ENVIRONMENTAL GOVERNANCE FAILURES IN INDIA: A HUMAN RIGHTS-BASED ANALYSIS OF ENFORCEMENT GAPS AND CORPORATE ACCOUNTABILITY

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1. Introduction

The increasing frequency of environmental degradation in India has exposed a **critical paradox** at the heart of its legal system: despite an extensive framework of environmental laws and constitutional protections, their **effectiveness remains deeply compromised at the level of enforcement**. This disjunction between **legal recognition and practical implementation** raises serious concerns regarding the protection of **fundamental human rights**, particularly the rights to **life, health, and livelihood**. Although Indian constitutional jurisprudence has progressively expanded the scope of **Article 21** to include the **right to a clean and healthy environment**, the persistence of environmental harm across sectors—from industrial pollution to large-scale developmental projects—continues to disproportionately affect **vulnerable and marginalized communities**.

This persistence is not merely a consequence of inadequate legal provisions, but reflects **systemic failures in governance**, including **weak regulatory enforcement, institutional inefficiencies, and limited accountability mechanisms**. Judicial interventions have played a transformative role in embedding environmental protection within the **human rights framework**, yet their impact remains constrained by deficiencies in implementation. In particular, the role of **corporate actors** in contributing to environmental degradation raises pressing questions about the adequacy of existing **accountability frameworks** and the effectiveness of regulatory oversight, thereby highlighting a deeper structural imbalance between **economic development and environmental protection**.

Against this backdrop, this paper critically examines the **structural deficiencies in India's environmental governance regime through a human rights lens**. It argues that the failure to enforce environmental laws constitutes not merely a regulatory lapse but a **violation of**

fundamental rights. By analysing enforcement gaps and challenges in **corporate accountability**, the study underscores the need for a **rights-oriented approach to environmental governance**. Ultimately, it advocates for a reconfiguration of governance frameworks that places **accountability, transparency, and participatory mechanisms** at their core, in order to ensure **sustainable and equitable outcomes**.

2. Conceptual Framework: Human Rights and Environmental Protection

The interrelationship between human rights and environmental protection has evolved from a peripheral concern into a **central pillar of contemporary legal discourse**. In the Indian context, this relationship is anchored in the judicial expansion of **Article 21**, which guarantees the right to life. Over time, the judiciary has interpreted this provision to include the **right to a clean and healthy environment**, thereby constitutionalizing environmental protection within the framework of **fundamental rights**.[1]

The jurisprudential foundation of this development can be traced to landmark decisions of the Supreme Court, where an **expansive and purposive interpretation** of fundamental rights was adopted. In *M.C. Mehta v Union of India*, the Court not only imposed strict liability for environmental harm but also articulated foundational principles such as the **"polluter pays" doctrine** and **absolute liability**, reinforcing the nexus between environmental degradation and violations of the right to life.[2] These principles have since become integral to India's environmental governance regime, shaping both **statutory interpretation and regulatory enforcement**.

However, while judicial innovation has strengthened the **normative framework**, the realization of environmental protection as a human right remains contingent upon **institutional enforcement**. Judicial observations increasingly emphasize that environmental governance must be rooted in the **rule of law**, requiring **effective, accountable, and transparent institutions** along with participatory decision-making.[3] This marks a shift from mere rights recognition to a **governance-oriented approach** focused on implementation and institutional integrity.

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[1] Subhash Kumar v State of Bihar (1991) 1 SCC 598; Virender Gaur v State of Haryana (1995) 2 SCC 577.
[2] *M.C. Mehta v Union of India* (1987) 1 SCC 395; see also development of absolute liability and polluter pays principle.
[3] Hanuman Laxman Aroskar v Union of India (2019) 15 SCC 401.

At the international level, the recognition of a **clean and healthy environment as a human right** has further strengthened its normative legitimacy. This development has influenced Indian jurisprudence, which now aligns more closely with principles such as **sustainable development, intergenerational equity, and the precautionary principle**.[4] Yet, the translation of these principles into enforceable rights continues to face **structural and institutional challenges** within domestic governance frameworks.

A critical dimension of this framework lies in the intersection between **environmental degradation and social inequality**. Environmental harm disproportionately affects **marginalized and vulnerable communities**, including tribal populations, rural inhabitants, and urban informal settlements. This phenomenon of **environmental injustice** underscores the distributive nature of environmental governance, where failure to prevent harm constitutes not merely regulatory inefficiency but a **substantive violation of human rights**, particularly the rights to **health, livelihood, and dignity**.

Contemporary developments further expose the limitations of a purely doctrinal approach. Despite robust legal principles, **enforcement failures persist**, weakening their practical impact. Mechanisms such as the **Environmental Impact Assessment (EIA)** are often reduced to procedural formalities, with limited community participation and superficial compliance checks. Similarly, the emergence of **ESG frameworks** and SEBI-mandated disclosures reflects an attempt to integrate corporate accountability, yet their effectiveness remains constrained by **weak enforcement and lack of stringent liability mechanisms**.[5] Recent audit findings and compliance failures underscore these systemic deficiencies, highlighting the urgent need for a **rights-based reorientation of environmental governance**.

Thus, the conceptual linkage between human rights and environmental protection in India, while firmly established at the normative level, remains fragile in practice. The challenge lies not in the absence of legal principles, but in their ineffective implementation. This disconnect between law and enforcement forms the central concern of this paper and necessitates a critical examination of environmental governance through a human rights lens.

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[4] United Nations Human Rights Council, 'The human right to a clean, healthy and sustainable environment ' (Resolution 48/13, 8 October 2021).

[5] Kanchi Kohli and Manju Menon, 'The EIA Notification 2020: Dilution of Environmental Safeguards '(2020) *Economic and Political Weekly*.

3. Environmental Governance in India: Legal and Institutional Framework

India's environmental governance framework is characterized by a comprehensive statutory architecture supported by specialized regulatory institutions and judicial mechanisms. Despite its apparent robustness, the effectiveness of this framework is deeply contingent upon the coordination, capacity, and accountability of the institutions responsible for its implementation.

A. Legislative Framework

At the legislative level, the cornerstone of environmental regulation in India is the **Environment (Protection) Act 1986**, enacted in the aftermath of the Bhopal Gas Disaster. The Act confers wide-ranging powers upon the central government to take measures for protecting and improving environmental quality.

Key features include:

- **Power to prescribe environmental standards**
  The Act authorizes the central government to set uniform standards for emissions and environmental quality, forming the baseline for regulatory compliance.

- **Authority to regulate industrial activity**
  The government may regulate or restrict industrial operations and locations to prevent environmental degradation, including in ecologically sensitive areas.

- **Power to issue directions, including closure of polluting units**
  The Act empowers the government to issue binding directions, including closure or regulation of industries, as an immediate enforcement mechanism.

- **Framework for penalties and enforcement**
  It provides for fines and imprisonment for non-compliance, creating a legal deterrent subject to effective enforcement.

Complementing this umbrella legislation are:

- **Water (Prevention and Control of Pollution) Act 1974**

- **Air (Prevention and Control of Pollution) Act 1981**

These statutes establish regulatory mechanisms for pollution control through licensing, monitoring, and penal provisions. Together, they form the backbone of India's environmental regulatory regime.

However, while the legislative framework appears comprehensive, its effectiveness is often undermined by weak implementation and regulatory gaps, thereby limiting its capacity to prevent environmental harm.

B. Institutional Framework

The enforcement of environmental laws is primarily entrusted to regulatory bodies at both the central and state levels.

Key institutions include:

- **Central Pollution Control Board (CPCB)**
- **State Pollution Control Boards (SPCBs)**

These bodies are responsible for:

- **Granting environmental clearances and consents**
  These approvals determine whether industries can commence or continue operations based on their compliance with prescribed environmental norms.

- **Monitoring industrial compliance**
  They conduct inspections and review data to ensure that industries adhere to emission standards and environmental conditions imposed upon them.

- **Initiating enforcement actions against violators**
  In cases of non-compliance, they are empowered to issue notices, impose penalties, or recommend closure of polluting units.

Despite these statutory mandates, multiple studies and audit reports have highlighted serious structural deficiencies, including:

- **Lack of technical and human resource capacity**
  Many boards suffer from understaffing and inadequate technical expertise, limiting their ability to effectively monitor and regulate complex industrial activities.

- **Political and administrative interference**
  Regulatory decisions are often influenced by external pressures, compromising the independence and objectivity of environmental enforcement.

- **Weak enforcement and negligible deterrence**
  Inconsistent penalties and delayed action reduce the deterrent effect of environmental laws, allowing violations to persist with minimal consequences.

Notably, reports of the **CAG (Comptroller and Auditor General of India)** have repeatedly pointed out failures in monitoring, delays in compliance actions, and inadequate penal enforcement, thereby exposing systemic weaknesses in regulatory functioning.[6]

The fragmentation of authority between central and state agencies further complicates coordination, often resulting in regulatory overlap and administrative inefficiency.

C. Judicial Mechanism: National Green Tribunal

The establishment of the **National Green Tribunal (NGT)** under the National Green Tribunal Act 2010 marked a significant advancement in India's environmental governance structure.

Key objectives of the NGT:

- **Expeditious disposal of environmental disputes**
  The Tribunal is designed to ensure swift adjudication of environmental cases, reducing delays typically associated with traditional court systems.

- **Effective enforcement of environmental rights**
  It seeks to operationalize environmental rights by providing a specialized forum for

[6] Comptroller and Auditor General of India, Report of the Performance Audit of Environmental Regulation (2017); Comptroller and Auditor General of India, Report No 39 of 2016.

addressing violations affecting individuals and communities.

- **Provision of relief and compensation for environmental damage**
  The NGT is empowered to award compensation and order restitution to restore ecological balance and address harm caused to affected parties.

The Tribunal has actively applied principles such as:

- **Sustainable development**
  The NGT consistently balances developmental needs with environmental protection to ensure long-term ecological sustainability.

- **Precautionary principle**
  It adopts a preventive approach by restricting activities that pose potential environmental risks, even in the absence of conclusive scientific evidence.

- **Polluter Pays Principle**
  The Tribunal holds polluting entities financially liable for environmental harm, ensuring that the cost of damage is borne by the responsible party.

However, despite its proactive role, the effectiveness of the NGT is often constrained by:

- **Dependence on administrative agencies for implementation**
  The enforcement of NGT orders relies heavily on executive authorities, which often lack the capacity or willingness to ensure compliance.

- **Delays and non-compliance with its orders**
  Instances of delayed execution and disregard for Tribunal directives weaken its authority and reduce the practical impact of its decisions.

This reflects a broader issue—**judicial strength without administrative backing limits real impact**.

D. Environmental Impact Assessment (EIA) Mechanism

The Environmental Impact Assessment (EIA) process is a critical preventive tool aimed at evaluating the environmental consequences of proposed projects before approval.

Core components of EIA:

- **Environmental screening and appraisal**
  Projects are assessed to determine their potential environmental impact and the level of scrutiny required before approval.

- **Public consultation and participation**
  Affected communities are given an opportunity to voice concerns and provide inputs, ensuring transparency and democratic decision-making.

- **Grant of environmental clearance**
  Approval is granted subject to compliance with specified environmental conditions aimed at mitigating adverse impacts.

However, recent developments have raised serious concerns:

- **Dilution of public participation requirements**
  Procedural changes have reduced opportunities for meaningful community engagement, undermining transparency and accountability.

- **Increased instances of post-facto environmental clearances**
  Projects are often allowed to seek approval after commencing operations, weakening the preventive purpose of the EIA framework.

- **Procedural formalities replacing substantive scrutiny**
  The assessment process is frequently reduced to a checkbox exercise, with limited evaluation of actual environmental consequences.

Scholarly critiques and policy analyses have argued that such trends weaken environmental safeguards and undermine the rights of affected communities, particularly their rights to participation and informed decision-making.[7]

[7] Kanchi Kohli and Manju Menon, 'The EIA Notification 2020: Dilution of Environmental Safeguards '(Centre for Policy Research, 2020); Ministry of Environment, Forest and Climate Change, Draft EIA Notification 2020.

E. Corporate Governance and ESG Framework

In recent years, environmental governance has increasingly intersected with corporate regulation through the introduction of sustainability and disclosure frameworks.

The **SEBI (Securities and Exchange Board of India)** has mandated the **BRSR (Business Responsibility and Sustainability Reporting)** framework for top listed companies.

This framework operates within the broader context of **ESG (Environmental, Social, and Governance)** norms.

Key objectives of BRSR include:

- **Disclosure of environmental performance**
  Companies are required to report their environmental impact, including emissions, waste management, and sustainability initiatives.

- **Transparency in resource usage and emissions**
  The framework mandates detailed disclosures on energy consumption, water usage, and greenhouse gas emissions to promote informed stakeholder assessment.

- **Accountability in social and governance practices**
  It integrates environmental concerns with broader corporate responsibilities, including labour practices, ethics, and governance standards.

While the introduction of **SEBI-led ESG compliance mechanisms** represents a progressive shift towards corporate accountability, significant concerns remain:

- **Lack of independent verification**
  Disclosures are largely self-reported, raising concerns about their accuracy, reliability, and potential for greenwashing.

- **Weak enforcement mechanisms**
  The absence of stringent penalties or regulatory follow-up limits the effectiveness of ESG compliance requirements.

- **Absence of strict liability for non-compliance**
  Companies often face minimal legal consequences for inaccurate or incomplete disclosures, reducing accountability.

As a result, ESG disclosures often risk becoming **box-ticking exercises rather than tools of substantive accountability**.

F. Persistent Governance Gap

Contemporary assessments of India's environmental governance reveal a persistent gap between legal design and practical enforcement.

Audit findings by the **CAG** and independent policy studies indicate:

- **Inadequate monitoring systems**
  Regulatory authorities often lack robust mechanisms and technological capacity to effectively track and verify environmental compliance.

- **Failure to impose penalties**
  Violations frequently go unpunished or attract minimal sanctions, undermining the deterrent purpose of environmental laws.

- **Delays in regulatory action**
  Prolonged administrative processes and inaction allow environmental harm to continue unchecked for extended periods.

- **Weak compliance culture**
  A general lack of strict enforcement fosters an environment where industries perceive regulatory compliance as optional rather than mandatory.

These systemic deficiencies undermine the credibility of the environmental governance framework and weaken its ability to safeguard human rights effectively.

In sum, while India's environmental governance framework is structurally comprehensive, its operational effectiveness remains constrained by institutional weaknesses, enforcement deficits, and evolving regulatory challenges. This disconnect between legal framework and implementation necessitates a deeper examination of enforcement failures, which forms the core focus of the subsequent section.

4. Enforcement Failures: Gaps and Challenges

Despite the existence of an extensive statutory and institutional framework, environmental governance in India continues to suffer from significant enforcement failures. These failures are not merely incidental but reflect deep-rooted structural and systemic deficiencies that undermine the realization of environmental protection as a fundamental human right.

A. Structural Weaknesses in Regulatory Institutions

A primary factor contributing to enforcement failure is the institutional weakness of regulatory bodies such as the CPCB and SPCBs. While these authorities are entrusted with critical functions of monitoring and enforcement, their operational capacity remains severely constrained.

Empirical studies and policy analyses have consistently highlighted issues such as understaffing, lack of technical expertise, and inadequate infrastructure.[8] These limitations hinder the ability of regulatory bodies to effectively monitor compliance, particularly in the context of increasingly complex industrial activities. Furthermore, the absence of real-time monitoring systems and data transparency reduces the reliability of compliance assessments.

Compounding these challenges is the issue of regulatory capture, where enforcement agencies operate under political or economic pressures. This often results in selective enforcement or reluctance to take stringent action against influential industrial actors, thereby weakening the credibility of environmental regulation.[9]

B. Ineffective Enforcement and Weak Deterrence

A critical gap in India's environmental governance lies in the inconsistent and often ineffective enforcement of legal provisions. Although environmental statutes provide for penalties,

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[8] Lavanya Rajamani and Shibani Ghosh, *Environmental Rule of Law in India* (OUP 2022).
[9] Usha Ramanathan, 'Regulatory Capture and Environmental Governance in India '(2018) 53(2) *Economic and Political Weekly*.

including fines and imprisonment, their application remains sporadic and inadequate.

Reports of the **CAG** have repeatedly documented instances where violations of environmental norms were identified but not followed by appropriate penal action.[10] In many cases, industries continue to operate despite non-compliance, with minimal regulatory consequences. This lack of consistent enforcement significantly reduces the deterrent effect of environmental laws.

Judicial observations have also pointed to this enforcement gap. The Supreme Court has, on multiple occasions, emphasized that the mere existence of laws is insufficient unless accompanied by effective implementation.[11] However, the persistent gap between legal provisions and enforcement outcomes indicates a systemic failure rather than isolated lapses.

C. Dilution of Preventive Mechanisms: The EIA Regime

The Environmental Impact Assessment (EIA) framework, which is intended to function as a preventive tool, has increasingly been criticized for its weakening effectiveness. Instead of acting as a rigorous mechanism for environmental scrutiny, the EIA process is often reduced to a procedural formality.

Scholarly critiques, particularly from policy institutions such as the Centre for Policy Research, have highlighted the dilution of safeguards through practices such as post-facto clearances and limited public consultation.[12] These developments fundamentally undermine the precautionary principle, which requires anticipatory action to prevent environmental harm.

Moreover, the marginalization of community participation in the EIA process raises serious human rights concerns. Affected populations are frequently excluded from decision-making processes, despite bearing the brunt of environmental degradation. This not only weakens democratic accountability but also exacerbates environmental injustice.

D. Gaps in Corporate Accountability

Corporate actors play a significant role in environmental degradation, yet accountability

[10] Comptroller and Auditor General of India, Report of the Performance Audit of Environmental Regulation (2017).
[11] Vellore Citizens 'Welfare Forum v Union of India (1996) 5 SCC 647.
[12] Kanchi Kohli and Manju Menon, 'The EIA Notification 2020: Dilution of Environmental Safeguards '(Centre for Policy Research, 2020).

mechanisms remain inadequate. While recent developments such as **SEBI's BRSR framework** and broader **ESG norms** represent a shift towards corporate responsibility, their practical impact remains limited.

One of the key challenges lies in the voluntary or disclosure-based nature of these frameworks. Without robust verification mechanisms and enforceable penalties, corporate disclosures risk becoming symbolic rather than substantive.[13] Additionally, existing legal frameworks do not impose sufficiently stringent liability on corporations for environmental harm, allowing them to externalize environmental costs onto society.

High-profile instances of industrial pollution and environmental violations further demonstrate the limitations of corporate accountability mechanisms. In many cases, penalties imposed are either too low to act as deterrents or are delayed due to prolonged legal and administrative processes.[14]

A number of recent and high-profile incidents further illustrate the persistent gaps in corporate environmental accountability in India. The **LG Polymers Gas Leak** exposed serious regulatory failures, where inadequate compliance with safety and environmental norms led to loss of life and long-term ecological damage. Investigations revealed lapses in environmental clearance and monitoring, raising concerns about both corporate negligence and regulatory oversight.[15] Similarly, the **Sterlite Copper Plant Controversy** highlighted prolonged allegations of industrial pollution and public health impacts, where enforcement actions were delayed despite sustained community protests and documented violations.[16] More recently, judicial scrutiny in cases involving industrial pollution in river systems, including observations in **Paryavaran Suraksha Samiti v Union of India**, has underscored the failure of authorities to ensure compliance with effluent treatment norms, allowing industries to operate in violation of environmental standards.[17] These instances collectively demonstrate that corporate

[13] Securities and Exchange Board of India, Business Responsibility and Sustainability Reporting (BRSR) Framework (2023–2025).
[14] Shibani Ghosh, 'Corporate Accountability and Environmental Governance in India '(Centre for Policy Research, 2019).
[15] Government of Andhra Pradesh, *Report on LG Polymers Gas Leak Incident* (2020); see also National Green Tribunal proceedings in *LG Polymers India Pvt Ltd v A.P. Pollution Control Board* (2020).
[16] Kanchi Kohli, 'The Sterlite Protests and Environmental Governance Failures '(2018) *Economic and Political Weekly*; see also Madras High Court orders on closure of Sterlite Plant (2018).
[17] Paryavaran Suraksha Samiti v Union of India (2017) 5 SCC 326.

environmental violations often persist due to weak enforcement, delayed regulatory response, and inadequate penalties, thereby reinforcing the systemic accountability gap.

E. Implementation Deficit in Judicial and Quasi-Judicial Orders

While institutions such as the National Green Tribunal (NGT) have played a proactive role in addressing environmental disputes, their effectiveness is often undermined by implementation challenges. Orders passed by the Tribunal frequently require execution by administrative agencies, which may lack the capacity or willingness to ensure compliance.

Studies have shown that delays in implementing NGT orders and instances of non-compliance are not uncommon, thereby limiting the practical impact of judicial interventions.[18] This reflects a broader governance issue, where judicial pronouncements are not adequately supported by administrative enforcement mechanisms.

F. Environmental Governance and Human Rights Violations

The cumulative effect of these enforcement failures is the erosion of environmental protection as a human right. Environmental degradation resulting from weak enforcement disproportionately affects marginalized communities, including rural populations, tribal groups, and urban informal settlements.

Scholars have argued that such patterns of environmental harm constitute a form of environmental injustice, where vulnerable populations bear the costs of development without adequate protection or compensation.[19] The failure of the state to prevent such harm represents not only a regulatory lapse but also a violation of fundamental rights under Article 21.

Recent developments further underscore the urgency of addressing these issues. Increasing instances of air and water pollution, ecological degradation, and climate-related vulnerabilities highlight the inadequacy of existing governance mechanisms. These challenges demand a shift from a purely regulatory approach to one that integrates human rights principles into environmental governance.

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[18] Shibani Ghosh, 'The National Green Tribunal: From Strength to Strength? '(Centre for Policy Research, 2020).
[19] Philippe Cullet, 'Environmental Justice in India: The Role of Law '(2010) 18 *Environmental Law Review*.

G. The Governance Paradox

The analysis of enforcement failures reveals a fundamental paradox: India possesses a robust environmental legal framework yet continues to experience widespread environmental degradation. This paradox is indicative of a deeper structural issue—namely, the disconnect between legal norms and their implementation.

Addressing this gap requires a shift towards a human rights-based approach emphasizing accountability, transparency, and participation. Without such reform, environmental laws will remain strong in theory but weak in practice.

5. Corporate Accountability and Environmental Harm

Corporate accountability for environmental harm in India has evolved through a combination of judicial innovation, statutory frameworks, and emerging governance mechanisms. However, despite the development of strong legal principles, the practical enforcement of corporate responsibility remains inconsistent and often inadequate.

A. Evolution of Corporate Environmental Liability

The foundation of corporate environmental accountability in India was laid by the Supreme Court in the landmark case of M.C. Mehta v Union of India. In this case, the Court introduced the doctrine of **absolute liability**, holding that enterprises engaged in hazardous or inherently dangerous activities are strictly and absolutely liable for any harm caused, irrespective of negligence or fault.[20]

This marked a significant departure from the traditional rule in *Rylands v Fletcher*, as the Court emphasized that industries must bear the **social cost of their operations**. The principle of absolute liability not only strengthened corporate accountability but also aligned environmental protection with constitutional guarantees under Article 21.

Subsequently, in Indian Council for Enviro-Legal Action v Union of India, the Supreme Court expanded this principle by imposing substantial compensation on industries responsible for environmental contamination, thereby reinforcing the **polluter pays principle**.[21] This case

[20] *M.C. Mehta v Union of India* (1987) 1 SCC 395; AIR 1987 SC 965.
[21] Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.

demonstrated that corporate liability extends beyond immediate harm to include long-term ecological restoration.

Similarly, in Vellore Citizens 'Welfare Forum v Union of India, the Court formally incorporated the principles of **sustainable development**, **precautionary principle**, and **polluter pays principle** into Indian law.[22] These principles collectively form the normative foundation of corporate environmental responsibility in India.

B. Judicial Recognition of Corporate Responsibility

Indian courts have consistently emphasized that corporate entities cannot evade responsibility for environmental harm by relying on formal compliance alone. In Sterlite Industries (India) Ltd v Union of India, the Supreme Court imposed significant penalties on a copper smelting plant for environmental violations, reaffirming that corporations must internalize the cost of environmental damage.[23]

The judiciary has also highlighted the importance of corporate conduct in ecologically sensitive zones. In Tata Housing Development Co Ltd v Goa Foundation, the Court stressed that development activities must conform to environmental norms and cannot compromise ecological integrity.[24] This reflects a broader shift towards integrating environmental considerations into corporate decision-making.

C. Persistent Gaps in Corporate Accountability

Despite the development of strong judicial principles, the practical enforcement of corporate liability remains uneven. One of the key challenges lies in the gap between **legal standards and regulatory implementation**.

In many cases, corporations continue to operate despite documented violations, with enforcement actions being delayed or diluted. The **Bhopal Gas Tragedy** remains one of the most stark examples of corporate environmental harm, where issues of liability, compensation, and accountability persisted for decades.[25] More recently, the **LG Polymers Gas**

[22] Vellore Citizens 'Welfare Forum v Union of India (1996) 5 SCC 647.
[23] Sterlite Industries (India) Ltd v Union of India (2013) 4 SCC 575.
[24] Tata Housing Development Co Ltd v Goa Foundation (2003) 11 SCC 714.
[25] Upendra Baxi and Amita Dhanda, *Valiant Victims and Lethal Litigation: The Bhopal Case* (Indian Law Institute 1990); see also subsequent Supreme Court proceedings (2023).

Leakhighlighted continuing gaps in compliance and regulatory oversight, despite the existence of stringent legal frameworks.[26]

These incidents demonstrate that while legal doctrines such as absolute liability exist, their enforcement is often constrained by procedural delays, weak regulatory action, and limited deterrence.

D. Corporate Governance and ESG: Emerging but Limited

The integration of environmental concerns into corporate governance has gained momentum through frameworks such as **ESG (Environmental, Social, and Governance)** and **SEBI's BRSR (Business Responsibility and Sustainability Reporting)** requirements. These frameworks aim to enhance transparency and promote responsible corporate behavior.

However, their effectiveness remains limited due to:

- Reliance on **self-disclosure mechanisms**
- Lack of **independent verification**
- Absence of **strict liability for inaccurate reporting**

As a result, corporate environmental responsibility often remains **formal rather than substantive**, with companies complying on paper without significant changes in practise.[27]

E. The Accountability Paradox

The Indian legal system presents a paradox in the context of corporate environmental accountability. On the one hand, it has developed some of the most progressive legal principles globally, including absolute liability and polluter pays. On the other hand, the enforcement of these principles remains inconsistent, allowing corporations to evade meaningful accountability in practice.

[26] National Green Tribunal proceedings concerning LG Polymers India Pvt Ltd (2020); application of absolute liability principles.
[27] Securities and Exchange Board of India, *BRSR Framework* (2023–2025); see also analysis of ESG enforcement gaps.

This paradox highlights a fundamental issue: **the existence of strong legal doctrines does not automatically translate into effective environmental governance**. Without robust enforcement mechanisms, institutional capacity, and political will, corporate accountability remains largely aspirational.

F. Towards Stronger Corporate Accountability

Addressing these challenges requires a multi-dimensional approach:

- **Strengthening regulatory enforcement mechanisms**
  Effective environmental governance requires enhancing the capacity, autonomy, and accountability of regulatory bodies such as CPCB and SPCBs. This includes improved monitoring technologies, stricter compliance audits, and insulation from political interference to ensure consistent enforcement.[28]

- **Introducing strict liability and higher penalties**
  The imposition of stricter liability standards, coupled with higher financial penalties, is essential to create a meaningful deterrent against environmental violations. Strengthening the application of doctrines such as absolute liability would ensure that corporations internalize the full cost of environmental harm.[29]

- **Ensuring independent verification of ESG disclosures**
  ESG reporting frameworks must move beyond self-regulation by incorporating independent third-party audits and verification mechanisms. This would enhance the credibility of corporate disclosures and reduce the risk of greenwashing and superficial compliance.[30]

- **Enhancing community participation and access to justice**
  Strengthening participatory mechanisms, including public hearings and access to environmental information, is critical to ensuring accountability. Facilitating easier access

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[28] Comptroller and Auditor General of India, Report of the Performance Audit of Environmental Regulation (2017); Lavanya Rajamani and Shibani Ghosh, Environmental Rule of Law in India (OUP 2022).
[29] M.C. Mehta v Union of India (1987) 1 SCC 395; Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.
[30] Securities and Exchange Board of India, Business Responsibility and Sustainability Reporting (BRSR) Framework (2023–2025).

to forums such as the National Green Tribunal can empower affected communities to seek timely remedies.[31]

A human rights-based approach to environmental governance can play a crucial role in this regard by reframing environmental harm as a violation of fundamental rights rather than merely a regulatory issue.

6. Reimagining Environmental Governance: A Human Rights-Based Approach

The persistent gap between environmental law and its enforcement in India necessitates a fundamental rethinking of governance frameworks. A human rights-based approach (HRBA) to environmental governance offers a transformative pathway by integrating principles of accountability, participation, transparency, and equity into regulatory structures. Rather than treating environmental protection as a purely regulatory concern, this approach reconceptualizes it as an enforceable dimension of fundamental rights, thereby imposing positive obligations on the state and corresponding responsibilities on corporate actors.

A. Institutional Strengthening through Independent Environmental Regulators

A critical reform lies in restructuring regulatory institutions to ensure independence, capacity, and accountability. The creation of an **independent environmental regulator**, as envisaged by the Supreme Court, can address the persistent issues of regulatory capture and administrative inefficiency.[32]

Such a regulator must operate with institutional autonomy from executive influence, be supported by specialised technical expertise and robust enforcement powers, and incorporate real-time monitoring systems through digital and satellite-based technologies to ensure effective and transparent compliance.

This reform is both feasible and necessary, as it builds upon existing institutional frameworks while addressing their structural deficiencies.

[31] *National Green Tribunal Act 2010*; Philippe Cullet, 'Environmental Justice in India: The Role of Law '(2010) 18 *Environmental Law Review*.
[32] *T.N. Godavarman Thirumulpad v Union of India* (2011) 7 SCC 338 (Supreme Court recommendation for independent environmental regulator).

B. Embedding Human Rights Impact Assessments (HRIAs) within the EIA Framework

The existing **Environmental Impact Assessment (EIA)** framework requires **substantive reform** to incorporate **Human Rights Impact Assessments (HRIAs)** as a mandatory component, ensuring decision-making addresses both **ecological and human consequences**.

The inclusion of HRIAs enables a structured evaluation of impacts on **health, livelihood, displacement, and well-being**.

It foregrounds the **lived realities of affected populations** within environmental governance. It also transforms communities from **passive stakeholders to active rights-holders**. This shift strengthens **participation, access to information, and legal protection**.

Furthermore, embedding HRIAs within the EIA process would align environmental governance with the constitutional mandate under **Article 21**, as interpreted by the judiciary to include the right to a clean and healthy environment. By integrating human rights considerations into the core of environmental appraisal, the EIA framework can be transformed from a largely procedural mechanism into a **substantive, rights-oriented tool of governance**, capable of ensuring more equitable and accountable decision-making.[33]

C. Strengthening Corporate Accountability through Binding ESG Obligations

While ESG frameworks and **BRSR disclosures** represent a step forward, they must be converted into **binding legal obligations**.

Key reforms include:

- Mandatory **third-party verification** of ESG disclosures
- Imposition of **civil and criminal liability** for false or misleading reporting
- Linking ESG compliance to **licensing, financing, and market access**

This approach ensures that corporate sustainability commitments are enforceable rather than

[33] United Nations Environment Programme, *Human Rights and the Environment* (2015); Lavanya Rajamani, 'Human Rights in the Climate Change Regime '(2010) 1 *Journal of Human Rights and the Environment*.

voluntary, thereby bridging the gap between disclosure and accountability.[34]

D. Enhancing Community Participation and Decentralized Governance

A human rights-based approach requires recognizing communities as central actors in environmental governance.

Practical measures include:

- Strengthening **Gram Sabha consent mechanisms**, particularly in tribal and forest areas
- Ensuring **meaningful public hearings** under the EIA process
- Expanding access to environmental information through digital transparency platforms

Decentralized governance not only enhances accountability but also ensures that environmental decision-making reflects local realities and concerns.[35]

E. Strengthening Enforcement through Technology and Data Transparency

The integration of technology into environmental governance can significantly enhance enforcement efficiency.

Key measures include:

- Deployment of **continuous emissions monitoring systems (CEMS)**
- Use of **GIS and satellite data** for environmental surveillance
- Creation of **publicly accessible compliance databases**

Such measures reduce discretion, enhance transparency, and enable real-time regulatory intervention, thereby addressing one of the core weaknesses in current enforcement

[34] Securities and Exchange Board of India, BRSR Framework (2023–2025); OECD, Corporate Due Diligence and Responsible Business Conduct (2018).
[35] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006; Philippe Cullet, 'Environmental Justice in India '(2010) 18 *Environmental Law Review*.

mechanisms.

F. Expanding Access to Environmental Justice

Access to justice remains a critical component of a rights-based framework. Reforms should include:

- Strengthening the capacity and reach of the **National Green Tribunal (NGT)**
- Reducing procedural barriers for affected communities
- Introducing **legal aid mechanisms for environmental litigation**

Ensuring timely and affordable access to justice would empower individuals and communities to hold both the state and corporations accountable.[36]

G. Integrating Climate Governance with Human Rights

Given the growing impact of climate change, environmental governance must incorporate climate justice as a core component.

This requires the recognition of **climate-related harms as human rights violations,** the development of policies addressing **climate displacement and vulnerability**, and the **alignment of national environmental policies with global climate commitments.**

Such integration ensures that environmental governance remains responsive to emerging challenges and aligns with evolving international standards.[37]

H. From Regulatory Compliance to Rights-Based Governance

Ultimately, the shift required is conceptual as much as institutional. Environmental governance must move from a compliance-based model to a rights-based framework in which the state is accountable for protecting environmental rights, corporations are held liable for environmental

[36] *National Green Tribunal Act 2010*; Shibani Ghosh, 'Access to Environmental Justice in India '(Centre for Policy Research, 2020).
[37] United Nations Human Rights Council, Resolution on the Right to a Clean, Healthy and Sustainable Environment (2021); IPCC, Sixth Assessment Report (2023).

harm, and communities are recognized and empowered as rights-holders.

This transformation is essential to bridge the gap between law and practice and to ensure that environmental protection is not merely aspirational but enforceable.

7. Conclusion

The trajectory of environmental governance in India reveals a profound **disjunction between normative strength and operational weakness**. While constitutional jurisprudence and statutory frameworks have firmly embedded the **right to a clean and healthy environment within Article 21**, persistent **enforcement failures** continue to undermine its realization. This paper has demonstrated that environmental degradation is not merely a failure of law, but a consequence of **systemic governance deficiencies**, including **weak institutional capacity, ineffective enforcement, and limited corporate accountability**, with disproportionate impacts on **vulnerable and marginalized communities**.

The analysis exposes a critical **governance paradox**: despite the development of progressive doctrines such as **absolute liability, sustainable development, and the polluter pays principle**, their practical impact remains constrained by **implementation gaps**. This disconnect necessitates a decisive shift from a **compliance-oriented regulatory model** to a **rights-based framework of environmental governance**, where environmental harm is recognized not just as a regulatory breach but as a **violation of fundamental human rights**.

Reimagining environmental governance through a **human rights lens** requires embedding **accountability, transparency, participation, and equity** at the core of institutional and corporate practices. Strengthening regulatory bodies, integrating human rights into environmental decision-making, and ensuring **meaningful corporate liability** are not merely policy reforms but **constitutional imperatives**. Ultimately, the legitimacy of environmental governance lies not in the existence of laws, but in their capacity to **prevent harm, protect rights, and deliver justice**, making the bridging of the **law–implementation gap** essential for achieving **sustainable and equitable outcomes**.

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