CORPORATE ENVIRONMENTAL LIABILITY IN INDIA: LAW VS PRACTICE

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ABSTRACT

India's environmental regulations have taken an absolute liability stance. However, the enforcement of these laws is lagging. As a result of the change in focus from criminal jail time to administrative fines during the period 2024-2026, a "Pay and Pollute" culture developed in which companies treat fines as just another cost of doing business. This is made worse by a "Recovery Paralysis", where overwhelmed District Collectors are finding it difficult to collect fines, thus victims such as those from the LG Polymers incident are getting stuck in the bureaucracy even long after the agreements are made.

On the other hand, corporations are employing "procedural warfare" to delay justice in the High Courts. In order to resolve this, we should stop depending on the slow moving bureaucratic hierarchies and bring in these reforms: authorize pollution boards to directly freeze bank accounts and require environmental insurance for high risk sectors, otherwise, India will continue to be a nation of great judicial decisions that are nevertheless overshadowed by a polluted reality.

Keywords: Absolute Liability, Recovery Paralysis, Pay and Pollute, Procedural Warfare, Environmental Insurance

THE SHIFT IN LAW: FROM BRITISH PRECEDENTS TO INDIAN ABSOLUTISM

The evolutionary path of Indian environmental law has been marked by a shift from the adoption of British legal principles towards a locally tailored law that is capable of effectively responding to the risks involved with rapidly growing industrialization of the country. In fact, for most of the twentieth century, the Indian judiciary turned to the doctrine of Strict Liability that had been evolved in the English case of Rylands v. Fletcher (1868)[1]. Under this law, if somebody brought on their land anything dangerous, and it escaped from there causing harm then the owner would have to answer for the damage whether or not he had been negligent. However, this legislation was a very poor one since it was loaded with numerous loopholes, e.g. Acts of God, sabotage by third parties or the plaintiff's own fault. Such excuses became a viable way for business corporations to avoid their liability for the disastrous failures, something that they realized very well in the Bhopal tragedy of 1984.

An extremely comprehensive judicial takeover of the case law was necessary to deal with the issue of the inadequacy of strict liability in the context of contemporary industrial hazards in the case of M.C. Mehta vs Union of India (1987)[2], following the Oleum gas leak at Shriram Food and Fertilizers plant in Delhi. Wordings of the new standard of liability, that is, the doctrine of Absolute Liability, were framed by Justice P.N. Bhagwati. This theory held that a business performing a risky or inherently dangerous activity is under a strict unavoidable obligation not to cause any harm to the public. In contrast to strict liability, absolute liability is a concept that does not permit any exceptions, the moment that damage is caused, the perpetrator is automatically and unconditionally liable to compensate the victim.

The Supreme Court underlined that the amount of compensation should be relative to the size and ability of the enterprise so that it becomes a strong deterrent. The source of this policy was Article 21 of the Constitution that guarantees the right to life and a healthy environment. The upcoming legal crisis for the 2024-2026 period is that, on one hand, corporations are held legally responsible for environmental harms, but on the other hand, the agencies entrusted with the task of getting that money are severely under resourced. This has resulted in a so, called "Recovery Paralysis" where no revenues are being collected and no environmental rehabilitation is taking place.

[1] Rylands v. Fletcher, (1868) UKHL 1
[2] M.C. Mehta v. Union of India, (1987) 1 SCC 395

THE 2024 PIVOT: TRADING JAIL TIME FOR PAPER FINES

The year 2024 marked a turning point in environmental regulation in India with the enactment of the Water (Prevention and Control of Pollution) Amendment Act, 2024. Essentially, this legislation redefined the main regulatory tool, shifting the focus from a criminal, heavy model to an administrative, penalty framework. Originally, even minor or technical violations under the 1974 Act could send offenders to jail, resulting in a huge backlog of cases in criminal courts that sometimes took decades to clear. The 2024 Amendment changed this by taking a number of these offenses out of the criminal code and exchanging jail time for the imposition of fines.

It was from a perspective of encouraging a business friendly atmosphere and speeding up the enforcement that this change was conceived. Instead of a magistrate convicting a polluter after a long trial, the government now has the option to issue fines through Adjudicating Officers usually at the level of Joint Secretary or higher, after a simple inquiry. Though this makes the ruling quicker, it has given rise to the "Pay and Pollute" criticism. Opponents claim that for huge companies a 15 lakh penalty is just a budgetary minor item and not a serious discouragement.

THE ENFORCEMENT CRISIS RECOVERY PARALYSIS

The major issue in environmental law today is the "Collection" rather than the "Order". Environmental Compensation (EC) may be levied by the National Green Tribunal (NGT) or a Pollution Control Board, but the company concerned frequently disregards the mandate. The enforcement procedure then changes into a Revenue Recovery Certificate (RRC). Here, the fine is recovered by the District Collector (DC) and the DC is empowered to confiscate and sell the property.

However, district collectors are most of the time tied up with election duties, disaster management, and administrative protocols, hence, they tend to keep environmental recovery as the lowest of their priorities.

THE PROCEDURAL WARFARE: HOW TECHNICALITIES STALL JUSTICE

In early 2026, a highly trend has emerged whereby large corporations evade environmental penalities by employing what can be termed to be “Procedural Guerrilla Warfare.” In short, rather than refuting the allegation of environmental damage, they are simply challenging the procedural conduct of the case. A perfect example would be the recently decided matter of M/S. Shanti Construction Sambalpur Pvt. Ltd. vs State of Odisha[3]. The Orissa High Court rejected a hefty fine worth 96 crores imposed on a mining company by the National Green Tribunal (NGT). The court did not even acquit the company of the pollution charge; it simply said that the NGT overstepped its authority and disregarded the principles of natural justice.

The main point of contention was the way NGT handled the technical evidence. They relied on satellite images to demonstrate the illegal mining, but the company argued that they were not provided with the raw data or the calculation that led to the enormous fine of 96 crores. Justice Sanjeeb K. Panigrahi siding with the company, mentioned that in cases where the technical reports are basis for imposing a fine, the data should be given to the accused so that they are able to defend themselves. This has in a way created a loophole, even when it is clear that a company has caused harm, the whole case can be dismissed if the tribunal's paperwork or process isn't perfect.

Besides the data problems, the court criticised the NGT for just agreeing with whatever the committee reports said instead of looking at the facts independently. They also emphasized how one-sided the fine was, the actual royalty dispute was only about 12.6 lakh, so the judge felt the leap to a 96 crore penalty was completely unjustified. By being so strict about these procedural rules, the High Court has essentially allowed polluters to keep challenging the court rulings.

THE BOARDROOM VS. THE GROUND: THE FLAW IN MODERN ESG AUDITS

On one hand, while enforcement is slow on the ground, the boardroom discussion on the environment has in fact heated up. This is being largely driven by the Securities and Exchange Board of India (SEBI) making it mandatory for the top 1000 listed companies to disclose Business Responsibility and Sustainability Reporting (BRSR). SEBI rolled out the BRSR , which focuses on a subset of nine critical ESG attributes, in 2023 and 2024. These attributes now require reasonable assurance, a high level of third party verification similar to a financial audit.

[3] M/S. Shanti Construction Sambalpur Pvt. Ltd. v. State of Odisha, (2026) Orissa High Court

The 2025 Audit Rules come as a direct response to the issue of Greenwashing, which is essentially when companies make false or exaggerated environmental claims in their annual reports. However, there still seems to be a major conflict of interest at the heart of the matter. The rules say that the assurance provider must not be engaged in non audit or non assurance activities (like consulting) for the same company in order to maintain independence. Nevertheless, the skills needed to carry out these audits tend to be limited to those firms which already have a strong consulting relationship with the big polluters.

However, the gap between boardroom ESG and the reality is enormous and quite evident. A company could boast a high score of gender diversity or a significant reduction of carbon emissions only at the executive level, while its manufacturing plant is discharging untreated chemical waste into a stream in the local area. In the absence of independent, on-the-ground verification of discharge points, ESG audits run the risk of becoming merely a very elaborate form of paper based compliance rather than an environmental protection tool.

GLOBAL COMPARISONS: US SUPERFUND AND EU FINANCIAL SECURITY

If India wants to get rid of its "Recovery Paralysis" it can take notes from international models that put the emphasis on immediate cleanup rather than long legal battles.

The US CERCLA (Superfund) Model

In the USA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) established a “Superfund” that aims to clean up the most polluted areas in the country. The main feature that makes the Superfund stand out is that the government will not wait for the polluter to pay. The Environmental Protection Agency (EPA) uses the fund initially provided by taxes on chemical and petroleum industries to clean the site and then sues the polluter for the reimbursement of the costs. This way the environmental risk is eliminated immediately without being dependent on the duration of legal proceedings.

The EU Environmental Liability Directive (ELD)

On the other hand, the European Unions model leans towards “Mandatory Financial Security.” In a lot of EU member countries, companies running hazardous plants are not even allowed to get a license unless they present an environmental insurance policy or a bank guarantee. The moment an accident takes place, the restoration expenses are directly covered by the insurance company or through the bank guarantee, thus no longer requiring the involvement of local officials who are already overloaded with work, nor the seizure of physical property.

It would be a game changer if India adopted the EU framework. In case of pollution, the insurance company pays the fine imposed by the NGT without delay and subsequently increases the premiums of the offending factory, thus turning the market mechanism into a very potent deterrent.

VIZAG CASE STUDY: WHEN BUREAUCRACY FAILS THE VICTIM

The 2020 gas leak at LG Polymers in Visakhapatnam is a tragic case of a system failure. The event resulted in the loss of 15 lives and thousands of others suffering from health issues that in all probability will be their lifelong companions. It was more than four years before any significant steps were taken. In 2024, the company at last declared a relief fund of 120 crores, half of which was intended for direct payments to victims and the other half for a health and environmental foundation. But, as of September 2025, a large number of those victims are still awaiting their money.

The reasons for the company's delay in disbursing the funds are administrative lapses, wrong bank account numbers, or simple mistakes by local staff. Also, the company requested the District Collector's “confirmation of eligibility” before releasing the funds, a document that the majority of the residents most affected could not obtain.

This is the human dimension of “Recovery Paralysis.” It is the situation of families in a kind of deadlock, when even if a multinational corporation agrees to pay, the paperwork and bureaucracy are so complicated that the money does not actually get to the people who are most in need of it.

CONCLUSION

At the end of the day, India is not short of laws, but it lacks follow through. It is well known that our country has released some of the most progressive environmental judgments worldwide, however, these only amount to words on paper if the actual cleaning do not take place later. In order to prevent the scenario of companies in the country treating fines as merely a cost of doing business, enforcement has to be the first thing we take seriously. This is where pollution boards, financial authorities, and other related local officers come in. We need to grant pollution boards the direct power to bank accounts freeze pollution offending firms so that they won't have to wait for local bureaucrats to come to their rescue.

Also, we must make environmental insurance a mandatory requirement for risky industries, if you are not insured, then you should not be allowed to operate. Lastly we should ensure that damaging the environment doesn't end up only as an entry in an accounting ledger but instead it is such a heavy weight that no business can afford to turn its back on it.

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