68</sup>

Through cross-references to the Environment Protection Act, Bharatiya Nyaya Sanhita, and securities law, the underlying message could be that environmental crimes are not limited to non-compliance with environmental laws and securities law violations in the dissemination of information to investors but also involve a grave breach of law that has far-reaching consequences in multiple areas.

### **VIII.D. Institutional Reforms and Coordination**

In addition, there is a need to look into institutional reforms. For example, it should be ensured that the pollution boards are provided with enough funding and access to appropriate monitoring devices to track violations of law in real time. Furthermore, the creation of

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<sup>65</sup> *Vardhaman Ka Paper & Ka Board Mills v. Union of India*, NGT Appeal No. 17/2013 (India).

<sup>66</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 34(2)(f), as amended.

<sup>67</sup> *Supra* Note 66.; SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 26.

<sup>68</sup> SEBI (Intermediaries) Regulations, 2008, Reg. 7 (fit and proper criteria).

environmental crime units in police and prosecution agencies could be considered to address the complexities of holding corporations liable for environmental crime.<sup>69</sup>

Institutions should establish a mechanism to facilitate coordination between the National Green Tribunal, pollution boards, the Ministry of Environment, Forests, and Climate Change, SEBI, and the criminal justice system. For example, if findings of serious non-compliance are established in the proceedings of the NGT and SEBI, then there should be a consideration of the initiation of criminal proceedings.<sup>70</sup> In addition, criminal courts that hear environmental crime cases should have access to inputs from expert bodies or consideration of remedial measures.

Lastly, public participation and transparency are key components of a comprehensive framework to combat corporate environmental crime.<sup>71</sup> For example, making information accessible to the public, such as environmental compliance and inspection reports, that are easily reachable by civil society, such as shareholders, could potentially help to scrutinize corporate performance and identify patterns of corporate crime.

## IX. Conclusion

The body of Indian environmental jurisprudence and regulation regime shows a strong normative orientation towards sustainable development, constitutional environmental protection, and corporate accountability. However, the current regime of enforcement of corporate environmental law prioritizes the issue of corporate environmental crime as one of administrative regulation.<sup>72</sup>

Although the sectoral legislation provides for the inclusion of offence provisions, the rate of prosecutions is relatively low, and the sanctions are merely nominal, thereby having a negligible influence on corporate practices. However, the Bharatiya Nyaya Sanhita, in the process of modernizing different aspects of criminal law, does not bridge the gap between the two by codifying the law on corporate environmental crime and providing guidelines for sentencing for significant environmental damage caused through industrial activity. However, the SEBI guidelines on BRSR, BRSR Core, and green debt have profoundly impacted the

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<sup>69</sup> U.S. DEP'T OF JUSTICE, *ENVIRONMENTAL CRIMES SECTION* (2023).

<sup>70</sup> National Green Tribunal Act, 2010, No. 19, § 20 (India).

<sup>71</sup> *Rural Litigants & Social Action Groups v. State of U.P.*, AIR 1985 SC 652, 659 (India).

<sup>72</sup> Puri, *Supra* Note 42, at 18-22.

regime of corporate disclosure and investor-oriented corporate governance. Although the developments are appreciable, they remain restricted to the domains of corporate disclosure and corporate governance.

Hence, for India, any move towards the better governance of corporate environmental crime necessitates the development of a regime that synthesizes the different threads of the subject into a cohesive regime, which includes the integration of criminal law, securities law, and environmental law.<sup>73</sup> This requires the development of clear rules of substantive corporate environmental crime, proportionate sanctions, and sophisticated rules of attribution of liability for juridical and natural persons. In this regard, the regime of securities law needs to be one that perceives corporate environmental crime and misrepresentation as a symptom of governance failure, which has implications for access to capital.

By developing a codified system of corporate environmental crime that integrates constitutional rights, environmental law, and capital market law, the Indian legal framework can commence a journey towards a regime that has the capacity to authorize development that is aligned with, rather than contrary to, the principles of ecological integrity and justice.

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<sup>73</sup> Nayak, *Supra* Note 51, at 20-22.