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THE GREEN MANDATE: CORPORATE RESPONSIBILITY AND ENVIRONMENTAL JUSTICE IN INDIA

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Abstract

Corporate environmental responsibility is an integral part of sustainable growth given the increasing environmental impact of industrialisation and corporate activity. Indian environmental law requires companies to comply with applicable standards and minimise ecological harm. This paper analyses the law relating to corporate environmental responsibility, corporate liability for environmental violations and role of judiciary in securing environmental justice by examining the constitutional provisions and legislations, namely, Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, and Companies Act, 2013. It also discusses the academic research on corporate environmental disclosures, sustainability practices and corporate governance of India. The role of judicial principles including Absolute Liability, Polluter Pays Principle, Precautionary Principle and Sustainable Development are analysed.

The research paper also highlights the challenges faced by the corporate sector such as corporate negligence, greenwashing, non-compliance with environmental obligations and weak enforcement. Finally, the paper concludes by identifying the issues with corporate responsibility and environment disclosure to achieve environmentally responsible actions with justice for present as well as future generations.

Keywords: Corporate Environmental Responsibility, Environmental Compliance, Corporate Liability, Sustainable Development, Environmental Justice.

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Legal Framework Governing Corporate Environmental Responsibility In India

Corporate environmental responsibility requires organisations to conduct their operations in ways that avoid unnecessary environmental harm. Due to growing industrialisation, a corporation is an important source of the socio-economic progression of a country, yet, their actions can sometimes lead to pollution of water, air, forests, and natural resources. Environmental protection is therefore central to responsible corporate conduct. Environmental protection is grounded in the Constitution of India. The Supreme Court has read the fundamental right to life under Article 21 and interpreted it to include a right to a clean, healthy, and a safe environment. Under Article 48A, the State is mandated to protect and improve the environment while Article 51A(g) puts the fundamental duty on citizens to do the same.[2] These statutes include: environment (Protection) Act, 1986 Section 3 authorizes the Central Government to implement measures to protect and improve the environment and to regulate the discharge of pollutants.[3]

Section 7 of this Act describes that industries must not discharge or emit pollutants beyond prescribed standards. Sections 24 and 25 of the Water (Prevention and Control of Pollution) Act, 1974 regulate polluting discharges and consent requirements.[4]The Air (Prevention and Control of Pollution) Act, 1981 also regulates industrial emissions and pollution-control measures.[5]

Section 166(2) of the Companies Act, 2013 also connects corporate governance with environmental protection which states that directors need to exercise their duties in good faith towards the company, its employees and the shareholders, community as well as the protection of the environment. Section 135, read with Schedule VII, also recognises environmental sustainability and ecological balance within the CSR framework.[6]

Another aspect to look at is academic research into corporate environmental responsibility. Tiyasa Mishra, Pritha Datta and Bhagirath Behera look into corporate environmental responsibility, financial performance and environmental performance in Indian firms. The study points to the significance of sustainable business practices for corporate growth in the long term. [7]

2 INDIA CONST. arts. 21, 48A, 51A(g).
3 The Environment (Protection) Act, No. 29 of 1986, INDIA CODE (1986), §§ 3, 7.
4 The Water (Prevention and Control of Pollution) Act, No. 6 of 1974, INDIA CODE (1974), §§ 24–25.
5 The Air (Prevention and Control of Pollution) Act, No. 14 of 1981, INDIA CODE (1981), § 21.
6 The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 166(2) & sched. VII.
7 Tiyasa Mishra, Pritha Datta & Bhagirath Behera, Corporate Environmental Responsibility, Financial Performance and

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Hence, the Indian framework of Environmental laws and Corporate Governance provisions serve as an important legal basis for responsible corporate conduct.

Corporate Accountability And Liability For Environmental Damage

Corporate accountability requires companies to address pollution caused by their industrial and commercial activities. Enterprises engaged in hazardous activities must comply with waste-management regulations and take preventive measures against pollution. The Environment (Protection) Act, 1986 Water Act, 1974 Air Act, 1981 The legal options to deal with violations of environmental regulations by companies include penalties, compensation and other regulatory acts.[8]

Another area where directors can play a key role is in ensuring that the company follows the law. Section 166 of Companies Act, 2013 states that directors of the company are always expected to do business in good faith and to use reasonable care, skill and diligence. Statutory conditions being met, such directors and those responsible for managing the company's business may also be held responsible for an environmental offence. One landmark of this area is the doctrine of Absolute Liability in M.C. Mehta v. Union of India or the Oleum Gas Leak Case, the court held that an enterprise carrying on an inherently dangerous activity owes an absolute and non-delegable duty to the general public to ensure that no harm results to anyone due to the activity. The enterprise cannot abrogate this liability by proof of due diligence.[9] Likewise in Indian Council for Enviro-Legal Action v. Union of India the Supreme Court has invoked the Polluter Pays Principle and held that the industries polluting the environment are required to pay for the expenses of the remedial measures.[10]

Academic research by Ezhilarasi G. and K.C. Kabra has explored how governance affects environmental disclosures. Their research involved 177 polluting companies and focuses on the importance of transparency and corporate governance for the environment.[11] Thus, corporate accountability holds companies responsible to avoid harming the environment, to report and disclose related information, and to take action to repair damage resulting from their operations.

Environmental Outcomes in India: A Review, 5 Discover Sustainability, art. 213 (2024).

8 The Environment (Protection) Act, No. 29 of 1986, INDIA CODE (1986), § 15 (as amended by the Jan Vishwas (Amendment of Provisions) Act, No. 18 of 2023); The Water (Prevention and Control of Pollution) Act, No. 6 of 1974; The Air (Prevention and Control of Pollution) Act, No. 14 of 1981.

9 M.C. Mehta v. Union of India, (1987) 1 SCC 395 (India).

10 Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 (India).

11 Ezhilarasi G. & K.C. Kabra, The Impact of Corporate Governance Attributes on Environmental Disclosures: Evidence from India, 10 INDIAN J. CORP. GOVERNANCE 24 (2017).

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Role Of The Judiciary In Promoting Environmental Justice

Indian courts have contributed considerably towards the evolution of environmental law, and towards holding companies liable for environmental damages. The Supreme Court has established many doctrines which form the current basis of corporate accountability. As the name suggests, this law puts the onus on the defaulter who has caused the pollution to pay for prevention and remediation of pollution. The Supreme Court, in Indian Council for Enviro-Legal Action v. Union of India, ruled that the polluting industry has to bear the cost of remedial action.[12]

The Principle of Precaution necessitates taking preventive measures even in the face of scientific uncertainty with regard to environmental damage. The Supreme Court, in Vellore Citizens' Welfare Forum v. Union of India, acknowledged the Precautionary and the Polluter Pays Principles to be inherent features of Indian Environmental Law.[13]

The principle that natural resources such as air, sea, forests and other natural resources are held by the State for public use and benefit is known as the doctrine of public trust. The doctrine of public trust was recognised by the Supreme Court in M.C. Mehta v. Kamal Nath.[14] A principle that you should achieve economic development without damaging the environment. It's about making sure that current development doesn't prevent future generations from being able to meet their needs. The National Green Tribunal also provides for environmental justice. The National Green Tribunal Act, 2010 sets up the NGT as a specialised forum for environmental disputes, Section 20 of the Act requires the Tribunal to follow the principles of sustainable development, precaution and polluter pays while adjudicating environmental cases.[15]

Academic Papers and Articles reinforce that Corporate Environmentalism is a substantial factor to consider. Shashank Shah, in his paper titled natural environmental responsibility in the Indian corporation investigates the incorporation of environmental protection by companies into organisational behaviour. This model is constructed from a study of corporate organisations and senior management executives.[16]

Thus, both judicial rulings and academic studies show that to achieve protection of environment, just good laws are not enough, there is need of responsible corporate activity.

12 Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 (India).

13 Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647 (India).

14 M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388 (India).

15 The National Green Tribunal Act, No. 19 of 2010, INDIA CODE (2010), § 20.

16 Shashank Shah, Natural Environmental Responsibility in Indian Corporations: A Mixed-method Study, 20 J. HUM. VALUES 129 (2014).

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Challenges And Reforms In Corporate Environmental Governance

Although numerous laws are there to control the environment and other Judicial safeguards are there to ensure that the polluters are not left free, still India has many problems in this field. Implementation remains uneven because environmental regulations are not consistently enforced. Environmental concerns should be monitored and regulated against, but there may be unfair delays and weakness in the implementation process of these standards. Another issue is corporate greenwashing, which involves trying to influence a consumer's perception by creating a false impression or providing misleading information about how a company's products, services or overall business are environmentally sound. Another issue is the absence of corporate transparency. Environmental issues matter to shareholders, consumers, regulators and surrounding communities.

Ritu Pareek, Krishna Dayal Pandey and Tarak Nath Sahu look at the association of corporate governance attributes and disclosures of environmental performance by Indian companies in their paper 'Corporate governance and corporate environmental performance disclosures'. They suggest that the structure of the board and the context in which the company operates have an impact on environmental disclosures.[17]

In many instances, the drive for economic development comes at odds with the concern for safeguarding the environment. When industrial development and the use of the economy's full potential take precedence over conservation of the environment and the rights of communities, then the latter suffers. Another study by Mousami Prasad, Trupti Mishra and Varadraj Bapat, looks into the connection between CSR spend and environmental performance with energy intensity being the indicator. In fact, the researchers found that there was no significant relation between the two, in a study of 100 BSE listed companies, during the period being studied. This indicates that CSR spend does not necessarily ensure positive environmental performance.[18]

These problems can be addressed by bringing about the following changes: Enforcement and accountability: Environmental regulation should be followed up on through enforcement. Government and industry should be subject to regular inspections, and should be given appropriate penalties for non-compliance. Environmental audits: Companies should carry out regular environmental audits for assessing potential risks and compliance. Corporate accountability: Companies should be open and honest in reporting their own environmental

17 Ritu Pareek, Krishna Dayal Pandey & Tarak Nath Sahu, Corporate Governance, Firms' Characteristics and Environmental Performance Disclosure Practices of Indian Companies, 12 INDIAN J. CORP. GOVERNANCE 142 (2019).

18 Mousami Prasad, Trupti Mishra & Varadraj Bapat, Corporate Social Responsibility and Environmental Sustainability: Evidence from India Using Energy Intensity as an Indicator of Environmental Sustainability, 31 IIMB MGMT. REV. 374 (2019),

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impact and pollution control. Director accountability: Directors should take environmental risks into account when making corporate decisions. Local involvement: Local residents impacted by industrial pollution must be provided with information on environmental issues as well as having access to proper legal remedies. All these measures can promote the environmental governance of listed companies and stimulate listed companies to implement sustainable development practices.

Conclusion

Corporate environmental responsibility has profound importance in sustainable development and environmental justice in India. The Constitution, the environmental legislations and judicial pronouncement, clearly and unequivocally implies that companies should act responsibly and be liable for damage to environment. The principles of absolute liability, polluter pays, precaution and sustainable development have strengthened the legal aspects of corporate responsibility for the environment. Academic evidence has revealed the essentiality of the disclosures for the environment, corporate governance and sustainable business operation. But problems including lax enforcement, corporate greenwashing and poor environmental compliance still hamper proper environmental protection. Thus we need tighter regulation, business transparency and effective implementation of the laws on the environment. In the long run, the measures of success are more than just financial profit. A company's role in the well-being of society and the protection of the environment is as important as positive economic indicators. Growth and conservation are inseparable.

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