

***CORPORATE CRIMINAL LIABILITY  
FOR ENVIRONMENTAL HAZARDS  
IN INDIA: AN ANALYSIS OF THE  
EXISTING LEGISLATIVE  
FRAMEWORK AND A BLUEPRINT  
FOR THE FUTURE***

**Prof. Sreenidhi K. R.**

**Ms. Veena. S**



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## Preface

In the wake of increasing industrialization and corporate expansion, the delicate balance between economic development and environmental preservation has become a topic of paramount importance. The escalating incidents of environmental degradation and hazards directly attributed to corporate actions have underscored the urgent need for a comprehensive analysis of corporate criminal liability within the Indian legal framework. This book, "Corporate Criminal Liability for Environmental Hazards in India: An analysis of the existing legislative framework and a blueprint for the future," is conceived as a timely exploration into the intricacies of corporate accountability in the face of environmental challenges.

Embarking on this academic journey, the book aims to dissect the current legislative, judicial, and regulatory mechanisms in place to combat environmental crimes committed by corporations. It endeavors to bridge the research gap by offering a meticulous examination of the relationship between corporates and the environment, underscored by an analysis of corporate social responsibility (CSR) towards environmental protection. Through a detailed investigation into various environmental acts and the role of the judiciary in enforcing corporate environmental liability, this work seeks to provide a holistic understanding of the landscape of environmental jurisprudence in India.

Moreover, the book is structured to address critical research questions, laying out the scope and limitations of the study while presenting a well-defined research objective. A hypothesis is posited, reflecting on the significance of this study in the broader context of environmental law and corporate governance. A comprehensive literature review sets the stage for the ensuing chapters, each dedicated to unraveling different facets of corporate environmental liability, from theoretical underpinnings to practical applications, and judicial interpretations.

By analyzing landmark cases and the evolving role of judicial bodies like the National Green Tribunal, this work highlights the pivotal moments and legal precedents that have shaped the current understanding of corporate criminal liability for environmental hazards in India. The conclusion synthesizes the findings, offering robust suggestions for strengthening the legislative framework to ensure a sustainable and environmentally conscious corporate conduct in the future.

This book is intended for legal scholars, practitioners, policymakers, and anyone interested in the confluence of corporate law, environmental ethics, and legal accountability. It is a call to action for a concerted effort towards crafting a future where economic growth and environmental sustainability are not mutually exclusive but are integrated into the fabric of corporate responsibility.

As we present this analysis and blueprint for the future, it is our hope that this work will contribute meaningfully to the ongoing discourse on environmental law and corporate liability, inspiring further research and advocacy in this critical area of legal scholarship.

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**Ms. Veena. S**

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## LIST OF ABBREVIATIONS

BD	Bio Diversity
CAEPPR	The Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules 1996
CER	Corporate Environment Responsibility
CCG	Central Crisis Committee
CNG	Compressed National Gas
CPCB	Central Pollution Control Board
CREP	Corporate Responsibility for Environmental Protection
CSR	Corporate Social Responsibility
DCC	District Crisis Committee
EAA	Environment Appellate Authority
EC	Environment Certificate
EIA	Environment Impact Assessment
EIS	Environmental Impact Statement
EMS	Environmental Management System
GDP	Gross Domestic Product
LCC	Local Crisis Committee
MOEF	Ministry of Environment and Forestry
MSIHC	The Manufacture, Storage, and Import of Hazardous Chemicals Rules
NETA	National Environment Tribunal Act
NGT	National Green Tribunal
OECD	Organization for Economic Cooperation and Development
PLI	Public Interest Litigation

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PP	Precautionary Principle
PPP	Polluter Pays Principle
PSU	Public Sector Undertakings
SCG	State Crisis Committee
SPCB	State Pollution Control Board
TPQ	Threshold Planning Quantities
TSDF	Treatment, Storage, and Disposal Facility
UCC	Union Carbide Corporation
UCIL	Union Carbide India Limited
WGEA	Working Group on Environmental Audit
WPCB	West Bengal Pollution Control Board

## LIST OF CASES

1	A P Pollution Control Board Vs Prof M V Nayudu (II) (2001) 2 SCC 62
2	A.P. Contamination Control Board Vs. Nayudu, (1999) 2 S.C.C. 718
3	Coo Verjee B. Bharuch Vs Excise official, Ajmer 1954, SC 220
4	Hindustan Coca Cola Beverages Pvt Ltd. Vs. West Bengal Pollution Control Board Principal Bench, Appeal No. 10 of 2011
5	Indian Council for Enviro-Legal Action Vs MOEF (10 December 2015)
6	Indian Council for Environmental-Legal Action Vs Association of India (1996) 3 S.C.C. 212
7	Kalpavalli Tree Growers Mutually Aided Cooperative Society Ltd Vs Union of India, Order 10 July 2013
8	M.C. Mehta Vs Association of India (1986) 2 S.C.C. 176
9	M.C. Mehta Vs Union of India. (AIR 1987 SC 1086)
10	M.C. Mehta Vs Kamal Nath (1997) 1 SCC 388
11	Narmada Bachao Andolan Vs Union of India (2008) 2 SC 222
12	LG Polymers India Private Limited vs Andhra Pradesh Pollution Control, on 19 May, 2020
13	Oleum Gas Leak (M C Mehta Vs. Union of India) 1987 SCR (1) 819
14	Rural Litigation and Entitlement Kendra Dehradun VS State of Uttar Pradesh (2000) 10 SCC 664-1
15	Rylands versus Fletcher. (1868) LR 3HL 330)
16	Union Carbide Corporation vs Union Of India Etc , 1990 AIR 273, 1989 SCC (2) 540
17	Vanashakti and Anr. Vs MPCB and Ors Application No. 37 of 2013 (WZ)
18	Vellore Citizens Welfare Forum Vs Union of India AIR (1996) SC 271

## CHAPTER 1

### INTRODUCTION

#### 1.1. INTRODUCTION

Environmental degradation is one of the largest threats that are being looked at in the world today. Before, corporates were as public beginning but as days passed it took the form of private enterprises<sup>1</sup>. At the initial stage of corporations, no one had assumed that these corporations which only had limited liability will be ruling the entire world and damage the environment to such an extent where even the lives of people are at stake. Since an organization plays an important central role in many issues, these organizations can have a huge impact on the environment, that is, directly or indirectly, wonderfully or negatively<sup>2</sup>. There are many reasons why the corporates commit crimes such as being careless, or deliberate acts or being ignorant. This is because the legal obligations are ignored by the corporates. Corporates crimes can also be traced back to negligence, except for poor management by the authorities, insufficient staff, or poor infrastructure management, which may cause environmental pollution.

Activities of industries which take place without any precautions would affects the lives of people and pollutes environment to a very large extent. And at times, negligent behaviour or carelessness leads to physical harms such as accidents which cause deaths and damage to environment etc. Therefore, in order to protect environment, it is made compulsory that all the corporation should comply with the rules and regulations. It is vitally important for adopting proper technologies and improve the management practices. As we have observed from the previous incidents, it is clearly understood that prosecution or punishment does not help in bettering the environmental management and they do not impose any responsibility on corporates in their environmental performances. More focus should be given to the improvement of management culture, the company's corporate governance, environmental and social responsibilities should be regarded as moral obligations or obligations, not just commercial obligations. "It is

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<sup>1</sup> Jennifer Hill, "Public Beginnings, Private Ends – Should Corporate Law Privilege the Interests of Shareholders?" International Corporate Law Annual, Vol. 1, Oxford: Hart Publishing.

<sup>2</sup> Shah A, "Corporations and the Environment" (- Global Issues July 20, 1998)  
<https://www.globalissues.org/article/55/corporations-and-the-environment>

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the moral obligation of the company to understand that it is necessary to protect and care for the environment so as the industry voluntarily provides affordable, more environmentally friendly care, this will help build partnerships on how to deal with pollutants. The response of the authorities varies from organization to organization, depending on its corruption, market share, and political support, giving the impression that small fines are easy to handle and pay will not hurt the fate of generations<sup>3</sup>."

In order to check the corporate activities, the concept of CSR was introduced. This concept is defined under section 135 under Companies Act 2013. Companies Act 2013 also makes it mandatory for companies to invest certain amount towards CSR. In India, the concept of social responsibility of business people is not new and can be easily noticed in the many historical instances<sup>4</sup> ."

The concept of corporate social responsibility is to be responsible for diligence, obedience and care to people. He is also responsible for climate change, consumer protection and sustainable development. Nowadays, investing in corporate social responsibility has become very important for the government, stakeholders, consumers and all kinds of people. The reason behind that is due to many tragedies like global warming, corporate legal responsibility, and tortuous legal responsibility of companies . Corporate social responsibility also includes the idea of participating in the environment responsibility. This concept is a new concept, including policies and plans, methods and ideologies.

"In order to provide world-class environmental management, companies need to formulate environmental policies, select key overall performance areas, and lay a solid foundation for achieving corporate goals<sup>5</sup>." Many areas of the company meet these environmental requirements based solely on laws and consequences. According to the

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<sup>3</sup> Murthy and Bhanu KV, "Business Ethics and Corporate Responsibility - A New Perspective" (SSRN April 13, 2007)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=979230](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=979230)

<sup>4</sup> Company Law, 1 December, 2016

<https://www.slideshare.net/WARIFVACIM/csr-69710168> last visited on April 19th ,2021

<sup>5</sup> Joshi A, "Corporate Environmental Responsibility: A Liability or Challenge" (SSRN Electronic Journal, Febraury19,2019)

[https://www.researchgate.net/publication/256036120\\_Corporate\\_Environmental\\_Responsibility\\_A\\_Liability\\_or\\_Challenge](https://www.researchgate.net/publication/256036120_Corporate_Environmental_Responsibility_A_Liability_or_Challenge)

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recommendations of the formulated environmental policy, it mandates the corporates at least to invest 2% of their capital investment to Corporate Environmental Responsibility .

There is major contribution from the corporates towards the environmental crimes which includes crimes like illegal dumping of wastes which pollutes natural habitats, if in case it is result of chemicals, general sewage waste which is discharged into the water or like in the case of Bhopal disaster. Environmental crime can be apprehended from a different perspective like the source of its occurrence, identifying the victims and kinds of issues. Corporate disasters which occur are determined as corporate crimes which makes the corporate liable for the events that took place. After the incident of Bhopal gas tragedy, Indian parliament has enacted various laws to impose liability on corporates. These liabilities will depend on the damages caused and losses suffered. In order to achieve sustainable development, the government should enhance the taxes which are imposed to regulate corporate behaviour. The corporate is supposed to indemnify to the losses suffered but there are many victims who still fight for justice.

The principle of sustainable development has been around for a long time in our country. At that time, people prayed to air, water and land and tried to protect it. Now it is regarded as part of traditional and cultural concepts, not just to protect the environment. It is also necessary to maintain an ecological balance. The concept of sustainable improvement can be answered by maintaining a balance between the part of the company and its environment. The court also confirmed that in the decades from Stockholm to Rio, "sustainable improvement" was a possible idea for eradicating poverty and improving the quality of "human livelihoods to the extent possible." Ecological construction movement". In short, the concept of sustainable improvement is to satisfy current wishes and aspirations without compromising fate and purpose<sup>6</sup>.

Corporate criminal liability is a concept which also makes sure that board of directors of the company shall check out the activities at diverse level which account for transparency of the company. Because the acts of the companies are ensuing in the disasters, leading to huge loss of lives of mankind and which has also greatly extended

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<sup>6</sup> "Madhav Chandra Shah Man and Environment", 2001, at p. 22.

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the imposition of penalties like company closure, revocation of license, disciplinary action, tax relief and exemption, etc. Many countries have added provisions to ensure patient care in their statutory regulations. Many guidelines have been formulated, including the "pollutant pay" rules, absolute liability clauses, etc. Though they are no strict legal guidelines the liability may be assumed based totally at the precedents by the courts. The national green tribunal was established in 2010, which has the statutory authority to regulate the matters concerning environment issues.

"Punishments imposed on criminals of any kind can be traced back to the many special foundations of criminal law, but deterrence is the reason this is related to currency actors including companies." The extraordinary personal profile as their member is sufficient hold them accountable and punish them.

The Indian Constitution, in its 42nd amendment in 1976, in addition, Article 48(A) and Article 51A(g) stipulate environmental safety, because caring for and improving the environment is the basic responsibility of the state and residents.

## **1.2. RESEARCH PROBLEM:**

Corporates are ultimately responsible for the country 's economic development. Implementation of different environmental legislation for corporations has typically been contentious. This is primarily due to the requirement for revision of the law provisions that have become mandatory with modernization of corporations. Despite the fact that so many legislations exist to prevent corporations from environmental hazards, they have not been effective in intimidating corporations to adhere to rules. The unavoidable truth concerning law is that "legislation is not as simple as enforcing it." Corporates play a significant role in environmental exploitation.

Following the terribly sad mishap of the Bhopal gas leak in 1984, many legislations was introduced to compensate the victims. The amended Companies Act of 2013 made provisions for corporate social responsibility, but there may be no specific provision for corporate environmental responsibility. Extending the CSR rules to spread knowledge about the threats to neighbouring human society and the scope of responsibility for killing are the two main obstacles to the introduction of any form of environmental regulations.

Raising awareness would be more of a corporate responsibility that cannot be lawfully invoked to its fullest. However, there have been no strict regulations seeking to impose the ratio of penalties to the varied concerned categories when it comes to "extent of imposition." In many other cases, such as the Bhopal gas disaster, the flaws have become genetic. Such scenarios are not covered by existing legislation or their corresponding amendments.

### **1.3. RESEARCH GAP**

In the case of the Bhopal gas tragedy, the corporation was convicted under Section 304 of the Indian Penal Code. Previous, IPC was the only legislation that provided for criminal liability in these kinds of cases. Section 304 enforces punishment for culpable homicide where the intent to kill is required. The court decided to sue the industry on the grounds of accidental death under section 304A because there was no material evidence of lack of intention and imposed a fine of Rs. 2,000. Following this incident, many laws were enacted to fill in the gap. Regrettably, the tragic incidents keep on going to this day. The Environmental Protection Act of 1986, which was enacted soon after this disaster, included provisions for penalising corporations for their disastrous actions. Despite this, the corporates have been unable to compensate the majority of the victims of the Bhopal disaster. In India, this state of injustice continues to exist.

As regards to the literature survey, there is a need for further research for the purpose of defining the requirement for and extent of remedies that can be provided for the victims of such disasters. On the other hand, preventive measures that can be undertaken to avoid such mishaps to occur in the future.

### **1.4. RESEARCH QUESTIONS:**

1. Whether the legal provisions related to corporates liability on environmental in India have proven to be effective so far?
2. Whether the basis on which the compensations determined for the victims are just, fair and reasonable? Whether corporations have always complied with the mandate of law in identifying their obligation and liability towards awarding the compensation?



### **1.5. SCOPE & LIMITATION OF STUDY:**

The scope of research includes analyzing the company's responsibility to the environment, reviewing various laws that require companies to assume responsibility for environmental risks, and reviewing policies and regulations. further, to examine environmental legislation and liability laws. The research also includes the study of historical accidents at work, from the gas tragedy in Bhopal to the present. The study also includes the amount of compensation that the sufferer must accept and the responsibilities of the organization. In general, the paper emphasizes the impact of companies on the environment. The purpose of the study is to understand how much progress has been made in dealing with one of India's most dangerous mistakes in legal norms and changes.

The research is limited to regulations on environmental issues affecting the company, including the reasons for the assessment obligation and compensation provided. The study is based on doctrinal research. The primary data in this study was gathered from various acts such as the Companies Act 2013, the Environmental Protection Act 1986 etc, as well as landmark cases such as the Bhopal Gas Leak, oleum gas leak, LG Polymers. Secondary data is gathered from text books, journals, reports, newspapers, websites, research theses, theses, and any other type of information that has been published for reference or to answer the question mark posed to all.

### **1.6. RESEARCH OBJECTIVE**

- To study various the legal provisions related to corporates on environmental issues.
- To understand the concept of corporate responsibility towards environment.
- To study corporates liabilities towards environmental accidents.
- To analyze various principles relating to corporations towards environmental hazards.
- To understand the part played by the judiciary in deciding the compensation degrees paid to the mankind which is occurred due to industrial or corporate disasters.
- To study the amendments that has been evolving since Bhopal gas tragedy.

### **1.7. HYPOTHESIS:**

The existing legal system that regulates environmental legal issues in India has a proven track record of being extremely ineffective against big corporates in India, because of various number of issues that has existed since the time of Bhopal gas tragedy.

It is also true that corporate houses in India have failed in their responsibilities to comply with any obligation or any liability that the law mandates against with respect to environmental legal issues in avoiding the compensation to victims of the disaster.

### **1.8. SIGNIFANCE OF STUDY**

The corporate carry their purpose by thousands of employees and agents. when a person is harmed by the acts of a corporation, it's the duty of the corporation to be liable for such harm. As a corporation has an absolute and non – delegable duty towards the people and the environment in which will cause extremely dangerous or inherently dangerous interests in it. Any movement that may be dangerous or extremely dangerous must be carried out with the highest protection standards, and all warnings and data required for the specified movement must be provided.

### **1.9. LITERATURE REVIEW**

Amanda Perry- Kessaris, "Corporate Liability for Environmental Harm".

The Author emphasises corporate liability in environmental hazards. The chapter examines some of the fundamental conflicts between corporate legal structures and the willingness of regulatory authorities and victims to make them responsible for environmental harms. The legal personality of a corporation and its limited liability are described. This means that companies have most of the same rights and obligations as human beings, but they don't realize the truth of their lack of soul. This gives companies a huge opportunity to limit or even avoid damage to legal liability. The author also stated that the general rules of international environmental law, including the polluter pays principle, are not "directed against companies".

Kanchan Chopra "Development and Environmental Policy in India: The Last Few Decades"

The Author explores the subtleties of development and environmental conservation policies in India over the last thirty years. Acknowledging that development must

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always take environmental concerns into account. The book conducts critical reviews of the various approaches that have been taken. The review is based on an understanding of the concurrent developments in theoretical understanding of the environment and ecosystems, and it provides suggestions toward possible change directions.

The author also suggests that, regardless of which theoretical cornerstone is used as a beginning point, it is the ethical undertones that drive the assessment in directions that obtain meaning in terms of quality and legitimization of decision-making. Furthermore, the dilemma confronting environmental set of policies remains how to simultaneously borrow from developments in and across disciplines while dealing with a diverse set of stakeholders on a more practical level.

Gitanjali Gosh, Shishir Tiwari, "Governance of Corporate Environmental and Social Responsibilities in India: Sketching the Contour of Legislative Evolution and Reforms",

This paper examines the development of India's legal and government reforms in terms of social and environmental responsibility after the Bhopal disaster. The document described in detail the legislative and judicial improvements since the tragedy. Companies that have a positive impact also benefit from the environment. In the field of environmental safety and social protection, these important situations have problems. With the fuel disaster in Bhopal as the background, the author consulted a number of laws and regulations promulgated by the government and judicial departments.

T.S. Doabia "Environmental & Pollution Laws in India"

This book by the author is a commentary on various aspects of environmental law. It is India's most exhaustive and comprehensive title on pollution control and environmental protection laws. The book discusses various aspects of India's Environmental and Pollution Laws. The author covers all of the major issues, including water pollution, nuclear pollution, marine pollution, air pollution, noise pollution, and light pollution. The National Green Tribunal and marine pollution have also been mentioned by the author. further, Environment Compensation Charge, Spent Fuel Management are some of the issues discussed. The book contains decisions from the Supreme Court, the National Green Tribunal, and other courts.

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Sunil Kumar rai "Environmental Protection in India: Role of Supreme Court"

The author educates on protecting the environment and the role of the Supreme Court in environmental protection. The practise of environmental protection, whether on a person or governmental level, for the betterment of both human and natural resources. The bio-physical environment is slowly and consistently degrading as a result of population conditions and modern technologies. The author concentrated on the trans-boundary issue of environmental pollution. the main aim of the author is to demonstrate how the legislation and judiciary in India have found a balance between environment and development. To that end, efforts have been made to critically evaluate India's constitutional philosophy and environmental policy, analyse and evaluate the judicial mechanism and assess the remedial measures contained in various laws of India.

## CHAPTER 2

### CORPORATE RESPONSIBILITY TOWARDS ENVIRONMENT

Corporate responsibility for the environment has been growing since the world's industrial revolution began in the mid-to-late 1800s. Before to this time, there was no such idea as being concerned about the environment, other than the exclusive notion of profit earning through industrial activity.

Every person has a role in protecting environment. Person maybe artificial person or natural person. The existence of artificial person through companies has led to environmental degradation. Though Corporates are artificial person, they are recognized as natural person when it comes to protection of environment. The legislation has enacted many laws to control and prevent the actions which are responsible for environmental pollution. most of these laws are to protect the environment by the companies. During ancient period, the kings would focus on areas where the public are vulnerable and financially weak to make noble cause by providing them the required resources. Similarly, this concept "Corporate Social Responsibility", which can be tracked down to Gandhi's concept of "Trusteeship"<sup>7</sup>. In trusteeship theory, Gandhiji says that the wealthy should leave behind their wealthiness in order to serve the needful. Likely, even CSR focuses on serving the needful and sustainable development. The corporate social responsibility towards environment is to decrease pollution, to manage waste, to safeguard natural resources etc. Corporate have duty to protect environment and this is pertinent to both the people just as corporations<sup>8</sup>.

When a country is in its initial development stage or even on the brink of accomplishing a specific rate of growth, the deterioration of natural resources and pollution of the environment is prevalent. Pollution, degradation, and economic growth all have an inverse relationship as environmental conservation efforts have spread around the world in latest generations academicians, mainly from the social sciences, have started

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<sup>7</sup> Srivastava A, "Gandhi and Corporate Social Responsibility: Challenging Aspects" (Tax Guru August 15, 2019)

<https://taxguru.in/corporate-law/gandhi-corporate-social-responsibility-challenging-aspects.html> last visited on april 21, 2021.

<sup>8</sup> The Stockholm Conference stated in Principle 1 that man's primary responsibility is to preserve and improve nature.

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to critically analyze the economic, social, and political dynamics of such efforts. Local policymakers and planners need information on both direct and indirect economic and environmental impacts of proposed regional conservation-related development initiatives in order to make informed decisions and enforce them. Luckily, the role of corporations, organisations, and economics in this process of environmental envisaging has already been seen on global agendas.

It's hard to say whether protecting the environment is a necessity or a luxury. Protection of the environment is both a luxury and a necessity for the nation's economic development, but it is meaningless in developing countries where it fails to acknowledge the urgent needs of the poor and the environment is degrading at an astonishing speed. The relationship between economic growth and environmental protection is clearly apparent almost in all developed and developing nations.

## **2.1. THE RELATIONSHIP BETWEEN CORPORATE AND ENVIRONMENT**

The term environment refers to a collection of components present in one's surroundings, which includes all the living as well as non-living things such as humans, animals, plants, air, water, mountains, plains, accessible natural resources, and so on. The same environment is used by the community for a variety of objectives that include livelihood, settling, business activities, and revenue diversification. Any organisation cannot exist without having an environment.

The Brundtland Report (World Commission on Environment and Development, 1987), commissioned by the United Nations to examine long-term environmental strategies, argues that economic development and environmental protection can exist side by side, but that this would necessitate a radical shift in economic practices around the globe<sup>9</sup>.

The focus of sustainable development presents a challenge to industries, holding them accountable for producing higher quality while using existing resources effectively and producing as little waste as possible.

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<sup>9</sup> Emeka Emmanuel Okafor, Adedoyin R. Hassan and Adeola Doyin-Hassan (2008), *Environmental Issues and Corporate Social Responsibility: The Nigeria Experience*  
[https://www.researchgate.net/publication/266869793\\_Environmental\\_Issues\\_and\\_Corporate\\_Social\\_Responsibility\\_The\\_Nigeria\\_Experience](https://www.researchgate.net/publication/266869793_Environmental_Issues_and_Corporate_Social_Responsibility_The_Nigeria_Experience) last visited on June 3rd 2021

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The role of industries and the corporate sector in today's scenario is multidimensional, as they are not only responsible for producing goods and services that please consumers, but also for taking care of and ensuring environmental preservation and conservation at every level.

Various industrial activities can have a negative impact on the environment in a variety of ways. Air and atmospheric pollution, water pollution, marine pollution, land contamination, and noise pollution are all examples of environmental pollution. Environmental degradation can be classified in many different of ways, but it is clear that the majority of environmental harm is a result of industrialisation. When directed by less stringent environmental protection legislation, permissive enforcement, and delayed implementation, industrialization can be moderately hazardous.

Around the 1960's, it was the beginning of environmental movement. When corporations were involved in environmental preservation, and corporates saw environmental stewardship as a primary social obligation to the public and social interest. Movement against corporations began following the occurrence of disasters such as toxin exposure at love canal, Union Carbide gas leakage at Bhopal, nuclear power plant meltdown at Chernobyl, oil spills at Exxon Valdez and Dow Chemicals, and so on. "A few corporations began to respond to public concern through the adaptation of codes of ethics and "Corporate Social Responsibility" (CSR) principles."

## **2.2. CORPORATE SOCIAL RESPONSIBILITY**

The concept of corporate social responsibility was introduced through Companies Act 2013. This concept gave prominence in handling the economic, social and environmentally sustainable manners of the company. The word responsibility signify that corporates have duty towards society where they not only deal with economic services but also with social problems. Companies create by producing goods and services which is demanded by the society and through this they generate profits to the people who own the company and their shareholders. Whereas social responsibility signifies the acceptance of the moral duties and obligations which arise from the relationship between companies and with their customers, suppliers, employers, shareholders and society. One of the primary essential of social responsibility is ecological duty of the corporates. The companies will have prescribed sum of amount which is to be spent for social upliftment. The amount which is not spent will be deposited under amount prescribed within the end of fiscal year under schedule vii.

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In the 1990's adding to, the concepts of stakeholder theory, Environmental Management System (EMS), bionics, and other commercial enterprises initiatives were encouraged. These concepts aided in changing business culture and management approaches by prioritizing the environment<sup>10</sup>.

Corporate responsibility in any commercial organisation consists of three fundamental aspects in the form of a company's duty to society as a whole, which include good governance, corporate social responsibility ("CSR"), and environmental responsibility. Corporations are associated with the natural environment in a variety of ways in order to carry out a variety of tasks, mostly to keep operations running smoothly and consistently; it pulls resources from the environment. A company also has an impact on the environment via practically all of its acts, and as such, it is responsible for any consequences. Previously, corporations dumped their wastes into the environment without hesitation or thought. However, with growing awareness and concern about environmental degradation, depletion of natural resources such as water and fossil fuels, and the phenomenon of global warming, corporations have begun to take strict measures to protect and safeguard the environment from causing further damage.

There is legal and moral obligation on corporations to recognise that the world must be protected and cared for so that future generations are not affected. Corporate Responsibility is related to the ideas of Sustainable Development in that it proposes that businesses be required to make decisions based not just on financial or economic criteria, but also on the social and environmental repercussions of their actions. As a result, proper corporate responsibility enables companies to achieve a balance between profit and societal duty by aligning their principles and behaviour with the expectations and demands of various stakeholders existing<sup>11</sup>.

Also new policies and established laws have compelled corporations to execute rigorously and provide the needed environmental stewardship. To provide effective environmental management, firms must develop environmental policies that define critical performance areas and establish a solid foundation for company objectives.

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<sup>10</sup> Asha joshi, Corporate Environmental Responsibility: A Liability or Challenge  
[https://www.researchgate.net/publication/256036120\\_Corporate\\_Environmental\\_Responsibility\\_A\\_Liability\\_or\\_Challenge#:~:text=It%20briefly%20explains%20the%20concept,corporations%20to%20strictly%20practice%20them](https://www.researchgate.net/publication/256036120_Corporate_Environmental_Responsibility_A_Liability_or_Challenge#:~:text=It%20briefly%20explains%20the%20concept,corporations%20to%20strictly%20practice%20them). last visited on June 3rd 2021

<sup>11</sup> <http://www.rajivplastics.com/social-responsibility.html> last visited on June 4th 2021



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Environmental management systems (EMS) strive to incorporate environmental factors into day-to-day company activities in order to achieve continual environmental improvement. An EMS is a continuous cycle of planning, implementing, reviewing, and improving the processes and activities that a company takes to fulfil its commercial and environmental objectives<sup>12</sup>.

### **2.2.1. CORPORATE ENVIRONMENTAL RESPONSIBILITY**

Corporate Environmental Responsibility is a novel term that encompasses a variety of ideas, activities, tactics, and beliefs. The notion properly defines and elucidates companies' participation in the present environmental problem. "Its fundamental concept is that a corporate participates in environment positive acts in order to lessen society's load on our ecosystem and achieve environmental sustainability<sup>13</sup>."

Nowadays a growing number of companies are incorporating environmental issues into their operations to maximise productivity and minimize practices that negatively affect the environment. Environmental initiatives have been taken into consideration by these companies such as energy efficiency in savings ,waste management by ensuring proper sorting and recycling, travel and transportation by using environmentally friendly electric vehicles .Sustainable events and environmental management systems provides environmental responsibility and ultimate companies care about environments responsibility because their stakeholders do .Another influential factor of environmental companies concerns is regulation of government policies, implementation of these policies is facilitated by subsidies and taxes. States are also often influenced by environmental non-governmental organizations activism that is why it is important to develop share solutions that can help reduce the administrative burden of building a more sustainable world.

However, most corporations have begun to go "green," which serves as a concealed advertising to boost their image and prominence in the marketplace. Concerns have grown across the world that certain corporations are damaging the environment and misleading the public about the consequences. "Green washing" means those corporates

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<sup>12</sup> <https://www.alberta.ca/assets/documents/ep-environmental-tools-environmental-management-systems.pdf> last visited on June 4th 2021

<sup>13</sup> Corporate Environmental Responsibility: A Liability or Challenge  
[https://www.academia.edu/32262570/Corporate\\_Environmental\\_Responsibility\\_A\\_Liability\\_or\\_Challenge](https://www.academia.edu/32262570/Corporate_Environmental_Responsibility_A_Liability_or_Challenge) last visited on June 4th 2021

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who claim to be "green" in all activities, including advertisement, marketing, sponsorships, instructional activities, and reporting, with the intent of enhancing society's ecological impact.

### **2.3. ENVIRONMENTAL HARM BY CORPORATES / ENVIRONMENTAL CRIMES:**

There are several causes or reasons why corporations commit environmental crimes. They may occur as a result of a company's ignorance or disregard for its environmental responsibilities. "Due to reckless behaviour, they often occur when the organization is poorly managed, employees are well-trained, or equipment and infrastructure are not up to the expected overall level, which can lead to disasters<sup>14</sup>."

Environmental crime may be examined and comprehended from a variety of ideas, including who the victim is, the cause of its incidence, the time span over which it is observable, and the types of concerns it highlights. Standardization that is controlled by legal instruments or legislation should be enforced to distinguish between improper and appropriate environmental practises.

Environmental crimes include unlawful trash dumping, smearing or defacing public locations with adverts, and pollution events caused by chemicals, agricultural slurry, or regular sewage waste dumped into a river. When it comes to environmental harm, it may take several forms, including animals, agricultural, forests, emissions, water etc<sup>15</sup>."

The degradation of the environment by many large projects in the developing world is constantly condemned, and they are requested to slow down or stop their activities. According to the investigations conducted by the Louisiana department of environment quality's criminal investigation division, environmental crime may be defined as any criminal behaviour that causes actual harm that can be demonstrated that has a harmful impact on human health or the environment, failed to report a real discharge, release, or emission that has a negative impact on human health or the environment, a pattern of illegal behaviour in a specific industry.

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<sup>14</sup> Corporate Environmental Crime,  
<http://environmentcrimes.com/Corporations/Corporate%20crime.htm>

<sup>15</sup> Select Committee on Environmental Audit, Second Report,  
[www.parliament.uk](http://www.parliament.uk)

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In the situations of environmental crime, corporations repeated the violations; purposefully disobeyed the rules and regulations; fabricated or concealed proper information, and so on. "Because companies are key participants in many issues, they can have a large impact on the environment (good or harmful, directly or indirectly)<sup>16</sup>."

"Corporate Environmental Crimes can range from unlawful trash dumping to pollution accidents caused by chemicals, farm slurry, or normal sewage waste being released into a river, or as in the case of the Bhopal disaster." Ignorance or carelessness is not the sole cause, but there are other additional factors and rewards that contribute to business behaving badly toward the environment. Poorly managed enterprises, untrained employees, bad infrastructure, old technology, and equipment that has not been maintained to the appropriate standard may be some of the causes, allowing a pollution disaster to occur.

Corporations' negligence or reckless conduct or action can sometimes result in physical damages such as on-the-job diseases, accidents, injuries, handling hazardous chemicals, fatalities, contaminated environment, and so on. The attitude of companies depends based on market share, immoral practises, and political backing, and thereby provides the assumption of simple and minor punishments which it can be easily managed and paid.

#### **2.4. LIABILITY ON CORPORATES TOWARDS ENVIRONMENTAL HAZARDS**

Every individual is required by the constitution to have a perception of liability and care for others. As a legal entity, a corporation bears responsibilities to the environment and to humanity. While carrying out its responsibilities, a company incurs certain liabilities for its actions. In the case of corporations dealing with dangerous chemicals, many environmental issues are surmounted. These issues are caused by a lack of adequate storage facilities, lack of compliance with safety standards, the use of low-quality machines, a lack of inadequate assessment, and a lack of safety measures for employees. As a consequence, corporations could undergo criminal and civil liability.

Before establishing the companies, the collaborations should consider their location. Manufacturing or synthetic industries should be considered, especially if they are to be located close to nearby regions. There are several sufferers who are in desperate demand

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<sup>16</sup> Shah Anup (2002), "Corporations and Environment", [www.globalissues.org](http://www.globalissues.org)

of justice. Following the tragic accident in 1984, many laws were enacted to ensure justice for the victims. To assist victims, the Public Liability Insurance Act of 1991 was enacted. The Environment Act adds a new tool to the toolbox for anticipating and controlling environmental contamination. Under the Act, the Central Government is authorised to establish new national standards for environmental quality, as well as measures to control the discharge and discharge of wastewater, for the industrial sector, support methods for controlling harmful substances, formulate accident prevention measures, and collect and disseminate pollution data. Since many agency laws are reflected in British regulations, the British Companies Act provides for business regulation in India. The primary legislative body for the formation of Joint Stock Companies was established in 1850, based on the English Companies Act of 1844. The 1850 Act recognised organisations enlisted as specific legitimate entities; However, it did not propose the idea of limit liability, and was later merged under the Company Act of 1857 with the traces of British Company Act of 1856. All these acts, but they can't completely bring justice to the victims.

Many countries recognised that corporations were capable of committing wrongdoing and thus should be penalised for it. As a result, corporations acted negligently in situations where extreme caution was required. Because civil liability only requires the payment of a fine, it has no effect on the company's image, development, or functioning. It is analogous to make a payment toward general obligations. To put a stop to these frivolous acts, it is very important to inculcate fear in the organization and its employees through prosecution. These provisions should be incorporated into the legislation as soon as possible.

#### **2.4.1. CIVIL LIABILITY**

Individuals are punished under civil liability based on the principles of sustainable development. The precautionary principle and the polluter pay principle are the concepts which have been universally accepted and implemented into Indian laws, hold corporations liable for the people and environment.

##### **The Precautionary Principle**

The primary underlying reason of environmental degradation is industrialization. Companies should take important precautions to protect the environment and have the responsibility to inform stakeholders and the majority of them. It must be possible to

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protect the environment by avoiding potential environmental hazards, that is, analyzing hazards before they occur. This process is determined by the precautionary principle<sup>17</sup>.

The precautionary principle to avoid harm to nature, humans and the environment, and the influence of certain behaviors and the release of unsafe materials are not entirely pure. Although it is usually assumed that the activity will continue until the loophole is completely eliminated, the precautionary principle avoids this activity. Although such sporting events are fraught with vulnerabilities, the ban protects an interest so that it can anticipate and reflect environmental damage.

As a result, the preparatory principle is a critical component of sustainable development. As Article 21 of the Indian Constitution guarantees the protection of life and individual liberty, this guide has been recognized as part of the rules that everyone should follow. The Citizen Welfare Forum of Vellore v. An Indian association and other organizations claiming the "Precautionary Principle" and the "Polluter Pays Principle" are part of the Indian Environment Laws.

Despite Articles 41A, 21, and 51(g) of the Indian Constitution, the Supreme Court made reference to the Brundtland Report and other global reports<sup>18</sup>. As a result, the precautionary principle seeks to prevent harm before it occurs. This principle safeguards the environment, wildlife, and humanity.

### **Polluter Pay Principle**

The concept governing environmental responsibility is commonly referred to as the "polluter pays principle," and the ultimate goal is to "minimise environmental harm." The Polluter Pays Principle (PPP) stipulates that individuals, organizations, or multinational organizations (MNCs) responsible for pollution must be financially responsible for damage caused to others. It is a general form of compensation for pollution damage. It does not mean that polluters should better pay for pollution prevention measures. It implies that the polluter should be held accountable for the amount on pollution prevention and management will be determined by the authorities whether it is prevention, remediation, or a combination of the two.

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<sup>17</sup> The precautionary principle states that any substance or action that poses a risk to the environment should be avoided, regardless of whether there is definitive scientific evidence linking that specific substance or action to environmental harm.

<sup>18</sup> Ibid (n) 75.

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The purpose of PPP is to punish the perpetrators, inform them of their actions and prevent them from evading legal responsibility. This principle is part of natural justice and ensures that equitable justice is served to all. In the case of *Vanashakti v. MPCB*<sup>19</sup>, damages adding up to INR 760 million were awarded with abandon the goal of paying for "compensation and repair" by polluting the Ulas and Valduni waterways in Maharashtra, West Indies by using various common paints in sewage treatment and commercial facilities.

Polluter pays is an important environment law and civil administration in India. Become the guideline for all environmental policies. The relevant "polluter can pay" expert rules may indicate that if the buyer or production organization, use, or production movement causes damage to others, the person who caused the damage will be liable for the loss or damage.

#### **2.4.2. TORTIOUS LIABILITY**

The common law provides for environmental protection. Tort law, which is a component of common law, has been used effectively in dealing with environmental concerns in India. Tort liability for harm falls on hazard originators. The distinction of tort law is found in the relationship between compensation and risk management. "Tort law is bifurcated, looking at both harm and compensation for harm."<sup>20</sup> Tort law safeguards an individual's rights in the event of a violation of his private law. In general, tort law in India is based on English tort law, which is based on precedent-based law in England. In any case, before applying any standard of English law, Indian courts should note whether this applies to Indian traditions and circumstances. It is worth noting that the standard law passed by Britain to India hinders the pragmatism of art here. 372 (1) The Constitution of India, unless amended or supplemented by law<sup>21</sup>. Through Public Interest Litigation, the Indian judiciary has enhanced the new precepts of tortious risk. There have been numerous establishments, such as the Public Liability Insurance Act of 1991, the Environmental Safety Act of 1986, the Prenatal Diagnosis Act of 1993, the

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<sup>19</sup> Application No. 37 of 2013 (WZ).

<sup>20</sup> Peter cane, "The Anatomy of Tort Law" (Bloomsbury Publishing)

<https://www.bloomsbury.com/au/the-anatomy-of-tort-law-9781901362084> visited on june 28th ,2021

<sup>21</sup> Dr. Madhuri Parikh, "Tortious Liability for Environmental harm: A Tale of Judicial Craftmanship" at 77 (2013)

<http://docs.manupatra.in/newslines/articles/Upload/1B0960FF-9DFE-4A43-917D-065ED5E6EE03.pdf>

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Human Rights and Safety Act of 1993 and the Abuse Prevention Act of 1994, these laws reflect the new standards of crime risk in India.

In some landmark decisions, Indian courts have applied and clarified various tort law doctrines that are prevalent in customary law countries. In the case of Union Carbide company v Union of India "The evaluation of Mehta ideas may forget the growing assumptions of distressing legal liability, and the main realization is likely to be financial risks." In fact, civil society cannot establish positive relationships with individuals. Relationship, even if they will be compensated for the next loss. infringement, liability. MNC, congenital injury. The most serious glorious danger. and many more. Compensation for the victims of the Bhopal disaster has been a source of consternation in Indian tort law. In the field of torts, there was a lack of prosecution. With the increasing number of industrial disasters, the concept has gained traction.

The court decisions clearly demonstrate the continuing angles in Indian tort law as a tool for environmental protection. The Indian legal executive has played a pivotal role in enacting tort law standards in environmental issues. The Court held in *M. C. Mehta vs Kamal Nath & Ors*<sup>22</sup> that contaminating the environment is a civil and a tortious crime against the public as a whole. Along with this, any individual who is responsible for contamination must pay compensation for the restoration of the resources and environment. In addition to the previously mentioned harms, the individual responsible for causing contamination may be held liable for additional harms in order to serve as a deterrent to others from causing contamination in the future<sup>23</sup>.

The large number of environmental pollution tort cases India is classified as misconduct, negligence, strict liability and breach of tenure. The tort law remedies are derived from the following:

Nuisance: The law of nuisance encompasses a wide range of activities that pollute the environment. It is an illegal impediment to the use and enjoyment of property and land, or perhaps some directly completed or related to it. The integration point of interrupt control is the inductance of the material and the general comfort of human beings. Negligence; it is defined as the failure to perform the care required for the specimen in

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<sup>22</sup> (1997)1 SCC 388.

<sup>23</sup> *M c Mehta v Kamal Nath & ors*, "Access Information on Multilateral Environmental Agreements" (Infor Mea May 12, 2000)

<https://www.informe.org/en/court-decision/mc-mehta-v-kamal-nath-and-ors>



a given environment. In the case of duty of care, reasonable care consideration needs to be given to situations that are likely to cause physical harm to a person or land. The level of care varies depending on the circumstances. the offended party must demonstrate a causal relationship between the complainant's negligence and the offended party's damage. If a ferocious pollution is released, they can be seen everywhere depending in the matter, the defendant need not demonstrate the link between the careless demonstration and the injury suffered<sup>24</sup>.

As a result, tort law has traditionally provided a tool for repairing environmental damage. A proper legal arrangement envisioned by those affected by environmental disasters would hold the wrongdoer accountable, compensate the victims, and prevent future risks. Tort law's customary guarantees are remedial equity, compensation, and prevention.

### **2.4.3. ABSOLUTE LIABILITY**

Absolute liability is a concept which is found in both civil and criminal liability. In December 1986, the Sriram gas leak case was resolved in an excellent court, with absolute responsibility. The case started with a court order filed in a magnificent court. A toxic unit found in a densely populated area of Delhi. Obviously, no matter who proposes risky and extremely dangerous exercises, according to the civil and criminal laws, whoever is "absolutely responsible". According to civil law, you liable for damage number of deaths of people and materials, as well as individual discomfort, as well as the expense of re-establishing the harmed land. He will also face penalties under the Environmental Protection Act of 1986 and other relevant criminal laws.

Strict liability and absolute liability are apparently the most important concepts in tort law, and understanding the distinctions between them. Strict legal liability is very important in tort law, company law and criminal law. So far, all violations of environmental standards by companies and companies have been described in accordance with strict liability rules. This is largely the guiding principle of factory supervision, as Rylands v. Fletcher set out. According to tort law, strict liability is placed at the risk of one party the absence of a finding of a flaw, such as negligence or tortuous liability.

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<sup>24</sup> Greherend Corporation v. Blackely (1958) 262 f2nd 401.



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The concept of no-fault liability has been legally recognised by the Public Liability Insurance Act (PLIA). According to the law, victims of accidents that are currently at risk are entitled to an amount maintained without evidence of negligence<sup>25</sup>.

The 1995 National Environmental Tribunal Act (NETA) extended the scope of absolute liability to any situation involving male or female (except employees) death or personal injury, or property or environmental damage with hazardous substances. In this case, the employer-owner shall be responsible for the death or injury of anyone other than the employee, or property or environmental damage caused by the accident.

#### **2.4.4. CRIMINAL LIABILITY**

At the end of the 19th century and the beginning of the 20th century, with the improvement of the concept of the welfare state, while guiding production, the state also tried to guide the actions of the group so as not to forget the needs of citizens on a larger scale. As part of the company's actions, the country tried to hold them criminally responsible.

Corporations are subjected to deterrent sanctions. Deterrent sanctions against the corporation can be structured in two ways: common authorizations and criminal assents. The method for demonstrating that an organisation is criminally liable appears to be somewhat unpredictable. If reason, knowledge or negligence are the basic elements of the crime, and if the company structure clearly, implicitly or implicitly attributes or authorizes the commission of the crime, these defects should be attributed to the company structure. The issue of criminal proceedings in India under environmental law. India reviewed the alternative protection laws in the region, but it is far from obvious whether they have negotiated sufficiently with the authorities not to pollute the environment.

The sec. 47 of the Water (Prevention and control of pollution) Act of 1974, the sec.40 of the Air Pollution (Prevention and Control) Act of 1981, and sec 16 of the Environment (Safety) Act of 1986 criminalize the criminal conduct of companies<sup>26</sup>. Except for the

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<sup>25</sup> The Public Liability Insurance Act, 1991, Section 3 sets out no fault liability for the proprietors, it gives that where death or injury to any individual (other than a worker) or harm to any property has caused because of an accident, the proprietor shall be liable.

<sup>26</sup> Sudarshana Thapa, "“Impact of Environmental Law on Corporate Governance” (Infor MEA March 28, 2018)

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provision dealing with the animal's death, there is no specific legislation in the Indian Penal Code regarding punishment for environmental damage<sup>27</sup>. Nevertheless, there are numerous other laws that impose criminal liability on corporations. As for industrial activities, the Factories Act focuses on public safety and well-being. This Act, in any case, was primarily concerned with damage caused by mechanical or physical acts, rather than those caused by dangerous substances<sup>28</sup>. This institution has legal personality. Officials of the organization are responsible for the organization and at the same time responsible for violations in the organization<sup>29</sup>. The law defines a person as "any institution, association or group of people, regardless of whether they are registered or not." The Indian courts supported the idea of reconciliation with Britain<sup>30</sup>.

The main difficulty of corporate criminal liability lies in the extent to which the company is prosecuted. A typical example is Union Carbide Corporation (UCC), which is still facing criminal lawsuits in India for leaking harmful MICs on pesticide production lines. Many costs were paid in this case, but in the end, Union Carbide was most effectively accused of negligence, and this illegal death did not constitute murder or gross negligence. Union Carbide was accused of a gasoline leak in Bhopal, and the criminal charges were reduced from 304b to 304A. In a recent LG Polymer gas leak case, the penalty fee falls under Section 304A, which covers death from negligence and can be punishable by up to several years in prison and an exclusive charge. Since the Bhopal Tragedy to the PLG Polymer Gas Leak, courts have tried industries only under the IPC, and that no other law has accurate provisions that are associated with these concerns.

However, except for the penalties imposed on them for violating the Act's provisions, none of the enactments contained any provisions imposing criminal liability on corporations. In order to right this situation, it is necessary to establish an effective prison system, especially a group-oriented prison system. In the event of a breakdown

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<https://blog.ipleaders.in/impact-of-environmental-law-on-corporate-governance/> last visited on June 20th, 2021

<sup>27</sup> The Indian Penal Code of 1860, S. 429

<sup>28</sup> The Factories Act, 1981, 7-B, 31, 41-B, 41-C and 111

<sup>29</sup> The Public Liability Insurance Act, 1991, According to Section 16, "Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and responsible to, the company for the conduct of the company's business, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be prosecuted." Provided that nothing contained in this sub-section shall render any such person liable

<sup>30</sup> Section 11.

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or various environmental accidents, the main difficulty is to compensate the victims of the accident. In addition, there is no framework for this extremely important assistance.

## CHAPTER 3

### LEGAL PROVISIONS UNDER VARIOUS ENVIRONMENTAL RELATED ACTS IN INDIA

The Indian constitution, which serves as the foundation for all subsequent enactments, includes provisions for environmental and human rights protection. It lays a responsibility on the person to care for the environment in which we live.

#### 3.1. PROVISIONS UNDER INDIAN CONSTITUTION FOR PROTECTION OF ENVIRONMENT

The constitution also mandates environmental protection. It is regarded as a fundamental right and is established in the country by DPSP protection guidelines. On January 26, 1950, the Indian Constitution came into effect, and there were no specific regulations on the environment at that time. Nevertheless, Article 47 of the DPSP that the state's principal role is to elevate the level of nutrition and standard of lifestyles, as well as to enhance public health. Certain provisions were later inserted into the III parts and IV parts of the constitution. The III parts of the Indian Constitution protects fundamental rights. In addition to the provisions of the IV parts of the DSPS, it also contains environmental safety regulations.

Ms. Indira Gandhi attended the United Nations Conference on Human Environment and Development held in Stockholm in 1972, which surpassed the two goals of the Magna Carta of our environmental rules:

- a) The individual has the basic right to opportunity, justice and adequate living conditions in a living environment that enables him to live a respected and self-fulfilling life;
- b) Human beings are committed to protecting and improving the environment for present and future generations.

These clauses have been cited in all industrial homicide cases because they impose a duty to safeguard the environment. The right to a safe environment, including safe drinking water and clean air, is a fundamental right of every citizen that impacts the

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citizen's personal life and liberty<sup>31</sup>. In the *Kendra Rural Litigation and Property Law v. Land* case (commonly known as the Dehradun Quarry case), the right to maintain a peaceful environment was initially considered an integral part of Article 21, which was the seminal case in India. For a long time, the Supreme Court addressed concerns relating to natural and ecological equality, and it cooperated to put a Stop mining in accordance with the "Environmental Safety Law". In *MC Mehta v. Union of India*, the ideal court recognized that the right to live in a pollution-free environment is an important right to life under Article 21 of the Constitution. Each Sriram device affects the health of a large number of people and causes the death of one of them.

The hearing was held for the purposes of the influenced individual's compensation application. Counsel for the candidates vigorously contested the Article 21 case against a private enterpriser involved in a movement that may have an influence on the lives and well-being of persons. These compensatory adjustments help protect the basic rights of life as stipulated in Article 21 of the Constitution. The question is why the Article 21 petition should not be considered now. In the judgment, Judge P.N. Bhagwati emphasized the importance of establishing new standards, which impose strict and absolute compensation obligations on the company. Accept the precedent of Sriram Corporations' order in violation of Article 21 of the Constitution. The choice of the last court in this example resulted in the selection of several excessive courts.

Fundamental rights are necessary rights, which can be maintained through strict sanctions on all institutions that violate these fundamental rights in order to do good and defend those rights. The judiciary aims to safeguard these rights. Any individual whose rights have been violated may seek remedies from the High Court or the Supreme Court by initiating a Public Interest Litigation PIL<sup>32</sup>.

To accelerate the speed of condition security, the Government of India changed the established content by making the following amendments. Schedule VII, which contains the three lists, simply outlines several regions associating with environmental security that the centre and states might adopt. As a result, the Indian Parliament enacted many laws governing environmental preservation. The 42nd Amendment Act adds articles 17-A, 17-B, and 20-A to the seventh schedule for the preservation of forests, animals, and environmental pollution control. The Forests Act of 1980 was enacted as a result of these

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<sup>31</sup> Ibid (n) 34.

<sup>32</sup> The Constitution of India, (n) 69

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modifications. The Amendment Act 1973 adds the Eleventh Schedule to the Constitution for protecting and conserving the environment.

These guidelines force the system to maintain the status quo to protect and improve the environment. Although Article 21 provides for substantive rights to the environment, this privilege may no longer be limited to people with traditional backgrounds. Except that the environment is a collection of many things, the term "person" in Article 21 can be regarded as an element of a legal person. As a result, the constitution requires legislators, administrations, the courts, and individuals to conserve the environment<sup>33</sup>. Only when the obligations required are done are the rights safeguarded.

### **3.2. VARIOUS ACTS RELATED TO ENVIRONMENT**

The main aim of the various laws related to environment is to protect the environment against the harms which are caused by the actions of individuals. So, it is required to create a balance between human and the environment. As humans are supposed to contribute to sustainable development. Around mid-1970's, people have realized the importance of environment and the need to protect it for their mere survival. We, definitely cannot imagine our life in an environment where there is no fresh air, where there is not clean water or where there is no cleanliness. No person would want to live without the basic needs and living in polluted environment amounts to literally living or surviving which is equal to animal existence. So, right to clean environment is a human right. All the incorporated organizations are required to support and make sure that they are not involved in activities that are against human rights such as dumping toxic waste in others territory, exploitation of natural resources etc<sup>34</sup>.

Considering the damages occurring to the environment, it was necessary to establish separate authority to govern the country for the management and protection of environment. So, Ministry of Environment and Forest (MOEF) came into existence in 1985 which was renamed in 2014, to title of Ministry of Environment, Forest and Climate Change. this authority is responsible for regulating the hazardous waste and to implement the policies and programs. Even before the MOEF, there were environmental

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<sup>33</sup> P. Leetakrishnan, "Environmental Law in India", Lexis Nexis Butterworths. Second Edition (2005).

<sup>34</sup> The Universal Declaration of Human Rights in six cross-cutting themes. (n.d.).

<https://www.ohchr.org/EN/UDHR/Pages/CrossCuttingThemes.aspx>.

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laws enacted and brought into effective. Prior, the compensation which was given in case of any injury or damages to individuals and properties was clear under the constitutional law and criminal law. As the industrial hazards have been on rise since few years, there have been many Acts enacted by the legislation to award compensation to the victims. The need for provisions particularly relating to compensation was realized after the Bhopal Gas tragedy.

### **3.2.1. THE INDIAN PENAL CODE, 1860.**

During the period of British rule in India, there were different laws which was enacted to deal with the various issues related to the environment. Indian Penal Code is one among those laws which was enacted in 1860 and which is applicable even today. chapter XIV of Indian Penal Code which contain section 268 to 294-A specifically deals with offences which are related to public health and safety and provides punishment to those acts which are harmful to the environment and dangerous to lives of people. After the Bhopal gas tragedy, the need to enact laws is increased. Industrialization has a major role in environmental hazards. There are many industries which deal with hazardous substance leading to environmental damage and further affecting the livelihood of people in many ways.

Also, increase of industries has led to noise pollution. noise pollution is covered under public nuisance and it is offence against the common people<sup>35</sup>. It is very evident that noise pollution is a man made and it keeps increasing from time to time with our social and industrial advancement<sup>36</sup>. When any person causes disturbance or inconvenience to public by producing loud noise, that person has committed offence. Such acts affect the lives of individual and violates their right to peaceful environment. Therefore, such people will be punished<sup>37</sup>.

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<sup>35</sup> The Indian Penal Code of 1860, S. 268

<sup>36</sup> M P Singh, "Legal Control of Noise Pollution in India: A Critical Evaluation", 2016, International Journal of Research in Humanities and Social Studies, Volume 3, Issue 4, April 2016, P. 34-45, ISSN 2394-6288 (Print) & ISSN 2394-6296 (Online) <http://www.ijrhss.org/pdf/v3-i4/5.pdf>.

<sup>37</sup> The Indian Penal Code of 1860, S. 290: The act imposes a fine of rupees two hundred for causing public nuisance

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Any person who releasing any kind of toxic substance into the water or voluntarily pollutes the water belonging to the general public where the water further cannot be used for the purpose which it was prior used for, such person will be penalized<sup>38</sup>.

These accidents at work are considered criminal offences and are punished because they are the end result of reckless and reckless behaviour that endangers people's lives or the personal well-being of others. Recklessness occurs when men or women act meaningless and meaningless. Fatal behaviour. Knowing that it is such information, but not realizing that it is likely to cause harm deliberately for no reason. Negligence occurs when men or women ignore the results of their actions and fail to take available actions. And effective care and preventive measures to avoid harming other men or women.

These manufacturing companies that handle toxic materials must take extreme precautions to avoid such hazardous materials from escaping. In such occurrence of escape, the companies' irresponsible and neglectful behaviour is determined and they are penalised<sup>39</sup>. If these substances cause harm to any individual by acting in a hasty or careless manner that jeopardises person's life or the person's quality of life of others, they will be held accountable<sup>40</sup>. Negligence or carelessness should indeed be associated with a criminal hazard. That is, the nature and severity of the injury will be irrelevant in determining criminal liability. If such reckless and irresponsible action results in death, the accused shall be punished for killing a person by negligence<sup>41</sup>.

### **3.2.2.THE FACTORIES ACT, 1948.**

In 1881, the Factory Law was passed for the first time, beginning to protect women and children, not only to ensure the safety of employees, but also to factories with 100 or more employees. The 1948 Act was amended to take into account the Factory (Amendment) Act of 1987<sup>42</sup>, which helped formulate specific national guidelines on the welfare and safety of Indian industrial and terminals. Efficiency and social stability. The

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<sup>38</sup> The Indian Penal Code of 1860, S. 277: The act imposes a fine of rupees five hundred for causing public nuisance and imprisonment for term extending to three months.

<sup>39</sup> The Indian Penal Code of 1860, S. 336: with imprisonment for the term which may extend to three months or with fine which may extend up to 250 rupees or both.

<sup>40</sup> The Indian Penal Code of 1860, S. 337: with imprisonment for a term which may extend to a half year, or with fine which may expand Rs. 500, or with both.

<sup>41</sup> The Indian Penal Code of 1860, S. 304A.

<sup>42</sup> The Factories (Amendment) Act 20 of 1987.



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primary motivation of the law is to ensure the safety, protection and suitability of people involved in dangerous actions, and to change the working environment of workers.

The mechanical field has seen significant modernization and development. A few compound corporations have emerged to manage hazardous and harmful materials. This has triggered a chain reaction of concerns about industrial safety and occupational health and safety hazards<sup>43</sup>. By "equipping" the workplace in the production facility and determining the requirements and measures in emergency situations, it has become mandatory to take preventive measures for the use and disposal of hazardous substances. So, in order to hold an inspection on corporations operating with industries handling dangerous substance, two schedules have been embedded that will provide a list of industries that manage dangerous synthetic compounds as well as list of synthetic compounds that can be used by industry<sup>44</sup>. For example, the "State Review Board" should review applications for the area where the commercial facility is located. An unsafe processor used to develop one of these commercial objects. It is very important to get relevant information to the hazardous operations getting communicated be revealed to all working people, as well as the residents of the local area in which the industry is already established including almost by healthcare institutions that can provide medical treatment in moments of emergency<sup>45</sup>. One of the most fundamental lessons to be drawn from 1984 gas leak case is the importance of being transparent and recognize the value public support in matters which pertaining to the location and activity of hazardous industries.

The transparency of the. punishment for any 'unapproved' disclosure is emphasizes under part IV of environment act, which is limited to the disclosure exposure even further<sup>46</sup>. In the occasion of an exceptional situation, along with a production line occupied with the perilous procedure, the Central Government may appoint an inquiry council to inquire into the industry's guidelines of security and wellbeing<sup>47</sup>. Even before an industrial facility can begin operations, a disaster management plan must be developed. To prevent accidents in these industries, the occupier who manages the

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<sup>43</sup> The statements and objectives of the amended act 1987 as notified on December 2, 1982, Para 7.

<sup>44</sup> The Factories Act of 1987, S. 41A-41G.

<sup>45</sup> The Factories Act of 1987, S. 41A.

<sup>46</sup> The Factories Act, 1987, Section 118

<sup>47</sup> The Factories Act,1987, section 41D

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enterprise obliged to participate in industrial safety management<sup>48</sup>. A factory law will give developers an advantage in risky technological development. For products and substances used in industrial companies, manufacturing companies are assigned standard obligations when it comes to items and substances to be used in the industrial plant<sup>49</sup>. The material supplier, manufacturer or designer is exempt from any responsibility for the safety of the specified product, as long as the consumer of the specified product guarantees in writing that the product is safe and that the product is not at risk to employees. When wearing<sup>50</sup>. In the event of a disaster in 1984, Section 7B (5) will completely relieve UCC from all obligations, provided that UCIL has provided written instructions stating that MCIL can be used safely and does not pose a hazard to workers. healthy<sup>51</sup>.

Every industry that handles with toxic substances is obligated to adhere to the provisions provided under fourth part of the Act. the noncompliance and violation of the provisions is a punishable offence<sup>52</sup>. Thus, after the 1984 gas leak case, the Act was modified purpose of providing safety and protection to workers, particularly those working in dangerous industrial plants, by making the industry's occupier liable for such hazardous accidents.

### **3.2.3.THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1947**

In 1974, the water (Prevention and Control of Pollution) Act was enacted by the parliament under Article 252(1) of the Indian constitution. In order calibrate nearly to Environment (Protection) Act ,1986, the Act was amended in 1988. This act was enacted to manage water contamination with "order and control". The rules are such as when the effluence is released and the people who are responsible for such release will be liable under this Act. And there will be a penalty imposed on the offender through fine or imprisonment or both.

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<sup>48</sup> The Factories Act,1987, section 41E

<sup>49</sup> The Factories Act,1987, Section 7B.

<sup>50</sup> The Factories Act,1987, Section 7B (5)

<sup>51</sup> S Muralidhar, "Bhopal Gas Leak Disasters Legal Issues-IELRC.ORG"

<http://www.ielrc.org/content/w0405.pdf>

<sup>52</sup> The Factories Act 1987, section 96A: the offender is punished with imprisonment up to three years or with fine or with both

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In order to effectively manage the water pollution two boards have been set up, i.e., Central Pollution Control Board (CPCB) and State Pollution Control Board (SPCB). The establishment of these two boards is an inventive mechanism and where a states with common boundaries can have a Joint State Pollution Control Boards<sup>53</sup>.

These boards have a legal authority where they can hold or discard property and Sue or be sued<sup>54</sup>. Any person who is responsible for any organization, where any activity or procedure is performed onto outfit to its information with respect to the development or any disposal which leads up to 7 years of imprisonment or will be imposed with 2 Lakh rupees of fine or sometimes both might be imposed. In case, if the offender fails to comply with the provisions, then a penalty up to extra ₹500 shall be added for each day until the offender complies with the provision.

Further, the state boards can direct for any structure, acquisition or expansion for the implementation of other prescribed company products<sup>55</sup>. The board can view the water of any body of water, or observe any canal or commercial sewage that is connected or corrected, and may overlap with any facility or ship or anywhere in such a river<sup>56</sup> and can impose restrictions on the usage of such stream or well for eliminating Chemical substance<sup>57</sup>. Any person who releases any trade effluents or Municipal water waste into any Stream of water body<sup>58</sup> must take permission of the board<sup>59</sup> considering improvements, creations or existing activities in the industry, as well as the elimination of the structure of a particular institution or any expansion or growth<sup>60</sup>.

In the event of an accident or excessive discharge of sewage<sup>61</sup>, the company must actually provide relevant data, combined with the records provided by the industry, SPCB urges the public utility company to appear in court<sup>62</sup>. Seek a way to prevent the water-borne infection in humans. Therefore, dumping waste into water bodies is

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<sup>53</sup> The water (Prevention and Control of Pollution) Act, 1974, Section 13.

<sup>54</sup> The water (Prevention and Control of Pollution) Act, 1974, Section 3and 4.

<sup>55</sup> The water (Prevention and Control of Pollution) Act, 1974, Section 20(3).

<sup>56</sup> The water (Prevention and Control of Pollution) Act, 1974, section 21

<sup>57</sup> The water (Prevention and Control of Pollution) Act, 1974, Section 24

<sup>58</sup> The water (Prevention and Control of Pollution) Act, 1974, Section 25

<sup>59</sup> The water (Prevention and Control of Pollution) Ac, 1974, Section 25(2)

<sup>60</sup> The water (Prevention and Control of Pollution) Ac, 1974, Section 26.

<sup>61</sup> The water (Prevention and Control of Pollution) Act, 1974, Section 31.

<sup>62</sup> The water (Prevention and Control of Pollution) Act, 1974, Section 33.

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considered illegal<sup>63</sup>, and unless the dumping amount is as high as 10,000 rupees, the company may be liable for such dumping and imprisonment not less than 3 months and may extend up to one year or sometimes both. In case, the offender does not comply, ₹5000 of extra fine will be added for each day of the infringement<sup>64</sup>. However, for the last two centuries, there is a development in the country due to industrial revolution, the pollution of the ocean by modern emissions is one of the biggest environmental problems. All these regulations are strictly applied to all hazardous industries. Such as, in 1984 gas leak tragedy case, the discharge of harsh chemicals and contamination of environment lead to pollution of groundwater.

### **3.2.4.THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT ,1981**

The Indian Parliament passed the Air Pollution Prevention and Control Act in 198 under article 253 of Indian constitution to make reality of the decision taken by the United Nations conference on environment which was held in Stockholm in 1972<sup>65</sup>. The main purpose of stock holm conference was to initiate measures to Maintain a healthy environment and to encourage the governments and international organization to protect the earth's natural resource along which also safeguards the nature of air and controls the air pollution.

The Act particularly deals with protecting the air from pollution and to control the level of air pollution. Though the air Act has all the Provisions to Control air pollution and commercial pollutants. There are still obstacles to major changes in the 1987 Act. Air law expands the power to establish a central and state governments with respect to water law but air pollution boards cannot be comprised independently<sup>66</sup>. Under this act, the central board Organises the activities of state board and Gives directions to the central government plans and executes the tasks of the country. The communication between the SPCB and the Central Committee and a component of the SPCB is the same for the

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<sup>63</sup> The water (Prevention and Control of Pollution) Act. 1974, Section 41, 45A

<sup>64</sup> Water (Prevention and Control of Pollution) Act, 1974. (1974, January 1).

<https://www.indiacode.nic.in/handle/123456789/1612?locale=en>

<sup>65</sup> DR. RAMAMOohana REDDY APPANNAGARI, ENVIRONMENTAL POLICY TRANSFORMATION IN INDIA – A HISTORICAL METAMORPHOSIS

[https://www.researchgate.net/publication/323944157\\_Environmental\\_Policy\\_Transformation\\_in\\_India-A\\_Historical\\_Metamorphosis](https://www.researchgate.net/publication/323944157_Environmental_Policy_Transformation_in_India-A_Historical_Metamorphosis) last visited on june 1st 2021

<sup>66</sup> The water (avoidance and control of contamination) Act. 1974, (n) 152

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use of the main purpose specified in the Act<sup>67</sup>. Similarly, the State board has the right to inspect any workshop, equipment or production system at any time, and to inspect the following as ordered to such persons as it may considers steps which are essential to control, eliminate or prevent air pollution<sup>68</sup>. In order to control industries from polluting the air, Industrial plants is required to obtain consent from the state board before establishing their industry in an air pollution control area<sup>69</sup>. Even the Shriram industries limited came under this provision of industries determined in the act and had to get approval under section 21 of the Act. and in case if the central board find Out that the industry is not complying with the issues discharged after the consent is given, the board can make a move according to the law at any stage.

Further, if the board Comprehensive that there is excessive discharge of pollution in the air against the guidelines given by the state board<sup>70</sup>, the board will apply to court which is not below the rank of Metropolitan magistrate are a judicial magistrate of first class for restricting such persons from polluting the air<sup>71</sup>. Considering this application, the court will pass an order Directing that individual not to release or contaminate the air<sup>72</sup>. Any person, who Does not comply with the provisions or fails<sup>73</sup> to comply shall be punished under this act<sup>74</sup>. In case , if there is an industrial accident or unexpected tragedy In any area due to which there is a release of excessive air pollutants into the air exceeding the limits given by the state board, such person is responsible for the area where the accident occurs And such person is supposed to immediately inform about the accident to state board and to authorities prescribed<sup>75</sup> , failure to do so is punishable offense <sup>76</sup>.In case, the company Commits an offense, knowingly or unknowingly, under

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<sup>67</sup> The Air (Prevention and Control of Pollution) Act, 1981, Section 16 and 17

<sup>68</sup> The Air (Prevention and Control of Pollution) Act, 1981, Section 17(1)(e)

<sup>69</sup> The Air (Prevention and Control of Pollution) Act, 1981, Section 21

<sup>70</sup> The Air (Prevention and Control of Pollution) Act, 1981, section 17(1)(g)

<sup>71</sup> The Air (Prevention and Control of Pollution) Act, 1981: section 22A inserted by Act 1987

<sup>72</sup> The Air (Prevention and Control of Pollution) Act, 1981, section 22A (3).

<sup>73</sup> The Air (Prevention and Control of Pollution) Act, 1981, section 21 or section 22 or directions given under section 31A.

<sup>74</sup> The Air (Prevention and Control of Pollution) Act, 1981, Section 37: imprisonment for a term which will not be short of one year and a half year however which may extend to six years and with fine, and in the event that the failure proceeds, with an extra-fine which may extend to five thousand rupees for consistently during which such failure proceeds after the conviction for the first such failure.

<sup>75</sup> The Air (Prevention and Control of Pollution) Act, 1981, Section 23

<sup>76</sup> The Air (Prevention and Control of Pollution) Act, 1981, Section 38: punished with imprisonment for the term of three months or with fine which may extend to ten thousand rupees or with both

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this act, every person who was part of the company during the commission of offence shall be considered guilty for the offence and shall be punished<sup>77</sup>.

But later on, the amendment made was that the court has power to decide on the offence Only when complaints are made by aboard or authorised officer or any person against the industry which has polluted the air.

Though, the air act was enforced before the Bhopal gas disaster, the act still does not have enough provisions to control air pollution and there are industries which Even now relace harmful and dangerous Pollutants in the air.

### **3.2.5.THE ENVIRONMENTAL (PROTECTION ACT) ,1986.**

The Indian Constitution created a strong advisory council chaired by N.D. Tiwari. In 1980, the panel delivered its report<sup>78</sup>. The council made a few proposals and discovered that several environmental legislations are out of date. They must convey explanations and goals, and there is no mechanism for assessing the law's efficacy. New enactments of areas of activity, such as toxins, are not protected by current legislation. Environmental protection is now included in the seventh schedules with concurrent review. Although the water and air acts have been adopted, no comprehensive enactment addressing all aspects of preservation has been developed. The Environmental Protection Act of 1986 was the first environmental law legislated for protecting environment.

After the gas leak incident in Bhopal, based on art 253 of Indian constitution, the government passed environmental protect Act in 1986 with an intent of preventing the contamination of eco system<sup>79</sup>. This was an initiation of UN conference on environment which was brought into effect in terms of environmental protection and enhancement, as well as to offer measures to avoid risks for all forms of life. It is a general law for

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<sup>77</sup> The Air (Prevention and Control of Pollution) Act, 1981, Section 40.

<sup>78</sup> Ahmad Furqan, Origin and Growth of Environmental Law in India, Journal of the Indian Law Institute (JILI) Vol. 43 (III) 2001, p- 358

<sup>79</sup> R.N. Iyengar and R.K. Verma Environmental Pollution in B.P. Chaurasia Environmental Pollution Perception and Awareness, 1992 at p. 408.

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coordination between primary and national authorities established under the Water Act of 1974 and the Air Act of 1981<sup>80</sup>.

The term "environment" is detailed in section 2 (a) of the Environmental Law. The relationship between water, air and earth, as well as water, air, land and human beings and various living animals. Plants, microorganisms and property are all part of the environment<sup>81</sup>.

"Hazardous Substance" refers to any substance or plan that, due to its synthetic or physio-compound qualities or handling, has the potential to harm people, other living animals, plants, miniature organisms, property, or the environment<sup>82</sup>.

According to the Act, "occupier" refers to the person who owns things or the affairs of the utility room and remembers to come into contact with any substance, and the person who owns the substance<sup>83</sup>.

The government has the ability to take any measures it deems necessary or beneficial to protect and improve the nature of the environment, prevent, manage and reduce pollution<sup>84</sup>. it has the right to open a commercial site; set natural environmental standards, and be responsible for landfill and commercial waste landfill; strongly recommend methods for handling hazardous materials; set up barriers to prevent injuries; collect and disseminate information about environmental pollutants<sup>85</sup>.

If any industry produces a large amount of environmental toxic substances, The person in charge of the company is responsible for providing the government with the correct information<sup>86</sup> that he is willing to conduct assessments in a timely manner<sup>87</sup>, and

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<sup>80</sup> Vinay Vaish, Partner, Vaish Associates Advocates and Hitender Mehta, India: Environment Laws In India

<https://www.mondaq.com/india/waste-management/624836/environment-laws-in-india>

<sup>81</sup> <https://www.mondaq.com/india/waste-management/624836/environment-laws-in-india> last visited on june 1st 2021

<sup>82</sup> The Environment (Protection) Act, 1986, Section 2(e)

<https://megbiodiversity.nic.in/sites/default/files/environment-protection-act-1986.pdf>

<sup>83</sup> The Environment (Protection) Act, 1986, Section 2(f)

<https://megbiodiversity.nic.in/sites/default/files/environment-protection-act-1986.pdf>

<sup>84</sup> The Environment (Protection) Act, 1986, Section 3(1).

<sup>85</sup> Ibid.

<sup>86</sup> The Environment (Protection) Act, 1986, Section 9.

<sup>87</sup> The Environment (Protection) Act, 1986, Section 11.



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confirming that the designated samples will be sent to the environmental laboratory<sup>88</sup>, for testing procedures when the person testing will be appointed by the central government<sup>89</sup>. The authorized experts are carried out on the basis of important national professional examinations, because the evidence can be Use in any judicial system<sup>90</sup>.

The central government has the right to issue instructions and perform its duties in accordance with the law<sup>91</sup>. Failure to comply with these instructions has been considered a crime<sup>92</sup>.

Under this Act, the central government or any men and women who report crimes and their reasons for complaining to the central government may take cognizance of the offence. This provision appears to provide the public with critical forces for enforcing the Environment Act<sup>93</sup>.

This provision appears to provide the public with crucial powers for enforcing the Environment Act. It is also stated that if an offender is found to be guilty of an offence in both this Act and also another Act, can be held liable under alternative laws instead of environmental laws of 1986. But nevertheless, this is a contentious provision because if the pollution released into the atmosphere by industries is relatively high and allowed under other acts rather than the provisions of this act, the provisions of the Environmental (Protection) Act 1986 will be rendered ineffective<sup>94</sup>. In the case of an offence committed by an organisation, each person who was in charge of that organisation at the time of the offence, as well as the company itself is responsible for the violations and will prosecute and punish the issue<sup>95</sup>. The main reason for including these regulations is to completely eliminate pollution. The act, however, was unable to succeed due to numerous gaps in its framework.

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<sup>88</sup> The Environment (Protection) Act, 1986, Section 12.

<sup>89</sup> The Environment (Protection) Act, 1986, Section 13.

<sup>90</sup> The Environment (Protection) Act, 1986, Section 14.

<sup>91</sup> The Environment (Protection) Act, 1986, Section 5.

<sup>92</sup> The Environment (Protection) Act, 1986, Section 15: imposes punishment with imprisonment for a term which may extend to five years or with fine which may reach out to one lakh rupees, or with both. In case of continuing, the offense will be charged with extra fine which may extend to 5,000 rupees for each day. If the inability to conform to the directions proceeds past time of one year after the date of conviction of wrongdoer will be punished with imprisonment for a term which may extend to seven years.

<sup>93</sup> The Environment (Protection) Act, 1986, Section 19.

<sup>94</sup> The Environment (Protection) Act, 1986, Section 24.

<sup>95</sup> The Environment (Protection) Act, 1986, section 16.



### **3.2.5.1. CHEMICAL ACCIDENTS (EMERGENCY PLANNING, PREPAREDNESS, AND RESPONSE) RULES, 1996.**

In India, chemical accidents happen very frequently, threatening both people's health and infrastructure. After the disaster of the Bhopal gas leak, several rules have been suggested. The rules for Emergency planning guidelines and rules for complex injuries supplement the accident prevention and prevention regulations supported by the Environmental Act of 1986, named "Production, Storage, and Import of Hazardous Chemicals rules." These regulations deal with gas leakage and comparable occurrences. The Chemical Accidents Rules has likely considered to have limited to monitoring factories or businesses such as the Union Carbide factory in Bhopal. It establishes a Central Crisis Committee<sup>96</sup>, The Minister of the Environment serves as the director and twenty special personnel for "proposals for dealing with serious accidents and dealing with serious chemical injuries". It includes certain provisions meetings at the state, regional, and even municipal levels.

The province's Control Crisis Group (CCG) the State Crisis Group (SCG) to prepare and respond to a severe accident in the state and to notify to the gazette by 30 days<sup>97</sup>. Within 60 days, regional collectors will not only form a district crisis group (DCG), but can even form a local crisis group (LCG) for each mechanical package on the site. The CCG will be the nation 's ultimate body in charge of managing and directing the planning and treatment of major chemical incidents. The CCG will continually monitor the post-accident situation and suggest steps to prevent such incidents from occurring again. They can accumulate frequently to meet the requirements of SCG and DCG<sup>98</sup>. SCG determines the effectiveness of off-site emergency plans<sup>99</sup>. The guidance for which is to be had in schedule-12 of the October 1994 revisions to the Manufacture, storage, and Import of Dangerous compound rules. DCG will be chaired by the district government, and DCG will serve as the lead committee at the district level, meeting every 45 days<sup>100</sup> For this reason, members of the main crisis team, government crisis team, and regional crisis team are regarded as key government officials<sup>101</sup>.

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<sup>96</sup> Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, Rule 3

<sup>97</sup> Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, Rule 6.

<sup>98</sup> Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, Rule 5.

<sup>99</sup> Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, Rule 7

<sup>100</sup> Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, Rule 8

<sup>101</sup> The Environment (Protection) Act, 1986, subsection (1) of Sec. 10.

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Therefore, federal, state, local, and local authorities are obliged to evaluate this behaviour and report it to all residents<sup>102</sup>. It is very important to set up a central crisis team for the incident control committee and have a rapid response mechanism called an emergency framework. It is expected that each state will hold an emergency meeting and report on its activities. The basic guidelines apply to the 1984 gas leak.

Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, and Manufacture, Storage, and Import of Hazardous Chemicals (MSIHC) Rules, 1989<sup>103</sup>. As a result, these regulations establish committees to oversee the chemical industry and restrict their discharges. Unfortunately, these guidelines were unable to create a suitable system, as a result of which industrial accidents continue to occur, affecting the whole population.

### **3.2.5.2. MANUFACTURE, STORAGE, AND IMPORT OF HAZARDOUS CHEMICALS RULES, 1989.**

The main goal of MSIHC regulations is to change the discharge of chemicals and reduce chemical tragedies. Chemical companies must comply with restrictions imposed after the 1984 fuel spill. A producer needs to provide whole product protection facts to the applicable authorities and must manufacture synthetic chemicals in accordance with the updated rules. MSIHC rules is due to industrial accident prevention and preparedness standards<sup>104</sup>.

The occupant and controller of a work area will be responsible for the legal gathering, receipt, ability to handle, store and dispose of hazardous wastes in accordance with schedules 1, 2 and 3<sup>105</sup>, and to manage their hazardous wastes by the controller of a workplace<sup>106</sup> and could offer such information as determined by means of the State Pollution Control Board to the administrator of a facility. It is the controller's or

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<sup>102</sup> Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, <http://www.lawsindia.com/Advocate%20Library/C045.HTM> last visited on June 21st 2021

<sup>103</sup> New chemical accident rules soon to prevent Vizag like accidents - Times of India. <https://timesofindia.indiatimes.com/business/india-business/new-chemical-accident-rules-soon-to-prevent-vizag-like-accidents/articleshow/75605463.cms> last visited on June 21st 2021

<sup>104</sup> Ibid (n) 204

<sup>105</sup> Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989, Rule 4

<sup>106</sup> Ibid

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founder's obligation to ensure that wastes listed in schedules 1, 2, and 3<sup>107</sup> are properly handled and disposed of without causing harm to the environment.

An occupier or recycler who does not have his own hazardous waste treatment and disposal facility and work in an area under the jurisdiction of the state Pollution Control Bureau or the Committee for a not unusual Treatment, Storage, and Disposal Facility (TSDF), become a member of that bureau and send your waste to the facility to ensure it is appropriate treatment and disposal<sup>108</sup>. These regulations mandate the occupier to prepare for and stay current on the most recent on-site emergency plan for dealing with serious incidents<sup>109</sup>. Threshold Planning Quantities (TPQ) are the unsafe synthetic establishments that include both mechanical procedures and isolated storages for hazardous substances in quantities. The district emergency authority or the district collector has to design an off-site emergency plan for the region, consolidating information made available by hazardous establishments and transportation authorities<sup>110</sup>. A separate transportation plan should be submitted as a sub-plan of the off-site safety plan. People on the strike index are responsible for providing evidence that they are aware of major accidents and have developed methods to prevent such injuries. He provides information and training to workers to ensure they are protected<sup>111</sup>.

Due to several accidents in the recent past, the MOEF desired to upgrade the rules in 2016 in order to maintain according to the current situation<sup>112</sup>. Industries having to deal with hazardous materials must identify imminent dangers and report them to the appropriate authorities. The chemical industries must exercise caution when handling dangerous chemicals and must comply with the regulations.

### **3.2.5.3.THE HAZARDOUS WASTE (MANAGEMENT AND HANDLING) RULES,1989**

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<sup>107</sup> Schedule 1: list of hazardous chemicals and the criteria to be followed by them. Schedule 2 and 3: are some hazardous chemicals with assigned threshold quantities

<sup>108</sup> Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989, Rule 5.

<sup>109</sup> Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989, Rule 13.

<sup>110</sup> Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989, Rule 14.

<sup>111</sup> Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989, Rule 15

<sup>112</sup> Ibid (n) 217 [1].

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Hazardous Waste Management Rules are published to ensure the safe handling, processing, treatment, packaging, storing, distribution, use reprocessing, compilation, transformation, and selling, destruction, and removal of hazardous waste. These Rules law was passed in 1989 and were amended later in the years 2000, 2003, and 2008, with the final notification of the Hazardous Waste (Management, Handling, and Transboundary Movement) Rules, 2008 superseding previous notification. The Rules establish corresponding responsibilities for various authorities such as the MoEF, CPCB, State/UT Governments, SPCBs, DGFT, Authority, and Custom Authority, while State Pollution Control Boards/ Pollution Control Committees have been designated with broader responsibilities encompassing nearly every single aspect of hazardous waste generation, handling, and disposal<sup>113</sup>.

The occupier and operator of a facility are accountable for the adequate collection, receipt, treatment, storage, and disposal of hazardous wastes listed in Schedules 1, 2, and 3<sup>114</sup>. If anyone else intends to have their hazardous waste treated, they must notify the operator of a facility as prescribed by the SPCB<sup>115</sup>. It is the duty of the facility's occupier and operator to ensure that waste is managed appropriately and disposed of in a manner that does not harm the environment<sup>116</sup>. Furthermore, it is their responsibility to prevent accidents and constrain their effects on and the eco system, and also to make sure that people who are working in this area are well aware of the consequence and that they are well trained with proper equipment to provide them utmost safety<sup>117</sup>.

In India, ineffective waste management has resulted from a lack of proper facilities along with restrictions in regulation for managing hazardous waste<sup>118</sup>. Burning in landfill sites is perhaps one of the most normally utilized waste disposal method, causing harm to both people's health and environment. Waste collection companies are mostly ill-

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<sup>113</sup> <https://cpcb.nic.in/rules/>

<sup>114</sup> Hazardous Wastes (Management & Handling) Rules, 1989, Rule 4[1]

<sup>115</sup> Hazardous Wastes (Management & Handling) Rules, 1989, Rule 4[2]

<sup>116</sup> Hazardous Wastes (Management & Handling) Rules, 1989, Rule 4[3]

<sup>117</sup> Hazardous Wastes (Management & Handling) Rules, 1989, Rule 4A

<sup>118</sup> Sunil Kumar, Stephen R. Smith, Geoff Fowler, Costas Velis, S. Jyoti Kumar, Shashi Arya, Rena, Rakesh Kumar and Christopher Cheeseman; Challenges and opportunities associated with waste management in India published on 22nd march 2017

<https://royalsocietypublishing.org/doi/10.1098/rsos.160764> last visited on july 10th 2021

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equipped, unskilled, and underpaid, and high-temperature treatment equipment is inadequate in India<sup>119</sup>.

Hazardous waste is still being generated as a result of the country's rapid industrial growth. Matter of fact, industrialised states such as Gujarat, Maharashtra, Tamil Nadu, and Andhra Pradesh are grappling with issues related to increasing amounts of hazardous waste<sup>120</sup>. Gujarat, for example, is one of India's quickest developing industrial states, with a growing number of chemical, petrochemical, medicines and pharmaceuticals, textiles, pesticides, paper, and fertiliser industries which makes it, one of the country's leading creators of toxic waste. The main source of pollution in the state is untreated waste from these factories. The PLIA was established in this type of manner that it lets in any industry or affiliation that handles unsafe chemicals.

### **3.2.6. THE PUBLIC LIABILITY INSURANCE ACT, 1991.**

The development of industry constituted a major threat to both the environment and humanity. The majority of the individuals harmed by companies owing to the leakage of harmful chemicals go undiscovered. After the Bhopal Gas Tragedy, the Public Liability Insurance Act was created to compensate victims of industrial disasters in order to offer assistance to the afflicted people. The ruling on the oil spill after the Bhopal disaster in 1987 became the main reason for maintaining the status quo of Indian civil liability insurance in 1991<sup>121</sup>. PLIA aims to enable any industry or affiliate to deal with unsafe chemicals to purchase insurance policies that cover their risk and provide relief of a given scale for all patients. PLIA's liability is based entirely on the principle of no-fault liability. As described in the act, the principle of no-fault liability grants insurance claim for death and personal injury caused by accidents within the prescribed time limit<sup>122</sup>. The provision of liability insurance is vital to private and government-owned

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<sup>119</sup> Indo-UK Seminar Report. 2015 Sustainable Solid Waste Management for Cities: Opportunities in SAARC Countries.

<sup>120</sup> The Associated Chambers of Commerce of India (ASSOCHAM) and PricewaterhouseCoopers (PwC). India Would Need to Bring 88 km Land under Waste Disposal by 2050: Study. June 25th 2017 <https://www.assochem.org/newsdetail.php?id=6350> last visited on July 10th 2021

<sup>121</sup> Vikram Raghavan, "The Public liability Insurance Act: Breaking new Ground for Indian Environmental Law", Indian Law institute, Vol. 39, No. 1 (January-March 1997), pp. 96-115 (20 pages) <https://www.jstor.org/stable/i40163386>.

<sup>122</sup> Ibid (n) 113.

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sector companies, and it is clear that in any relief situation, victims should no longer be required to report death, injury or disability caused by an accident.

Under sub-section (1) of Section 3 of the PLI Act, hazardous materials companies must purchase one or more insurance policies because they rely on aid waivers<sup>123</sup>. The policy must be updated in a timely manner with the help of the owner, and it must be purchased at a price lower than the percentage of the disposal capital of the hazardous materials industry<sup>124</sup>. The authorities have power to listen to victims' claims for accident claims filed by an accident victim. When an accident is brought to his attention, the collector is to investigate it and determine the cause of exposure<sup>125</sup>. In the event of death as a consequence of an accident, the deceased's legal representative must file an application, which must be supported by all essential documentation<sup>126</sup>.

If sec 6(3) of the act stipulates a five-year limitation period for persons who must file a claim due to an accident, PLIA requires forewarning. The five-year time restriction may render the provision insufficient, given that several indications of various ailments, such as a danger caused by the effects of the hazardous drug, might develop much later. The collector has the ability to conduct an inquiry into the claim once the parties have been given an opportunity to be heard<sup>127</sup>. Further, he has the power to decide the amount of relief to be given which he feels is reasonable, as well as selecting who must get such relief. In order to offer relief to victims, the owner of the business is required to save a particular amount to the insurance, which is then saved into a special fund called the Environmental Assistance Fund, which is then utilised to offer relief to the persons in issue<sup>128</sup>.

Any person who is authorised by the Central Government may demand that any owner to produce general details<sup>129</sup> and has the authority to enter any location, whether a building or a vehicle, where a hazardous material is stored in order to determine if any provision, rule, or course prescribed by the PLI Act is followed accordingly or not<sup>130</sup>. In

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<sup>123</sup> The Public Liability Insurance Act, 1991, Section 4

<sup>124</sup> Ibid

<sup>125</sup> The Public Liability Insurance Act, 1991, Section 5

<sup>126</sup> The Public Liability Insurance Act, 1991, Section 6

<sup>127</sup> The Public Liability Insurance Act, 1991, Section 7(1).

<sup>128</sup> The Public Liability Insurance Act, 1991, section 7-A.

<sup>129</sup> The Public Liability Insurance Act, 1991, Section 9

<sup>130</sup> The Public Liability Insurance Act, 1991, Section 10

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case, it is found that there has been violation of sec 4(1) of the acts, the person whoever is authorized has the power to store those dangerous substance including the important material which is required for the legal procedure under the Act and discard the seized hazardous substance if he believes that it is necessary to stop the accident from occurring<sup>131</sup>.

The power is also vested with the central government to pass orders with concern to the aim of the Act. Further, it can also initiate a proceeding before the court of law with a intent to restrict a person from dealing with hazards materials, and the violation is penalised<sup>132</sup>. If you do not take out insurance policies under section 4 and do not follow the guidelines under section 12, you may face a criminal punishment of up to 6 years in prison and a fine of at least 100,000 rupees. in the event of, repeated or violating the law for the second time, the imprisonment will be up to seven years which will be not be below two years and a fine that must not be less than one lakh rupees<sup>133</sup>.

In the event that an company and whoever was currently in charge of the department, at the time of the crime, will be legally liable and accountable for the mishap which occurs at that time. the corporations will be tired and punished<sup>134</sup>. The court will take cognizance of any infringement under the PLI Act solely on the basis of a complaint submitted by the Central Government or any authority of that Government that has been formally approved for this benefit. The Court may hear a grievance from any person who has withdrawn from the Central Government or the previously specified authority after the alleged offence and of his intention to filing a grievance within 60 days<sup>135</sup>. Subjected to the PLI Act, the Central Government appoints an 'Advisory Committee' to advise on problems relating to insurance policies<sup>136</sup>.

However, there were inadequacies in the act's structure. The reliefs offered under the act's schedules are insufficient; for example, when it comes to injury to the body or permanent disability, the medical expenditures given is only Rs. 12500/-, but in case of fatal accidents, the medical costs given is only Rs. 25000/-. Wage loss owing to disability

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<sup>131</sup> The Public Liability Insurance Act, 1991, section 11

<sup>132</sup> The Public Liability Insurance Act, 1991, section 13.

<sup>133</sup> The Public Liability Insurance Act, 1991, section 14.

<sup>134</sup> Ibid (n) 119.

<sup>135</sup> The Public Liability Insurance Act, 1991, Section 18

<sup>136</sup> The Public Liability Insurance Act, 1991, Section 21



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is calculated at Rs. 1000/- per month for a maximum of three months<sup>137</sup>. These reliefs have not been efficient, and the legislation has discounted the individual's life at an incredibly cheap cost. The statute also neglected to specify a penalty for noncompliance with Section 3's duty to pay immediate relief. This clause preserves the 'no-fault' rule in place." The act only has provisions to provide immediate relief and makes no mention of compensation.

### **3.2.7. THE BIO-LOGICAL DIVERSITY ACT, 2002**

The Bio-Logical Diversity Act of 2002 makes it illegal to obtain any biological resource without the permission of a national biodiversity authority<sup>138</sup>. A body corporate, association, or organisation that is not incorporated or registered in India, or that is established or registered in India, but has equity or management interests outside India, it is considered in this category<sup>139</sup>.

A corporation cannot acquire any biological resource for commercial use, or conduct a bio-survey and bio-utilisation for commercial use, without first informing the State Biodiversity Board<sup>140</sup>. The State Biodiversity Board may, after consulting with the local bodies concerned and conducting such inquiries as it deems necessary, prohibit or restrict any such activity by order if it believes that such activity is detrimental or contradictory to the goals of conservation and sustainable use of biodiversity, or equitable sharing of the benefits arising from such activity. Provided, however, that no such order shall be made without first giving the person affected an opportunity to be heard<sup>141</sup>. Anyone who violates the rules will be punished<sup>142</sup>.

When a company commits an offence or violation under this Act, each individual who had responsibilities and obligations for the management of the corporate at the time of

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<sup>137</sup> The Public Liability Insurance Act, 1991

<https://www.indiacode.nic.in/bitstream/123456789/1960/1/A1991-06.pdf> last visited on June 13th 2021

<sup>138</sup> The Bio-Logical Diversity Act, 2002, Section 3

<sup>139</sup> The Bio-Logical Diversity Act, 2002, Section 3(2)

<sup>140</sup> The Bio-Logical Diversity Act, 2002, Section 7

<sup>141</sup> The Bio-Logical Diversity Act, 2002, section 24(2)

<sup>142</sup> The Bio-Logical Diversity Act, 2002, section 55(2), with imprisonment upto 3 years and fine extending upto 5 lakhs or with both .



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the crime or contravention was committed, and also the company, is considered guilty of the offence or violation and is liable to be prosecuted and punished<sup>143</sup>.

It took nearly a decade after the ratification of the Convention on Biological Diversity for the BD Act, 2002 to be drafted. As a result, it is clear that the provisions were developed after extensive research and consideration by government officials, non-governmental organisations. Subsequently, with the implementation of the Biodiversity Rules under the BD Act in 2004, a Biodiversity Management Committee was established, giving indigenous and local communities the ability to voice their opinions on conservation, use, and equitable sharing.

However, there are still some gaps in the Act. One main drawback is that this act does not give adequate consideration to conservation; instead, it focuses on preventing profit-sharing from commercial use of biological resources. The framework of this act was laid to prevent developed countries from engaging in bio-piracy. However, one must not overlook another major goal of this act, which is to protect biodiversity.

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<sup>143</sup> The Bio-Logical Diversity Act,2002 ,section 57

## Chapter 4

### ROLE OF JUDICIARY IN AWARDING THE COMPENSATION

In the event of an accident by industry, compensation for the affected is a vital issue. Previously, compensation was given by the Supreme Court and the High Court. With the Bhopal disaster, there has been a growing concern about giving proper compensation. Bhopal demonstrated the inefficiency of the legitimate equity framework in providing justice to deceived persons, as well as its incapacity to serve as a barrier in current instances. A large number of individuals were denied payment, while others were given whole ties that would not cover their medicines.

The Parliament established the Office of the Welfare Commissioner, Bhopal Gas Victim, which was to restrict<sup>144</sup>. This main office was established on November 22, 1985, with the goal of resolving claims and distributing compensation to victims of the Bhopal Gas Tragedy. The Appellate Body is an additional assistance officer. In the context of this incident. Any request regarding the amount of compensation or the distribution of funds among different survivors based on the judgment or any other issues related to the review of the case can be appealed to the additional assistance officials, which also selected a topic and a for the reasons stated in the statement, make the right choice.

In this case, if it proves that the applicant has paid at least 25,000 rupees/and the amount has increased to the applicant in the residence/nearby area affected by natural gas on the critical night, compensation can be obtained. The court referred to Rajiv Gandhi's legal reimbursement system, which was approved by the Bhopal Gas Leakage (Claim Processing) Act of 1985, which stipulates that there are between 1,00,000 and 300,000 per dead person and a permanent disability of 50,000 To 200,000. Severe injuries are 400,000 rupees, minor injuries are up to 20,000 rupees, property damages are up to 15,000 rupees, and domestic animal life losses are up to 10,000 rupees<sup>145</sup>.

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<sup>144</sup> The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, section 6.

<sup>145</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/upa-i-opposed-increase-in-bhopal-payout/articleshow/6056937.cms?from=mdjr>. last visited on June 23rd 2021

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Following, the Bhopal gas leak, the 2008 Environmental Relief Fund (ERF) was established under the Public Liability Act (PLIA) of 1991 to provide immediate compensation to patients exposed to hazardous chemicals. In the MC Mehta v. Union of India case in 1987, PLIA promised not to defend and took into account the absolute liability claims of the best courts in India, requiring groups engaged in hazardous chemical transactions to purchase national risk insurance. In addition to the responsibilities of venture capital companies that choose PLIA to protect, ERF also includes compensation for actions taken by the National Green Court (NGT) for environmental damage<sup>146</sup>.

According to the 1991, PLI guidelines, the maximum payback sum of money for the coverage of PLIA is 5 crore rupees per accident and 15 million rupees per year, which remains unchanged at present. Under one of the applications examined, a singular policy with an indemnity of maximum of Rs 15 crore was issued to a single business with several divisions in various locations. In another example, a single protection strategy, again with an insurance of up to Rs 15 crore, was granted to a company that operates a variety of activities<sup>147</sup>.

Thereby, based on the two massive accidents which is the Bhopal gas leak and the Oleum gas leak tragedy, the law recognised three methods for minimising the risk and improving safety, which are delaying hazard recognition and allowing workers to notify the auditor and the administration of any breaches of safety. Monitoring safety precautions is part of the manufacturing plant management. Second, there is the risk of criminal prosecutions. under the Indian Penal Code 1860, which treats breaches as a 'absolute crime,' where a breach of a legal provision becomes liable even if no intent to commit an offence is evidenced either by carelessness or conduct<sup>148</sup>. The third method is deterrent via a deep pocket manner of dealing with pay. In the end, the court also recommended the concepts of "absolute responsibility" and "corporate responsibility", which will improve the company by ensuring well-being. As a result of the Bhopal

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<sup>146</sup> The National Green Tribunal Act, 2010, Section 24

<sup>147</sup> Report on the Management of the Environment Relief Fund"

[https://vidhilegalpolicy.in/wpcontent/uploads/2020/06/Management\\_of\\_ERF\\_Debadityo\\_Sinha\\_VCLP\\_2020.pdf](https://vidhilegalpolicy.in/wpcontent/uploads/2020/06/Management_of_ERF_Debadityo_Sinha_VCLP_2020.pdf) last visited on June 23rd 2021

<sup>148</sup> The Indian Penal Code 1860, Section 336

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disaster, the government recognised the importance of creating tribunals and giving equitable compensation and relief.

Before the establishment of Environmental Courts, Environmental issues have been resolved through the excessive jurisdiction of the national courts and judicial procedures. The higher courts and courts have made rulings on sustainable development standards, including the "non-payment of polluters" and the "precautionary principle." Finally, the surrounding courts of all states are covered. Parliament is said to have special powers to circumvent the rules. The ultimate goal is to adopt the decisions of the 1972 Stockholm Convention and the 1992 Rio Conference<sup>149</sup>. According to the various Environmental related acts, the court ordered an appeal order with the help of interested experts, which included allowing governments to recommend the court as the court of appeal is subject to other pending environmental laws.

Following the Bhopal disaster, some rules were added to provide compensation and assistance to victims of industrial hazards, and to promote the environment. Environmental impact is a continuous system. It is difficult to choose a time frame for measuring or understanding environmental impact. The environment is considered a feature of Article 21 of the Indian Constitution, concerns relating to the environment fall in public space, and every citizen has a duty to protect the environment. When the complexity of cutting-edge environmental rules is compared with the goals of environmental protection. compelled a number of nations to establish some type of environmental court or tribunal. Parliament passed the 1995 National Environmental Court Act to solve environmental problems. and to remove instances arising from mishaps when handling dangerous chemicals. This tribunal was formed to compensate victims on the basis of 'No Fault' responsibility<sup>150</sup>. However, because its members knew nothing about environmental issues and had no power to deal with or direct, the court became ineffective.

After that, the 1997, National Appellate Authority Act was enacted to hear environmental clearance challenges. This act was quite limited in scope. Both statutes failed to provide effective judgments, and there was an urgent need to resolve this issue. The Law Commission, in the 186th Report, recognised the inadequacy of the present

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<sup>149</sup> Article 253 read with Entry 13 list I of VII

<sup>150</sup> The National Environmental Tribunal Act, 1995, Section 3

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appellate authority established under several natural laws and reviewed their condition in order to achieve coherence in their structure and the extent of their jurisdiction<sup>151</sup>.

The Law Commission of India in the report of 186th approved the Environmental (Green) Court, intending to rely mainly on similar courts in Australia and New Zealand. It was decided that judges with experience and understanding in science, technology, and the environment should be selected. The report focused on environmental jurisprudence before the formation of courts and examined previous rulings. *M.C. Mehta. v. Association of India*<sup>152</sup>, *A.P. Contamination Control Board vs Nayudu*,<sup>153</sup> It was determined that because environmental matters frequently include the evaluation of logical information establishing environmental courts on a jurisdictional basis with an authorised professional elected official and two professionals would aid in the quick legal procedure<sup>154</sup>. Hence, the resulting establishment of green courts, particularly the National Green Tribunal, may be appropriately ascribed to the Supreme Court of India's active stance and positive hostility.

#### **4.1.THE NATIONAL TRIBUNAL ACT ,1995**

The rise in industrial accidents necessitated the establishment of environmental courts to provide redress to those harmed. After the Bhopal disaster, many environmental courts were established. The National Environmental Tribunal was established to hear cases involving environmental problems. India joined the United Nations Convention on Environment and Improvement in Rio de Janeiro in June 1992, calling on states to expand national regulations on the liability and compensation of people affected by pollutants and other natural disasters<sup>155</sup>.

The National Environmental Court Act was passed, which provides strict liability for damage caused by accidents involving the handling of hazardous substances, as well as to establish a National Environment Tribunal to compel the prompt resolution of cases

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<sup>151</sup> The National Green Tribunal (NGT): An Introduction, 18 August 2011

<https://indiacr.in/the-national-green-tribunal-ngt-an-introduction/> last visited on June 23rd 2021

<sup>152</sup> (1986) 2 S.C.C. 176.

<sup>153</sup> (2001) 2 S.C.C. 62

<sup>154</sup> Rengarajan, S, Palaniyappan, D., Ramachandran, P, "National Green Tribunal of India – an observation from Environmental Judgements",

<sup>155</sup> National Environment Tribunal Act, 1995

<https://lawsisto.com/Read-Central-Act/1474/NATIONAL-ENVIRONMENT-TRIBUNAL-ACT-1995> last visited on June 17, 2021

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arising from such accidents, with the ultimate goal of compensating individuals, land, and the environment<sup>156</sup>. The NETA was established because of the apex Court while making the decision in *MC Mehta vs Union of India*<sup>157</sup>. The Supreme Court established Environmental Courts to deal with cases of natural pollution, environmental devastation, and conflict over natural resources. The tribunal's principal goal is to force and expedite the resolution of disputes involving ecological security and the conservation of forests and other natural resources.

The Tribunal will also hear all previous outstanding cases. It aims to execute all lawful rights relating to the environment and also includes compensation and paying affected persons for property damage. If death or personal injury is caused by an accident caused by hazardous chemicals, business owners are obliged to make compensation regardless of whether the report is improper, negligent or negligent. Five years of competition, otherwise it is very likely to win<sup>158</sup>. The law excludes workers from its scope. However, the law has not yet entered into force.

In addition, it is possible to discuss merging these courts with the Environmental Appeals Authority (EAA) established by the Act of 1997, requests to prohibit industry activities or areas where practice is not allowed will be terminated.

The courts now have the power to order compensation for personal injury or death, as well as property and environmental damage<sup>159</sup>. The victim is not necessary to argue or show that the death, damage, or harm was caused by an illicit act or default of any individual in order to get such compensation<sup>160</sup>. The duty to pay compensation in certain situations is based on no-fault liability rules. Two forms of proof are necessary for the provisions of pay for death and injury to a human, as well as damage to property and the environment. First, there is the death, injury, and harm caused by an accident when using dangerous chemicals. In addition, such death, injury or damage must be under the jurisdiction of any or one of the governments listed in the table<sup>161</sup>. When the

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<sup>156</sup> The National Environmental Tribunal Act- Ministry of Affairs.

<https://www.indiawaterportal.org/articles/national-environment-tribunal-act-ministry-environment-and-forests-1995> last visited on June 17th, 2021

<sup>157</sup> AIR 198 SC 965

<sup>158</sup> The National Environment Tribunal Act, 1995, 4(6)

<sup>159</sup> The National Environment Tribunal Act, 1995, (n) 40.

<sup>160</sup> *Ibid*

<sup>161</sup> *Ibid*

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injured party, the owner of the damaged property, the legal representative of the deceased, any expert, framework or representative body approved by the above-mentioned person, Central Government or a Statue<sup>162</sup>. The court is not obliged to use the methods described in the civil procedure law. It is mainly based on the standards of natural justice. And can choose to place an intermediate order<sup>163</sup>.

If the owner is obligated to pay under NETA and also need to pay the compensation amount stipulated in the PLI Act or other compensation stipulated by other regulations. The compensation amount owed by NETA will be reduced by the compensation and other compensation amounts paid by other regulations<sup>164</sup>. Inability to comply with the court's instructions carries a three-year jail sentence and a ten-lakh-rupee fine<sup>165</sup>. In the case of a crime with the assistance of an organization, anyone who was responsible for the organization during the crime, such as a commercial company, may be found guilty of a criminal act. Be punished for crimes<sup>166</sup>. If anyone can prove that the act was carried out without their knowledge, or if they took reasonable precautions to prevent the occurrence of this crime, no one shall be responsible for the sanctions imposed under this law.

This statute is ambiguous and merely provides for reasonable recompense. It also levied excessive costs for filling out an application, which were not entirely justified for persons from low-income categories. This was, however, superseded by the National Green Tribunal Act of 2010.

#### **4.2. THE NATIONAL APPELLATE AUTHORITY ACT, 1997.**

The NEAA stipulates the established procedures of the National Environmental appellate authority for receiving complaints related to companies, activities or forms or industry scales, obligations or procedures that do not comply with restrictions in certain areas of protection according to the Environmental Act of 1986<sup>167</sup>. The Authority's administrative centre is located in Delhi. The NEA Authority has been mandated to

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<sup>162</sup> The National Environment Tribunal Act, 1995, (n) 248

<sup>163</sup> The National Environment Tribunal Act, 1995, Section 6

<sup>164</sup> The National Environment Tribunal Act, 1995, section 7

<sup>165</sup> The National Environment Tribunal Act, 1995, Section 9(3) c and Section 9(4)

<sup>166</sup> The National Environment Tribunal Act, 1995, Section 26(1)

<sup>167</sup> <https://economictimes.indiatimes.com/industry/energy/oil-gas/gas-leak-raises-questions-about-legal-safeguards/the-national-environment-appellate-authority-act-1997/slideshow/75622998.cms> last visited on June 19th 2021

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exercise the powers assigned to it and to carry out the functions assigned to it by the NEAA Act.

Anyone who is offended by orders to authorize environmental clearance in areas where business, activities, or processes cannot be completed or can be better carried out through unique protection measures, can also place an order within 30 days from the date of appeal to the office. However, if the authorities find that the plaintiff has been prevented from filing an appeal in time, the period can be extended to ninety days<sup>168</sup>. The civil court or other authority cannot be used in any appeal concerning any matter with which the NEA Authority is empowered to deal under the NEAA Act<sup>169</sup>. According to provisions sec 193, 219 and 228 of the Indian Penal Code, all cases submitted to the authorities will be considered legal strategies<sup>170</sup>. Those who do not follow the path of authority will be punished<sup>171</sup>. The agency must comply with general fairness standards and act on its own, including determining the time and scope of the investigation, and deciding whether to take a public seat or a private seat<sup>172</sup>. The responsibilities of the employer are related to those who are above things and responsible for the organization. Lack of awareness and due diligence seems to be a reasonable restriction on entrepreneurial business opportunities.

However, the act's reach is severely limited in the appeals. Bhopal's heinousness remains a warning flag. The 1984, gas leak case and its consequences are a warning that the two industrializations in these evolving countries, especially the chemical industries, is fraught with dangers to humans, the environment, and the currency cycle. Several initiatives involving the Indian authorities, including the establishment of a Ministry of Finance, help protect the well-being of the people from dangerous activities.

The study of provisions under multiple different Environmental Acts aids in comprehending the existing scenario of legislations relating with the discharge of hazardous chemicals from industries, the measures implemented by executives to

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<sup>168</sup> The National Appellate Authority Act, 1997, Section 11(1)

<sup>169</sup> The National Appellate Authority Act, 1997, Section 15

<sup>170</sup> The National Appellate Authority Act, 1997, Section 16

<sup>171</sup> The National Appellate Authority Act, 1997, Section 19: imprisonment for a term which may extend to seven years or with fine which may extend to one lakh rupees, or with both.

<sup>172</sup> The National Appellate Authority Act, 1997, Section 20.



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supervise and put a stop to the polluters, and the role played by the judiciary in arriving at the ends of justice by implementing provisions in the right situation.

### **4.3. THE NATIONAL GREEN TRIBUNAL ACT, 2010.**

After the 1995 National Court Law and the 1997 National Appellate Body Law were repealed, the National Green Court was established. On October 18, 2010, the National Green Court was established in accordance with the 2010 National Green Court Law to help resolve related cases faster. Protect the environment and protect forest areas and other natural resources, such as confirming legal claims related to the environment and providing repairs and damages to people and property, and for issues relating to the environment<sup>173</sup>. The Act was passed by the Indian Parliament in accordance with Art. 21 of the Indian Constitution, which emphasises the right to live in India<sup>174</sup>.

The NGT is a 'semi-legal body'<sup>175</sup> with limited authority. It has the same authority as law enforcement organisations but it is not the same as a regular court. In India, Justice P.N. Bhagwati first mentioned the need for an environmental court in the Oleum Gas Leak Case<sup>176</sup>. The Supreme Court of India drew attention to cases involving environmental contamination, environmental pulverisation, and its conflict over environmental assets, which included assessment and improvement of systems administration, and thus, as stated by the court, there was an urgent necessity for the integration of experts in the organisation of justice.

The tribunal's membership is as follows:

The Green Tribunal's members will have chairman, full-time judicial personnel, ten to twenty members only and full-time experts, ten - twenty member only. The administrative department has the opportunity to invite external experts to assist the arbitration tribunal in handling selected cases. The competent authority consults with the Chief Justice of India to appoint the director. The election committee appoints legal

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<sup>173</sup> National Green Tribunal (NGT)

<https://greentribunal.gov.in/about-us> last visited on June 24, 2021

<sup>174</sup> Ibid (n) 279

<sup>175</sup> Sridhar Rengarajan, "National Green Tribunal of India-an observation from environmental judgements",

<https://link.springer.com/content/pdf/10.1007%2Fs11356%20-018-1763-2.pdf>. last visited on June 24th 2021

<sup>176</sup> AIR 1987 SC 965.

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persons and experts to review proposals<sup>177</sup>. The Tribunal has jurisdiction over any civil case in which a substantial inquiry relating to the environment is included and this survey is based on the use of the institutions listed in Table I. Follow-up actions are listed in Table 1:

- Air (Pollutant Prevention and Control) Act 1981
- Environment Act, 1986.
- Biodiversity Act, 2002
- Water Act (Prevention and Management of Environmental Pollution), 1974
- Liability Insurance Act, 1991

The tribunal is related to the jurisdiction, powers and methods of the arbitration tribunal<sup>178</sup>. There are also time limits for court debates. If a motion to resolve the dispute is not filed within six months from the date of the first filing of the basis of the claim, the court will ignore the motion at this stage. However, if the court is convinced that the applicant cannot register the device at an accurate point in time, it can approve the registration within a period of no more than 60 days<sup>179</sup>. The Tribunal will consider applications for compensation of any relief or restitution, or compensation of property or condition, unless they are made within five years Calculated from the point of time when the compensation basis or compensation first appeared<sup>180</sup>. The court can also provide through its order: remedy and compensation for victims of pollution and various natural damages obtained under the licenses listed in Annex I, including accidents that also occur when handling hazardous materials; Damage to property Compensation; Environmental compensation in a specific area or jurisdiction. As a result of the revision of the PLI Act in 1992, the Environmental Assistance Fund was established<sup>181</sup>. Regardless of how the foundation and related regulations are notified, the victim can also file a claim for damages with the NGT, which can award damages regardless of the PLI law.

Any victim can appeal the court records of an order, decision, or conclusion made in a workplace that controls 10 different laws or proposals within 30 days from the date of

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<sup>177</sup> The National Green Tribunal Act, 2010, section 10A.

<sup>178</sup> Ibid

<sup>179</sup> The National Green Tribunal Act, 2010, Section 4.

<sup>180</sup> The National Green Tribunal Act, 2010, Part III, Section 15(1).

<sup>181</sup> Ibid.

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receipt of the order, choice, or notice of the order. or guarantee<sup>182</sup>. The validity period can be extended to 60 days. In addition, the extension period for appeals to the competent court of decisions, elections or orders of the council is ninety days<sup>183</sup>. There may be an exception clause stating that if it can be proved that the plaintiff cannot appeal for good reason<sup>184</sup>, the main court can rule on any appeal after 90 days. The court may conduct a review based on its choice<sup>185</sup>. Investigation requests are limited and cannot be regarded as objections. If there are obvious mistakes or errors, or if some new substantive issues need to be brought to the attention of the court, you can consider requesting for review.

Therefore, one of the basic elements of the 2010, National Green Court Law is that tends to require the council to apply the significant standards of sustainable development, Polluter Pay Principle, and Precautionary Standard when taking any decision, order, or grant<sup>186</sup>. The Tribunal recognised the public trust doctrine, which requires specialists to keep up with and maintain environmental balance. It was also perceived that the state is the trustee of all natural resources that are essentially implied for public use and enjoyment. People everywhere are beneficiaries of the coastline, air, timberlands, and environmentally sensitive lands. The government has a legal responsibility to safeguard land and resources in a sensible manner.

When passing judgement, the court is based on the principles of natural justice and is not subject to the procedures of the Civil Procedure Act of 1908 or the concept of evidence contained in the Indian Evidence Law of 1872<sup>187</sup>. In the case of environmental issues, the tribunal incorporates these internationally accepted principles in order to provide equal justice to everybody. The confrontation between Hindustan Coca-Cola Beverages and the West Bengal Pollution Control Commission<sup>188</sup> involved water pollution in one of the country's largest bottle and beverage organizations. It also mentioned that "polluting enterprises" should bear the tariffs and "full compensation" of pollutants, as well as the responsibility of environmental clean-up. In addition, the

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<sup>182</sup> The National Green Tribunal Act, 2010, Section 16

<sup>183</sup> Civil Procedure Code, 1908, section 100

<sup>184</sup> The National Green Tribunal Act, 2010, section 22

<sup>185</sup> The National Green Tribunal Act, 2010, (n) 96

<sup>186</sup> Ibid (n) 82.

<sup>187</sup> The National Green Tribunal Act, 2010, (n) 96

<sup>188</sup> Principal Bench, Appeal No. 10 of 2011.

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court hired the West Bengal State Pollution Control Board (WBPCB) to analyse the cost of repair and environmental damage, and ordered that fund be deposited in WBPCB at the same time as the atmospheric repair. Compliance with court orders will result in sanctions<sup>189</sup>. The NGT Act contains "vicarious liability " for supervisors, senior managers, administrators, secretaries, department heads or other officials for criminal offences stipulated by law<sup>190</sup>. In real or imminent dangers, the lack of complete logical truth cannot be used as a reason to delay effective actions to prevent environmental degradation.<sup>191</sup> "

The main purpose of the court is to provide assistance and compensation to victims of pollution and other environmental damage caused by the companies listed in Appendix II. If the death or injury of any person (except employees) or the damage of assets or scenes due to accidents or adverse effects of methods, hobbies or processes, the person in charge may be required to pay such compensation or be related to any or all of the titles listed in Schedule I Compensation for such death, damage or injury. The responsible man or woman may be required to provide such compensation, or compensation for loss of life, injury or loss, and all or any of the titles listed in Appendix II, and the court may also order<sup>192</sup> "The act's second schedule provides the following head:

- Death,
- Permanent, temporary, cumulative or partial disability or other injury or infection,
- Loss of wages due to total or partial incapacity, permanent or temporary incapacity,
- Medical expenses due to healing injuries or infections,
- Property loss Expenses incurred by the government or related professionals for providing help, support and rehabilitation to the affected people.

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<sup>189</sup> The National Green Tribunal Act, 2010, section 26: impose punishment for the term which may extend to three years or with the fine which may extend to 10crores or with both. In case of a continuing offense, an extra fine will be forced which may extend up to rupees twenty-five thousand consistently. whereas in case of an organization the fine may extend up to 25 crores and an extra fine may extend to one lakh on such continuing offense.

<sup>190</sup> The National Green Tribunal Act, 2010, Section 27 & Section 28.

<sup>191</sup> Principle 15 of the Rio Declaration on Environment and Development (1992).

<sup>192</sup> The National Green Tribunal Act, 2010, Section 17(1).

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- Government expenditure on administrative or legal hobbies, or expenditure on developmental injuries or injuries, including incentives for environmental corruption and clean-up,
- Harmful acts,
- Claims for damage, damage or destruction of animals, including dairy cows and draught animals other than marine animals,
- Claims for damage, damage or spraying of green plants, including marine green plants, vegetation, vegetables, timber and plantations.
- thousand. Cases related to environmental damage or compensation for damages, including pollution of soil, air, water, land and the environment,
- The misfortune and destruction of other property except personal belongings, square meters.
- The company either loses its operations or loses all
- Any other incidents caused by or related to the transportation of dangerous substances<sup>193</sup>

In contrast to the NEAA, the NGT was given extensive powers that allow it to adjudicate cases involving the protection of the environment, natural resources, and the legal rights of individuals who are affected by various existing laws. While exercising its authority, the NGT issued a wide range of decisions concerning environmental protection and compensation for industrial homicides. The issue before the NGT. In the Kalpavalli Tree Growers Collective Cooperative Society Ltd v Union of India case<sup>194</sup>, the issue before NGT relates to the decision of section 15 of the NGT Act regarding the windmill manufactured by the defendant Enercon India Ltd. Was sent to a wooded area. The plaintiffs are a group of influential growers and arborists who argued that the company started to operate in the biodiversity heritage site. Public areas and power lines are built on the mountain, and 55 windmills can be improved and built. To build the windmill, more than 30,000 mature shrubs were cut down and many smaller trees and shrubs were destroyed. Steel scrap is also scattered throughout the region. The improvement work resulted in a large number of particles appearing in the surrounding fields, reservoirs and reservoirs, completely destroying the water in our bodies. The environment has

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<sup>193</sup> "The National Green Tribunal Act, 2010 No. 19 of 2010

<https://www.advocatekhaj.com/library/bareacts/nationalgreen/index.php?Title=The%20National%20Green%20Tribunal%20Act> last visited on June 24th 2021

<sup>194</sup> Order 10 July 2013.

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suffered irreversible long-term environmental damage. According to the income statement, the defendant cancelled the price on the grounds that the company was not in a forest area, but in a neutral area. Interviewees continued to emphasize the importance of wind as a powerful and problem-free energy source. NGT has determined that the development project is located in a forest area, which is an environmental hazard based solely on evidence. Therefore, he decided to make the company open to payers 5 million as compensation for damage to nature and the environment.

The Gujarat Pollutant Management Committee and Ambuja Cement Co., Ltd<sup>195</sup> were fined by using NGT in a specific case involving toxic gas leakage that had an impact rural field. When the Gujarat Pollution Control Commission was imposed with a fine of one lakh rupees, the organisation was fined five lakh rupees based on the compensation agreed upon between the farmers and the organisation. The amount was not decided by the NGT.

The NGT, on the other hand, failed to provide a proper mechanism for determining compensation. In 2016, the Central Pollution Control Board issued a set of guidelines for implementing liabilities for hazardous waste disposal, stating that: "In cases where the care or disposal of hazardous waste causes pollution that affects livelihoods, well-being, and outsiders, etc." The relevant party must make up for this compensation by paying a fee determined by the district judge or relevant government agency. If property loss, crop loss, yield loss, death toll, hospitalization expenses, lack of vegetation, etc. are caused by hazardous waste treatment or disposal, the compensation may be huge<sup>196</sup>.

However, they interfered with the work of the courts that exercise judicial supervision, which is not provided for in this law. The law allows courts to review the consistency of orders issued by State authorities in accordance with environmental principles; however, this does not appear to include the ability to review rules and guidelines and determine their legitimacy<sup>197</sup>. In many cases, the tribunal overstepped its authority.

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<sup>195</sup> 2013.

<sup>196</sup> P Bhawan, "Guidelines on Central Pollution Control Board- India", 2015

<sup>197</sup> The National Green Tribunal Act, (n) 82.

## **4.4. LANDMARK CASES DEALING WITH CRIMINAL LIABILITY**

### **4.4.1. THE BHOPAL GAS LEAK CASE, 1984**

The Union Carbide India Limited is a foreign industry subsidiary unit of Union Carbide Corporate. The subsidiary factory was located in Bhopal, Madhya Pradesh's capital city. This facility was placed within 2 kilometres of a railway station, for which the Zonal authorities refused the clearance; nonetheless, the company was successful in securing the permission and began operations. Later, a deadly material known as MIC leaked from a storage tank, causing 42 tonnes of the material to be discharged into the atmosphere at a broad range, resulting in several fatalities and illnesses. The disaster occurred because to the reversal of water into a MIC tank as a result of regular pipe repairs. This event was recognized as the Bhopal Gas Leak Tragedy, and it occurred on the 2nd and 3rd of December, 1984, at midnight.

The severity of the tragedy was such that it wiped out humanity, cattle, and caused irreversible harm to the ecosystem. There is still no precise figure for how many individuals died or were injured. This calamity is etched in Indian history because it shocked the whole country and opened the way for other enactments. It instilled dread in the public, the government, the industry's higher authorities, and other state officials. From that moment on, the victims' tragedies have haunted their lives. Only 20% of the total number of victims have received compensation, and a significant percentage of them have not received the full amount recommended. Despite the fact that the money granted was insufficient to cover their medical demands. This tragedy tends to result in ongoing offence. In this case, children who are born even after the tragedy has been 37 years are still disabled due to genetic problems. The centre requires Union Carbide and various agencies to provide additional fund of Rs 7,844 cr significantly in excess of the existing settlement amount of 715 crore for civil and criminal liability<sup>198</sup> in 1989 for paying compensation to gas disaster victims<sup>199</sup>.

On May 4, 1989, the court issued a thorough ruling clarifying to provide a basis of Rs 715 crore to resolve all civil, criminal and special liabilities of UCC and UCIL. Allegedly,

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<sup>198</sup> Union Carbide corporation v Union of India (1989) 1 SCC 674

<sup>199</sup> Bhopal Gas Tragedy: SC to Hear Centre's Plea for Additional Rs 7,844 Cr Fund to Compensate Victims" (India Today January 27, 2020)

<https://www.indiatoday.in/index/story/bopal-gas-tragedy-union-carbide-dow-chemicals-compensation-1640690-2020-01-27> last visited on June 14th ,2021

a large number of the dead were transferred to the planned maximum of 3,000 and between 100,000 and 300,000 rupees. There were about 30,000 instances of everlasting aggregate or partial incapacity compensation ranging from fifty thousand to two lakhs per individual. Another 20,000 cases of short aggregate or fractional handicap pay in the range of twenty-five thousand to one lakh were planned. In extremely severe cases (estimated at 2,000), consider reimbursing 4,00,000 rupees for each victim. In total, 500 cr rupees were paid for loss of life and 42,000 actual personal injury cases<sup>200</sup>. Not enough survivors receive short-term relief immediately after the disaster and those who received, it was insufficient for them, with the majority of them receiving no relief. The Welfare Commissioner was established to investigate issues such as the supply of medication and treatments. This welfare commission was established to report on compensation and how it was used.

The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was passed to ensure a fast trial to the Bhopal victims. This statute empowers the Central Government to be the representative of the victims of the accident. This measure, however, was not successful because sections 3, 4, and 11 violate the basic rights protected by articles 14, 19(1)(g), and 21 of the constitution. The right to represent their own case has been denied to the Victims. The entire law empowers central authorities, and the central government of Madhya Pradesh has the ability to file, record, and decide complaints, but there is no risk of victims being heard. This is contrary to the concept of natural justice. Furthermore, this legislation was designed to offer relief solely to the victims of the Bhopal Tragedy, not to victims of any other incidents which are related.

In order to receive compensation, victims had to make an application and go through a lengthy procedure that delayed them justice. Many petitions were submitted before the Supreme Court by victims for a variety of reasons, including pharmaceutical availability, compensation balance, etc. The victims of Bhopal were denied justice. The government, the judiciary, and the legislature failed to express condolences to the victims because there were no adequate legal provisions for such industrial movements. The government tried to force UCC to pay higher compensation., But failed, and the judiciary also failed to protect these citizens' fundamental rights, which included the right to life and personal liberty.

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<sup>200</sup> Ibid (n)149 [1]



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The companies were made liable under the civil procedure code but not under criminal procedure code, which becomes a problem. Later, after long delay the Bhopal court sentenced seven UCIL officials to two years in jail in 2010 for the catastrophe, which occurred. Warren Anderson, the then-executive of UCIL's parent company Union Carbide Company, was sentenced to two years in jail for the tragedy. But unfortunately, the main accuse did not appear and had absconded without appearing in front of the court in Bhopal<sup>201</sup> .

They were initially charged with a crime of manslaughter equivalent to murder,<sup>202</sup> . and the Supreme Court later reversed the sentence, accusing them of being irresponsible and reckless.<sup>203</sup> because no employees or officials knew about it. Regarding the hazards that may occur before the start of production. Another major disadvantage in this case is that the records will not be passed on to residents, surrounding hospitals, construction site personnel, etc. The officers were familiar with the dangers of dangerous gases and had to inform them, but they failed to do so. As a result, if the corporation had taken necessary caution, the event would not have happened, creating a threat to the environment and living beings. Even after 30 years, the enactments passed in the aftermath of the catastrophe have not been able to fix this situation, and the victims are still waiting for justice. This is due to the fact that laws are not adequately constructed, and loopholes continue to exist.

#### **4.4.2. M C MEHTA VS. UNION OF INDIA (OLEUM GAS LEAK CASE) 1987**

Delhi Cloth Mills Ltd. is a public limited company which is located in Delhi. It runs a venture known as Shriram Foods and Fertilizer Industries, which has a few units taken up manufacturing of so many products which has chemical content and involves dangerous substance. Manmohan Singh Committee<sup>204</sup> and the Nilay Choudhary Committee<sup>205</sup> was appointed by the apex court to look into the matter. These committees

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<sup>201</sup> Aryan A, "SC Agrees to Hear Plea Seeking More Compensation for Bhopal Gas Victims" (Business Standard January 28, 2019)

[https://www.business-standard.com/article/current-affairs/sc-agrees-to-hear-plea-seeking-more-compensation-for-bhopal-gas-victims-119012800746\\_1.html](https://www.business-standard.com/article/current-affairs/sc-agrees-to-hear-plea-seeking-more-compensation-for-bhopal-gas-victims-119012800746_1.html) last visited on June 14th 2021

<sup>202</sup> The Indian Penal Code, 1860, Section 304 Part II

<sup>203</sup> The Indian Penal Code, 1860, (n) 138

<sup>204</sup> Technica' a firm of consultants, scientists, and engineers of U.K. Dr. Slater the chairman of the committee visited the plant on June - July 1985.

<sup>205</sup> Manmohan Singh committee consisting Manmohan Singh, manager of IPC1L, Baroda and other three members visited the plant.

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are set up by the courts for the purpose of making a reasonable and fair evaluation of statistical data. The court established six committees to ensure environmental safety and good industry performance.

Soon, on December 4, 1986, an oleum gas release erupted from one of Shriram's units, affecting countless individuals, both workers and the general public. The leakage occurred as a result of an explosion caused by the destruction of the structure where the oleum tank is stored, which worries most urban residents. Just two days that after people had recovered from their trauma, another leakage occurred due to the escape when people recovered from their injuries, all other leaks were caused by fuel leaks at the funnel junction. The immediate response of the Delhi government to the two oil spills was a manifestation of the court order on 6th of dec 1985. from Delhi Magistrate,<sup>206</sup> co - ordinating and mandating Shriram fertilisers to halt compiling and managing hazardous and dangerous chemical concoctions and gases such as chlorine, oleum, super-chlorine, phosphate, anthraquinone, and anthraquinone within 2 days of after giving the order to stop gathering and handling perilous and deadly synthetic. and within seven days to remove such chemical compounds and gases from the stated location and not to retain or store them in a corresponding location again.

This lawsuit was brought up in order to make a written request in the latest court records to provide compensation to the victim under Article 32 of the constitution of India. The main purpose of this lawsuit is to hold the organization accountable to the victims. Ruilan v. Fletcher's established "strict obligation" approach is no longer the correct way for punishing business owners who engage in risky operations. These businesses must be held completely accountable since they endanger people's lives, infringing on the basic right granted by Article 21 of the Constitution. This article's scope is broad enough, as it encompasses the right to a free and secure environment. To protect the individual and provide equal and fair justice, The Supreme Court put forward the concept of absolute responsibility, according to which the organization can be exempted from the obligation of due diligence. Also be careful when handling this substance. And the accident was caused by his negligence. This is the main case that gave rise to this idea. In the compensation example, the court concluded that compensation should be proportional to amount and type. Entrepreneur's activity. Since it is not always feasible

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<sup>206</sup> The Code of Criminal Procedure, 1973, section 13 subsection (1).

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and permanent to close industries that provide goods and services for the development of the country, it is ordered that enterprises should be relocated outside residential areas for relocation as shutdown would lead to 4,000 unemployed workers, which further led to poverty<sup>207</sup>.

The main difficulty in this situation is the common interest, namely the safety and protection of men or women. In response, the Supreme Court stated that Sri Rama's composition in this case was Rs 2 million in the lawsuit, as a guarantee of the price of compensation for people in difficult circumstances. In addition, the government was forced to set up a financial institution to ensure that in the event of fuel theft (if any), Rs 15,000 must be paid in full or in part by the Registrar of preferred litigations within the 3 years. The board of directors should follow the recommendations of the technical committee. The number of rupees. 30,000 / Must be kept in court to cover travel expenses for professional organizations. A green belt with a width of 1 to 5 kilometres should be set around such clusters. Court records ordered Sri Rama's food to be paid in rupees. The price of 10,000. The court requires major governments to open environmental disputes with judges and experts (environmental science experts) to assist judges in solving environmental problems. In response to this concept, the Indian government passed the National Environmental Court Act in 1995. This lawsuit was a follow-up to the Bhopal disaster, in which many people died and had health problems as a result of the release of dangerous chemicals. This case was designated as a landmark judgement because the court used a novel approach to treating issues in this case, holding the businesses responsible under the concept of polluters, in which polluters must pay. This is one of the principles of long-term growth. According to me, this idea should include these ideas as mandatory requirements in the rules. So far, in India, these ideas have been easier to express through precedent and applied through agreements submitted to the Supreme Court and the High Court in accordance with Article 32 and Article 226 of the Indian Constitution. Following this decision, courts began to consider the concepts of sustainable development when dealing with similar instances.

As a result, the court issued a major decision and ordered all other industries that handle dangerous substances to take the highest to ensure the safety and protection of people

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<sup>207</sup> Case Analysis: M C Mehta V Union of India (Shriram Industries Case): Roopali Lamba, 26 May 2018 <https://www.latestlaws.com/articles/case-analysis-m-c-mehta-v-union-of-india-shriram-industries-case-by-roopali-lamba/> last visited on June 19th 2021

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and other life forms. After the Bhopal gas disaster, the authorities tried to enact strict regulations to protect the environment and personnel from company hazards. Nevertheless, following the catastrophe, the necessity for legislation became vital, and the Environmental Protection Act of 1986 was adopted, which is the primary Act dealing with paying compensation and rehabilitating the affected environment.

#### **4.4.3. LG POLYMER GAS LEAK CASE ,2020**

LG Polymers India Private Limited Vs Andhra Pradesh Pollution Control Board & Others<sup>208</sup>. The company was established in Visakhapatnam, India in 1961. Its predecessor was Hindustan Polymers, used to produce styrene monomer, polystyrene and their copolymers, and then cooperated with Mc Dowell and Company limited of UB was organized in 1978. This company was taken over by LG Chemical Substances, a Korean corporation, which acquired 100 percent of the company's shares. The entity was later called LG Polymers. Plastics and plastic mixes like as polystyrene, expanded polystyrene, and improved plastic mixes are manufactured at the company's Vizag unit. On May 7th 2020, there had been a chemical leak from the industry, and a deadly material called Styrene gas was released into the atmosphere as a result of the company's lack of preventative care in keeping the tanks that held reserves of these chemicals. Because styrene is an ignitable gas, it impacted all of the communities developed near the plant. Following the Bhopal Gas catastrophe, all chemical industry are governed by different acts and laws passed by legislatures. Styrene is classified as a dangerous and toxic chemical under the Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989<sup>209</sup>. This falls under the 'A classification.' The assembly facility used styrene monomer to produce stretchable polymers. The styrene monomer stockpile requirement specifies that it must be kept at temperatures below 17 degrees Celsius. The leak was caused by a failure to keep it at the appropriate temperature<sup>210</sup>.

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<sup>208</sup> "India Environment Portal: News, Reports, Documents, Blogs, Data, Analysis on Environment & Development: India, South Asia" (Andhra Pradesh | India Environment Portal | News, reports, documents, blogs, data, analysis on environment & development | India, South Asia January 6, 2020

<http://admin.indiaenvironmentportal.org.in/category/state/andhra-pradesh> last visited on june 20th 2021

<sup>209</sup> Manufacture, Storage, And Import of Hazardous Chemical Rules, 1989, Rule 2(e) read with Entry 583 of Schedule I

<sup>210</sup> Ibid(n) 204

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From its inception, and according to the established procedures of the Environmental Act of 1986, the employer did not receive the environmental certificate issued by the government confirming the production to operate. It is mandatory to get an EC before establishing any industry.

An EC is also necessary if an expansion or modification in product mix is planned. Since its inception, the industries have continued to function without EC and have expanded their operations beyond the limits established by EC. The industry has acquired authorization from the State Pollution Control Board for this purpose (CEF and CEO). Nevertheless, in 2018, the firm submitted to the State Environment Impact Assessment Board (SEIAA) for an Environmental Clearance Certificate. In 2017, the Supreme Court levied a 100 percent fines for illegal activities, citing relevant environmental statutes<sup>211</sup>.

Even after repeated references and recalls, the manufacturer did not comply with the requirements and laws. Soon after the accident, the National Green Court heard the Somoto case and set a time limit for the return of 50 million rupees to provide emergency relief to the victims. "The amount is determined based on the institution's financial price and the amount of loss caused," the court said<sup>212</sup>. After the disaster, several committees were set up to record the overlap, preventive measures taken, who was responsible, proof of damage, and compensation to victims. All regions have made affidavits, and judgments are expected to be made soon.

There is significant proof that the industry did not follow the requirements in 1989, such as the requirement for on-site and off-site safety guidelines. This carelessness on the part of the industry and its leaders resulted in criminal charges. Where the corporation is required to compensate locals for their losses and to rehabilitate the environment. NGT adopts the polluter pays principle and leads responsible business<sup>213</sup>. This situation does not include the concept of strict liability, because it is clear that the firm behaved

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<sup>211</sup> Jayashree Nandi, "Vizag Polymer Unit Didn't Have Environmental Nod" (Hindustan Times May 9, 2020)

<https://www.hindustantimes.com/india-news/vizag-polymer-unit-didn-t-have-environmental-nod/story-CSMrE8I36C3k5TTR2fVsDM.html> last visited on June 20th 2020

<sup>212</sup> Misra S and others, "NGT Issues Notices to Centre, LG Polymers; Orders to Pay Rs 50 Crore after Vizag Gas Leak" (The Print May 8, 2020)

<https://theprint.in/india/ngt-issues-notices-to-centre-lg-polymers-orders-to-pay-rs-50-crore-after-vizag-gas-leak/417043> last visited on June 20th 2020.

<sup>213</sup> The National Green Tribunal Act 2010, (n) 82

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carelessly while taking reasonable care prior to commencing the activity of the industry. According to IPC regulations, this corporation must be held responsible for illegal deaths by negligence<sup>214</sup>.

Aside from section 304, it must be prosecuted under IPC sections 278<sup>215</sup>, 284<sup>216</sup>, 285<sup>217</sup>, 337<sup>218</sup>, and 338<sup>219</sup>. The state also failed to carry out its responsibilities since the pollution control board lacks the power to provide an environmental clearance certificate because this firm comes within the A category, as specified in the regulations 1989, and the obligation was handed to MOEF. The corporation is completely liable for the illegal growth of its operation in a residential area, as well as the failure to provide such information about imminent risk to the inhabitants in the neighbourhood. According to the revised Factories Act, the courts must promptly mandate the relocation of the industry. The notion of relocation has emerged as a result of the two great catastrophes that occurred, ruining people's lives. The court should strive to provide a fair and just trial by compensating the victims and so bringing justice to everybody.

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<sup>214</sup> The Indian Penal Code, 1860, Section 304

<sup>215</sup> The Indian Penal Code, 1860, Section 278: making the atmosphere noxious to health.

<sup>216</sup> The Indian Penal Code, 1860, Section 284: negligent conduct with respect to poisonous substance.

<sup>217</sup> The Indian Penal Code, 1860, Section 285 negligent conduct with respect to fire or combustible matter

<sup>218</sup> The Indian Penal Code, 1860, Section 337: causing hurt by act endangering life or personal safety of others.

<sup>219</sup> The Indian Penal Code, 1860, Section 338: causing grievous hurt by act endangering life.

## CHAPTER 5

### CONCLUSION & SUGGESTIONS

#### 5.1. CONCLUSION

The contemporary environment's criticality stems from two primary branches. One is the repetitive discharge of pollutants, which has a continual impact on the environment, contaminating the air, water, soil, and the flora and animals in the vicinity. People carelessness or a lack of adequate maintenance rules are the reasons which leads to release of more dangerous toxins into the environment when this is a continuous unavoidable process that has not yet been entirely handled. Though extremely rare, when it occurs, it poses a significant threat to the ecosystem.

Due to the belief in industrialization, many changes have taken place in India and its surrounding areas. The need to protect the environment began in the 1980s, with the explosion of fuel leakage in Bhopal. This situation indicates a lack of operating instructions. Immediately after the plant closed, the standard was met. a period of time. Resetting the machinery, as well as carelessness towards minor fixtures such as leaking pipes, were recognised as contributing factors to the tragedy. Reforms in legislation, as well as the formation of several groups to address such concerns, represented a novel approach to providing justice to criminal responsibilities.

To maximise profits, large corporations have depleted the country's resources to the greatest extent possible. They harmed the lives of countless people, animals, and other beings throughout this process. Following the Bhopal disaster, a series of accidents compelled the administration, judiciary, and legislative branches to seek comprehensive enactments. Following that, the acts were introduced. However, there were numerous inadequacies that have yet to be filled by the three primary organs that acted as a gateway for the ongoing crimes. The lack of adequate legal consequences for the crime, as well as the government authorities' carelessness in executing the drafted legislation, aided corporates in being more unwilling to abide by the rules.

A large number of people are still in severe danger even after 37 years of the world's most heinously awful industrial disaster in Bhopal. very few of victims received a disproportionately small sum and are mostly because of the result of their own hard fight for equality and retribution. Sadly, it appears that the disaster of Bhopal and the



fight of the sufferers was insufficient to compel the official, legislative body, and the administration must work together to meet the challenges posed by a combination of the political financial system and perilous innovation. This is further demonstrated by the risks produced by carelessness long after the occurrence.

The key issue is the organisations' responsibility for fraudulent activities committed by them. The legal liability for small-scale relocation is very small, but if the crime is serious, there is criminal liability. Corporate criminal liability is a complex issue. The existence of common law in corporate criminal liability can and should have an additional impact on the idea of how corporate criminal liability is described in the Indian criminal system. In terms of corporate criminal liability, the Indian judicial system is inefficient. Imposing Punishment on corporations under criminal law is much more difficult than enforcing regulations.

The main flaw in the legislation is that in the event of an offence, the company or people guilty for carelessness must be fined. People in this aspect refers to the groundwork force (which includes maintenance teams, shop floor staff, and safety departments) as well as supervisors (include Directors to stakeholders). Instead of relying on old theories, courts should take a more dynamic approach to punish. To avoid the reflexive urge to impose sanctions, the optimal use of criminal law in deterring corporate misbehaviour requires legislators to modify the substantive rules so that they provide unambiguous warning of prohibited activity. Proof of men's rea or actus rea is necessary in this situation of criminal liability. Corporates are prosecuted under the Indian Penal Code 1860 with section 304 of Part II of the act where the motive is a necessary factor, prior to the implementation of various laws. However, this was modified to Section 304A, in which corporations are prosecuted for their negligent acts without the need for proof of mens rea. along with this, fines are enforced basis on absolute liability, the Polluter Pays principle, and different environmental laws.

In the context of civil liability, the sole kind of penalty is the imposition of fines. However, the company cannot be held responsible for potential crimes, and those who commit the same crimes will be held criminally responsible. "The criminal law demands that the wrongdoer be punished and that the aggrieved be compensated for the offender's actions." Because the acts provide no provision for dealing with these difficulties, the courts rely on criminal law to resolve them. In several cases, the Supreme Court was unable to handle situations in which the primary sanction suggested was jail



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for the offence rather than a fine. Existing environmental laws include legal provisions that allow offenders to be imprisoned, and because offences committed by organisations are considered, the court has the authority to sentence such a responsible party to a fine. In any case where the offence is punishable by jail or any other punishment other than fine, and the offender is a corporate entity, the court will have the authority to sentence such guilty party to fine.

Matter of fact, even if there is an urgent need to review the profit expectations of experts, it will eliminate many of the company's existing criminal liabilities without affecting them. The legal framework based on the decision needs to be strengthened to ensure that authorized dangerous activities are performed in the simplest way under genuine permission. To ensure compliance with the terms and conditions of permission, regulatory monitoring by competent professionals is required. These experts may be given the authority to impose regulatory penalties on offenders. Any laxness with authoritative professionals must lead in outcomes.

The struggle for justice and the fastest commences is the result of internal struggles within the country. However, when there is external action such as people from different country holding shares in corporations of our country, the situation becomes more complicated and there will be an injustice for people those who are affected within the country. Such criminal offences create a no-win situation and drag on the clock, delaying justice. As a result, combating within their homeland should be made more easier in order to reduce the time frame of the judgement procedure.

In order to prevent similar problems from occurring in the future, it is recommended that both corporations and government organisations take responsibility for providing a safer living in the country.

## **5.2. SUGGESTIONS**

### **5.2.1. INADEQUACY IN EXISTING LAWS**

- Legislators must work hard to create fair and just laws that provide equitable justice. Legislations should be concerned not only with the creation of laws, but also with their effective implementation. The enactments must be reviewed on a regular basis in order to adapt to changing circumstances.

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- The Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986 have identified natural and legal persons as capable polluters of the environment and have subjected them to criminal penalties for noncompliance with the prescribed environmental laws. That being said, the quantum of liability levied on individual citizens happens to be appreciable and adequate to regulate their environmentally harmful activities, it is not so in the case of corporations (i.e., legal persons). The legal liabilities are inadequate to influence the changes needed. They have failed in their simple levels of deterring large enterprises from preventing even more damage, and restoring the environment.
- To compensate victims of industrial hazards, the Public Liability Insurance Act of 1991 was enacted. Corporates must be compelled to make a contribution to the Environmental Relief Fund in order to ensure the security of people. The major flaw here is that, while the money is added to ERF, it is insufficient to give for the entire population of victims and their families that are injured. The amount which is deposited must be used to provide relief and must not be manipulated for industry profits or for political influence. The insurance coverage in this act is limited to 50 crores, regardless of the size of the industry. To hold industries accountable and adhere to the polluter pays principles, corporations should stringently be responsible depending on the size and function of the entity.
- The Companies Act 2013 governs corporates in India in general. They exhibit all of the legal characteristics of humans while also being held accountable for their actions. Any violation of obligation entails liability all over the world, whether it is committed by a human or a corporate entity. There are two types of liabilities, as we all know. The nature of the offence determines the degree of civil or criminal liability. The Companies Act of 2013 contains adequate provisos for civil liability. When it tends to come to severe offences such as causing death or irreversible damage through hazardous activities, the issue of criminal liability arises. In India, corporations are only subject to civil liability and not criminal prosecution. This is due to the fact that, companies Act does not contain any provisions which make the corporations criminally liable. Considering this, an amendment with respect to this is required.
- The Environmental related Acts must be amended to reflect the current situation and should include provisions for detailed information on working staff and public safety, harmful substances (names, quality and quantity managed, medical

impact which arises from handling such chemicals, the nature and work performed and the method of using and storing of those chemicals) All relevant information must be provided by the company and the government, because the ownership of records is a fundamental right guaranteed by Article 19(1) of the Indian Constitution.

- The National tribunal Act of 1992 also has many shortcomings; the simplest is that it protects people living in industrial areas, not labor. sec. 7 of this law stipulates that if reimbursement has been provided under other laws, the amount of cash paid shall be reduced. This provision should be amended because the damage caused and suffered cannot be calculated in terms of money, and the amount prescribed in the Acts is insufficient as the level of health damage is extreme. As a result, this provision should be changed so that it acts as an addition to the already compensated sum.
- In the industrial hazards that has occurred, the risk was greater than estimated. Therefore, the five-year time limit for submitting an application for compensation under Section 24 of the NGT Act of 2010 is incorrect, because the impact of the damage is visible after certain period of time, and victims cannot be denied justice based on time constraints. As a result, the provision must be amended to encourage claims depending on the amplitude of the injuries incurred.

### **5.2.2. PROPOSED CHANGES FOR IMPROVEMENT OF EXISTING LEGAL SYSTEM**

- Industrialization is a significant growth in developing countries such as India. When handling hazardous substances, industries that work with toxic substances should be more cautious. They should include a proper risk assessment mechanism. The authorities should carry out the functions to which they have been delegated. Before they begin, all industries must obtain an Environmental Clearance certificate. To this end, the competent authority must effectively localize and classify the industry. The facts of the assessment must be communicated to the main and state governments to ensure that no illegal approval is obtained. They are EC certified. To that end, the government should look into structure plans to ensure that they don't have a negative effect on the environment. Before granting EC, strict rules must be followed, which should include post-monitoring norms.

- The industry needs to pay more attention to risk control systems. The cost of hazard insurance is much higher than the cost of preventive measures. Ultimately, the risk assessment must be successful, and an assessment report must be prepared. There should be resident review. As a result, the risk is reduced. Because this disclosure raises public awareness of the company's currently underway operations. The main source of concern in all industrial accidents is the failure to disclose information about the corporates' operations. Ever since the Bhopal disaster, this standard was given more importance and it has been incorporated into the Factories Amended Act 1981. However, failure to comply with this procedure has resulted in the continuing violation. To that end, a risk assessment committee must be established to review activities and make disclosures on safety and dangers for all surrounding localities.
- Sustainable development strives to establish a balance between the humanity and environment. It uses international principles in this process. If the precautionary approach continues to fail, the polluter-pays principle may be used to ensure the restoration of the damaged environment and compensation to the affected people. To effectively implement the polluter-pays standard, an obligation and compensation scheme must be combined with financial instruments such as mandatory protection inclusion or the creation of funds. In order to prevent such incidents, the government must strictly control and guide these authorities, they must be continuously monitored, and the activities of these industries must be audited for at least one year. Any type of fix in any of the machinery and hardware should be addressed as soon as possible. The government should take the initiative to ensure that all of it is in working order. So apart from just that, the government should make certain that there is a legal system in place to compensate the victims. It should ensure expedient equity and that genuine relief is provided to the individuals in issue.
- And after the Bhopal disaster, strict inspections, environmental board permissions, and safety certificates were made compulsory to stop such accidents from taking place again, causing damage to human health and the environment. It is proved that these are not enough to ensure the safety of people living in nearby areas. Due to the process's backlogs, there is a continuous need for amendment by introducing new socio-economic norms, judicial decisions to ensure the safety

of the people .further , to provide the justice to the injured people and the environment .

- A health and safety committee must be formed to review the health of the general citizens and workmen who live in close proximity to the industries. The committees have to provide local hospitals with a complete description of the chemicals being used and adverse effects caused by those same chemicals. A fatal accident committee must be formed in order to determine the causative factors of the accidents and reach conclusions in order to avoid future accidents. Workforce and other officials should be given training and knowledge and experience in the field which they work. Meetings should be held at all levels to ensure that everyone have proper knowledge and are on the same page.
- When starting or expanding a business, community participation should be made mandatory, and the community should have a say in environmental and safety decisions. The laws must be changed to reflect this. The government should hear from residents who live near these industries about their concerns.
- Compensation legislation should be revised. Stringent provisions should be created for compensating victims based on the severity of their injuries. Aside from the company's compensation schemes, also public compensation must be credited in separate scheme, programmes and institution. It will contribute to the prosperity of upcoming generations.
- Fixing the damage and compensation to the victims are not feasible by levying the pre - determined fines specified in the Acts. Thus, the courts must be given liberty in calculating compensation based on predetermined factors. The Acts must clearly state those parameters in order to calculate compensation for victims.
- Although there was already progress in safety standards, environmental checks, and maintenance activities in large industries, there is always the possibility of a few mishaps. Compensations can help to restore environmental peace as well as provide solace for human grievances in these unavoidable situations.

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