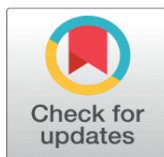


# EFFICACY OF CORPORATE ENVIRONMENTAL RESPONSIBILITY IN INDIA: AN ANATOMIZATION

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## ABSTRACT

Corporate firms have distinct responsibilities towards the planet. Responsibility towards the environment is one of the significant factors that need to be appeased. In India, legislative intervention related to corporate social responsibility has been implemented, encompassing the environmental responsibilities of companies. However, it has remained one of the smallest fulfilled aspects of social responsibility. In this layout, corporate environmental responsibility requires a separate directive for enforceability. Various elucidations have been providing almost homogenous denotation on the environmental responsibility of companies. From ancient history to modern philosophy, the environmental responsibilities of people have advanced. Considerably, several direct measures have been provided, which have been followed by the merchants and companies, who are also following several existing legal provisions relating to environmental protection. Several global bodies provided enlightenment with respect to the environmental responsibility of companies. Supporting extracts of judicial precedents have been canvassed. Thus, an analysis is required to detect the extent of the existing legal provisions, which are lacking to fulfil the responsibility towards the environment. This investigation has covered all aspects related to the environment, as well as the responsibility of companies to assess the effectiveness of corporate environmental responsibility in India.

**Keywords:** Corporate Responsibility, Environmental Responsibility, Corporate Environmental Responsibility in India, Polluter-pays Principle, Absolute Liability

“It is our collective and individual responsibility to preserve and tend to the environment in which we all live”

...Tenzing Gyatso, The 14<sup>th</sup> Dalai Lama<sup>1</sup>

## 1. INTRODUCTION

All living creatures are surviving because of a peculiar ecological balance in the world. As one of the finest living creatures, humans should be the most responsible toward maintaining this environmental balance. However, never-ending materialistic desire, luxury and competition for wealth probably abated environmentally harmful developments. This resulted in massive environmental destruction and severely disturbed the ecological balance. Although the importance of industrial growth to establish an economically strong state cannot be neglected. Corporate firms play a crucial role in the establishment of industry, employment generation, and profit sharing. Even Corporate firms have an artificial legal personality as they serve several similar functions to a biological person. The regular functioning of these corporate firms depends on natural resources, such as those provided by others. Additionally, natural resources are being affected due to the gross misuse and pollution caused by corporate firms. This form of use, dependence,

<sup>1</sup> UMWTogether-Collective and Individual Responsibility, Acts of Kindness, Eagle Eye, <https://eagleeye.umw.edu/2021/02/09/umwtogether-collective-and-individual-responsibility-acts-of-kindness/>.

exploitation and pollution generally raises different forms of responsibilities towards the environment. Environmental responsibility is one of the significant factors that everyone needs to fulfil to protect or restore a liveable environment.

## 2. HISTORICAL BACKGROUND

Environmental responsibility can be observed in the Indian literature as well as in literature collected from other civilisations.<sup>2</sup> The environmental thinkers have warned people not to affect the environment to maintain ecological balance.<sup>3</sup> Even environmental degradation, pollution and climate change have been mentioned as one of the significant reasons for the downfall of civilisations like the Mesopotamian Civilisation,<sup>4</sup> the Egyptian civilisation<sup>5</sup> and the Indus Valley civilisation<sup>6</sup>. All those downfalls and natural disasters created fear in the minds of people, which possibly resulted in the worship of natural resources.<sup>7</sup>

In the Hindu religion, the concept of 'Dharm' stands for environmental responsibility because it prohibits the destruction of the environment, deeming it Adharma—Rigveda, as the oldest scripture in the world, which mentions different factors of the environment.<sup>8</sup> The sacred scripture also notes that any change in the environment caused by human activities may result in an imbalance in weather, rainfall, and crops. It may affect the air, water and the earth.<sup>9</sup> In the Yajur Veda, people have been told not to pollute the atmosphere and not to harm the sky.<sup>10</sup> The Atharva Veda also significantly contributed to environmental protection.<sup>11</sup> Pollution has been termed as "poisoning" of the environment in the Atharva Veda.<sup>12</sup> Several shlokas can be mentioned stating the protection of natural resources and ecological balance.<sup>13</sup> According to one of the shloka of the Atharva Veda, may the sun rise and shine joining and energising the earth with its rays and proper order of the seasons, and may a harmonious equation of water, air and wind, and Agni, temperature, create and maintain climatic and environmental conditions for a vast and great world order worth living in with peace and comfort.<sup>14</sup> The entire Vedic period reflects environmental concern and responsibility in society, as people faced various natural calamities that were beyond their control, causing significant effects on both inhabitants and belongings.<sup>15</sup> In the Legal guidance of Manu Smriti, water pollution and cruelty against animals have been condemned.<sup>16</sup> Even in Kautilya's Arthashastra, information is provided on the preservation, conservation, and protection of the environment, forests, and wildlife, as well as the development of sanctuaries, water conservation, and the maintenance of public sanitation.<sup>17</sup>

Islam originated in the Arabian Peninsula.<sup>18</sup> Once, it was one of the major trade routes in ancient times.<sup>19</sup> However, when the religion originated, the region was in a state of impoverished environmental conditions due to various reasons.<sup>20</sup> So, the responsibility of environmental protection was one of the primary objectives of survival in the Arabian Peninsula.<sup>21</sup> Its reflection can be observed in the sacred scriptures of Islam.<sup>22</sup> In the Holy Quran, environmental

<sup>2</sup> Ryszard F. Sadowski, On Religious and Cultural Principles of Environmental Protection, 15 J. SUSTAIN. DEV. 80 (2020).

<sup>3</sup> Anja Kollmuss & Julian Agyeman, Mind the Gap: Why do people act environmentally and what are the barriers to pro-environmental behaviour? 8 ENVIRON. EDUC. RES. 248 (2002).

<sup>4</sup> Abbas Amanat, Environment and Culture: An Introduction, 49 IRAN. STUD. 929 (2016).

<sup>5</sup> Tom Abate, Climate and the Collapse of Civilization, 44 BIOL. SCI. 518 (1994).

<sup>6</sup> Dr. Sanjeev Kumar, Environmental Factors Contribute to The Decline of Indus Valley Civilization, 1 INT. J. HIST. 51 (2019).

<sup>7</sup> Mike Hulme, The conquering of climate: discourses of fear and their dissolution, 174 GEOGR. J. 10 (2008).

<sup>8</sup> Dr. Nimisha Sarma, Environmental Awareness at The Time of Vedas, 26 VEDA-VIDYA 222 (2015).

<sup>9</sup> Id.

<sup>10</sup> Shikha Uniyal Gairola, Review Article on Relation between Hinduism and Environment - A Vedic Approach, 13 ASIAN J. ENVIRON. ECOL. 22 (2020).

<sup>11</sup> Dr. Benudhar Patra, Environment in Early India: A Historical Perspective, 1 ENV. TRAD. & SCI. RES. 44 (2016).

<sup>12</sup> R. Renugadevi, Environmental Ethics in The Hindu Vedas and Puranas in India, 4 AFR. J. HIST. 2 (2012).

<sup>13</sup> Kamlakar K. Askar, Indian Response to Nature and Ecology, 53 INT. J. EDU. SCI. 179 (2016).

<sup>14</sup> DR. TULSI RAM, ATHARVA-VEDA 164 (Vijaykumar Govindram Hasanand, Delhi, 2013).

<sup>15</sup> Ashutosh Kumar Singh, Ecological Consciousness in Ancient India, 13 PARISHEELAN 22-26 (2017).

<sup>16</sup> Dr. Benudhar Patra, Environment in Early India: A Historical Perspective 1 ENVIRON. TRAD. SCI. RES. 46 (2016).

<sup>17</sup> Ashim Roy & Alpana Roy, Environmental Conservation in Ancient India, 3 INT. J. SANSKRIT RES. 139-142 (2017).

<sup>18</sup> Erhun Kula, Islamic Ethics towards Environmental Protection, 3 AF. EURAS. STUD. J. 40 (2014).

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

responsibility has been provided to the followers.<sup>23</sup> Buddhism and Jainism also guided the maintenance of ecological balance.<sup>24</sup>

In the medieval period, environmental concern can be traced.<sup>25</sup> In the Mughal regime, several nature parks and gardens were made and maintained.<sup>26</sup> An administrative machinery has been established to protect the environment, and Jahangir and Akbar have funded research in the dimensions of flora and fauna.<sup>27</sup>

By the end of the seventeenth century, India came under the control of the British East India Company.<sup>28</sup> In the eighteenth century, these rulers started not only economic exploitation but also environmental exploitation through the mining of various minerals and the use of other resources with economic value.<sup>29</sup> This form of exploitation even extended to the agricultural fields, where Indian farmers were forced to cultivate indigo.<sup>30</sup> Nevertheless, some pro-environmental steps were also taken by the then rulers, which demonstrate the environmental responsibility of both rulers and the people of India during the colonial period.<sup>31</sup> In 1855, the forest department of India was established, executive posts like the Indian Forest Service (IFS) were created, and several places were demarcated as protected areas. In this period, several legislations have been enforced depending upon specific issues within the local provinces and localities.<sup>32</sup> The basic routes of these provisions were nuisance, negligence, trespass and strict liability.<sup>33</sup> These legislations were prepared mainly to prevent and reduce pollution and discourage people from doing anti-environmental activities.<sup>34</sup> Primarily, all such escape from environmental responsibility was settled within the framework of the criminal provisions.<sup>35</sup> Gradually, some legislations were prepared mentioning the duty of the proprietors of the establishments.<sup>36</sup> Even some of the executive decisions also reflected an interest in enforcing environmental responsibility to merchants in the mid-nineteenth century.<sup>37</sup> However, due to the close connection with the Viceroy, Lord Canning, and the scope of high tax collection, those decisions cannot be executed properly.<sup>38</sup>

The last century can be glorified as the period of renaissance for environmental awareness.<sup>39</sup> Environmental protection has become one of the common goals for all countries as environmental pollution was affecting the air, water and soil of the countries and their neighbours.<sup>40</sup> International organisations,<sup>41</sup> regional organisations,<sup>42</sup> governmental machineries,<sup>43</sup> non-governmental organisations,<sup>44</sup> research institutions<sup>45</sup> All other resources work hand in hand to protect the environment. People, as citizens and non-citizens, became environmentally aware than before.<sup>46</sup> It has been

<sup>23</sup> Id.

<sup>24</sup> Divakar Maurya, Ecologism and Environmental Harmony in Jainism and Buddhism, 9 PANKHURI 22-25 (2023).

<sup>25</sup> Dr. K P Prakasha, The History of Ancient and Medieval Periods - An Environmental Study, 11 INT. J. MULTIDISCIPL. EDU. RES. 64-65 (2022).

<sup>26</sup> Id.

<sup>27</sup> Dr. Bithin Thakur, History of Environmental Conservation (Ancient and Medieval Periods), 4 INT. J. MULTIDISCIPL. RES. REV. 1073 (2019).

<sup>28</sup> Michael H. Fisher, Indirect Rule in the British Empire: The Foundations of the Residency System in India (1764-1858), 18 MOD. ASIAN STUD. 396 (1984).

<sup>29</sup> Thomas H. Holland, Mineral, Not Mining, Laws in the British Empire, 20 J. COMP. LEG. & INT. LAW 24 (1938).

<sup>30</sup> Dr. Amit Kumar Tiwari & Radhe Shyam Sharma, Impact of British Colonial Rule on Indian Peasantry, 1 IND. J. SOC. STUD. & HUM. 28 (2023).

<sup>31</sup> Gregory Barton, Keepers of the Jungle: Environmental Management in British India 1855-1900, 62 THE HISTORIAN 558 (2000).

<sup>32</sup> Furqan Ahmad, Origin and Growth of Environmental Law in India, 43 J. INDIAN. L. INST. 365 (2001).

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Gregory A. Barton & Brett M. Bennett, Environmental Conservation and Deforestation in British India 1855-1947: A Reinterpretation, 32 ITINERARIO 85 (2008).

<sup>38</sup> Id.

<sup>39</sup> David John Frank, Ann Hironaka, et.al., The Nation-State and the Natural Environment over the Twentieth Century, 65 AM. SOCIOL. REV. 97 (2000).

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Peter L. Lallas, Daniel C. Esty, et.al., Environmental Protection and International Trade: Toward Mutually Supportive Rules and Policies, 16 HARV. ENVTL. L. REV. 281 (1992).

<sup>43</sup> Zhong Xiang Zhang, Effective environmental protection in the context of government decentralization, 9 INT. ECON. ECON. POLICY 57 (2012).

<sup>44</sup> Y. Hedjazi & F. Arabi, Factors Influencing Non-Government Organizations' Participation in Environmental Conservation, 3 INT. J. ENVIRON. RES. 130 (2009).

<sup>45</sup> Jeffrey A. Sayer & Bruce Campbell, Research to Integrate Productivity Enhancement, Environmental Protection, and Human Development, 5 CONSERV. ECOL. (2002).

<sup>46</sup> Id.

observed that massive transformations are being done all over the world with respect to the environment to maintain ecological balance, and India cannot be an exception in this regard.<sup>47</sup>

After the independence of India, small provisional changes for environmental protection can be observed in the essence of the Constitution of India.<sup>48</sup>

### 3. DEFINITION OF CORPORATE ENVIRONMENTAL RESPONSIBILITY (CER)

The word 'responsibility' meant an obligation or duty towards any person or object, which may or may not be assigned, but is independently or voluntarily interested in doing so.<sup>49</sup> In this aspect, 'corporate responsibility' means every sensible policy and practice of companies that reflect business responsibility for a bigger and ecological betterment.<sup>50</sup>

On the other hand, the concept of 'environmental responsibility' of companies can be stated as a due obligation for companies, where companies must give back to society when they use natural resources for economic benefits to achieve long-term corporate development.<sup>51</sup> According to Brummer, 'environmental responsibility' means that companies should follow a sustainable development perspective, consume fewer resources and produce less waste in their production processes.<sup>52</sup>

According to Lyon and Maxwell, CER means "environmentally friendly actions not required by law, also referred to as going beyond compliance, the private provision of public good, or voluntarily internalising externalities".<sup>53</sup> According to Rong Liu et al., CER is the internalisation of environmental costs by companies, which involves applying the concept of sustainable development to the process of production management and cost control to maximise overall benefits.<sup>54</sup> Piotr Mazurkiewicz has defined CER as the duty to cover the environmental implications of the company's operations, products, and facilities; eliminate waste and emissions; maximise the efficiency and productivity of its resources; and minimise practices that might adversely affect the enjoyment of the country's resources by future generations.<sup>55</sup> CER is a voluntary activities that assess and reduces the ecological footprint in the business model.<sup>56</sup> It can also be considered an environmental commitment, whereby the company fully embraces sustainability and leaves a positive impact on both the environment and society.<sup>57</sup> N. Rahman and C. Post defined CER as a commitment of corporate firms in minimising or neutralising any harmful effects and maximising their beneficial impact upon society in the long run.<sup>58</sup>

CER can also be defined as the obligation and organisational accountability of corporate firms to reduce negative environmental impact within their regular or stipulated operations. It signifies that corporate firms play a significant role in the environment and natural resources, which can be performed with the help of different actions like minimisation of pollution, conservation of energy and water, proper waste management, sustainable manufacturing process, zero or less greenhouse gas emission, use of renewable energy and intra-institutional environmental awareness.

<sup>47</sup> Dr Somlata Sharma, Environmental Protection and Indian Constitution, 3 INT. RES. J. COM. L. 48 (2016).

<sup>48</sup> Abraham P. Meachinkara, Environment Protection in Indian Polity, 1 NUALS L. J. 112 (2007).

<sup>49</sup> Meir Dan-Cohen, Responsibility and the Boundaries of the Self, 105 HARV. L. REV. 960 (1992).

<sup>50</sup> D. Matten & J. Moon, Implicit and Explicit CSR: a Conceptual Framework for a Comparative Social Responsibility, 33 ACAD. MANAG. REV. 406 (2008).

<sup>51</sup> Robert D. Klassen & Curtis P. McLaughlin, The Impact of Environmental Management on Firm Performance 42 MANAG. SCI. 1199 (1996).

<sup>52</sup> J.J. BRUNNER, CORPORATE RESPONSIBILITY AND LEGITIMACY, 212 (Greenwood Press, 1991).

<sup>53</sup> Cristina Ganesu & Laura Dindire, Corporate environmental responsibility – a key determinant of corporate reputation, 2 COMPUT. MET. SOC. SCI. 49 (2014).

<sup>54</sup> Rong Liu, Hongfeng Zhao, et. al., Does Corporate Environmental Responsibility Promote the Improvement of Corporate Economic Performance? – Based on the Perspective of Green Reputation, 32 POL. J. ENVIRON. STUD. 3 (2023).

<sup>55</sup> Piotr Mazurkiewicz, Corporate Environmental Responsibility: Is a common CSR framework Possible? World Bank (2004).

<sup>56</sup> Mei-Chee Tan, Tuan-Hok Ng, et. al., Modeling the Impacts of Corporate Environmental Responsibility on Information and Communication Technology- Waste Management, 8 INT'L J. ENG. ECON. POL. 350 (2018).

<sup>57</sup> Sumita Sindhi & Niraj Kumar, Corporate Environmental Responsibility- Transitional and Evolving, 23 MANAG. ENVIRON. QUAL. 641 (2012).

<sup>58</sup> N. Rahman & C. Post, Measurement Issues in Environmental Corporate Social Responsibility (ECSR): Toward a Transparent, Reliable and Construct a Valid Instrument 105 J. BUS. ETH. 307-319 (2012).



#### 4. EFFICACY OF CER IN INDIA

India, as one of the developing countries, is facing massive environmental degradation for several reasons. Business activities conducted by corporate firms can cause pollution, which may be a significant contributor to environmental degradation.<sup>59</sup> The country is facing different challenges in protecting the environment because of its limited resources.<sup>60</sup> To compensate for these challenges, corporate firms can be chosen as one of the suitable functionaries as they have adequate economic and other available resources.<sup>61</sup> The growth of the business sector of India is as old as the civilisation.<sup>62</sup> However, if we observe the first formal legislation for companies in India.<sup>63</sup> Under the legislation, registered companies numbered only 60 from 1851 to 1860.<sup>64</sup> Presently, India has 24 Lakhs registered companies, out of which 15 lakhs (62%) are active.<sup>65</sup> On 1<sup>st</sup> April 2014, the newly framed Companies Act 2013 was enforced, containing provisions regarding corporate social responsibility in India. According to the June 2022 report, only 1.28 per cent of active companies in India practised corporate social responsibility.<sup>66</sup> In the same financial year, only 0.58 per cent of the total paid-up capital of companies in India is being spent on corporate social responsibility to fulfil the legal aspect of Section 135 of the Indian Companies Act 2013.<sup>67</sup>

This provision regarding corporate social responsibility also covers the protection of the environment. According to Schedule VII of the Companies Act 2013, companies may include corporate social responsibility policy activities relating to ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintain quality of soil, air and water including contribution to the clean Ganga fund set-up by the Central Government of India for revival of river Ganga.<sup>68</sup> The Ministry of Environment and Forests, Government of India, also notified in an office memorandum that the list of activities under corporate social responsibility under section 135 of The Companies Act 2013 includes environmental sustainability, which has been further notified in Companies (Corporate Social Responsibility Policy) Rules 2014.<sup>69</sup> Again in 2018, the Ministry of Environment, Forests and Climate Change of the Government of India issued a circular mentioning the imposition of 'corporate environmental responsibility'.<sup>70</sup> It also provided clarification on concerned committees, fund allocation for projects, the process of public disclosure, and activities that fall under the purview of CER.<sup>71</sup> After this circular, CER in India turned into a separate concept from corporate social responsibility.<sup>72</sup> This separation may have created confusion and fear in the minds of corporate firms, as it could create an additional burden for the companies. The Ministry of Environment, Forests and Climate Change of the Government of India faced challenges while enforcing CER separately. Even the circular was challenged before the Hon'ble Delhi High Court.<sup>73</sup> In 2020, another office memorandum was published with respect to CER.<sup>74</sup>

The necessity can be observed by examining the latest expenditure, specifically in the environmental sector under corporate social responsibility. Almost 11 per cent has been diluted in the industry of the total CSR expenditure in 2022, which is only Rs . 2837 Crores.<sup>75</sup> According to the World Bank, India is facing a loss of more than Rs . 3 Lakh Crores/year

<sup>59</sup> Mahesh Chandra, Environmental Concerns in India: Problems and Solutions, 15 J. INT'L BUS. & L. 3 (2015)

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> Ron Berger & Ram Herstein, The evolution of business ethics in India, 41 INT. J. SOC. ECON. 1075 (2014).

<sup>63</sup> Companies Act 1850.

<sup>64</sup> RADHE SHYAM RUNGTA, RISE OF BUSINESS CORPORATIONS IN INDIA 1851-1900 46 (Cambridge University Press, 1<sup>st</sup> ed. 1970).

<sup>65</sup> Annual Report 2022-2023, Ministry of Corporate Affairs, Government of India.

<sup>66</sup> Government of India, Monthly Information Bulletin (Ministry of Corporate Affairs, June 2022).

<sup>67</sup> Annual Report 2022-2023, Ministry of Corporate Affairs, Government of India.

<sup>68</sup> Companies Act 2013, Schedule VII, Paragraph No. (iv).

<sup>69</sup> Ministry of Environment and Forests, Office Memorandum, File No. J-11013/25/2014-IA.I. (Issued on August 11, 2014).

<sup>70</sup> Ministry of Environment, Forests and Climate Change, Circular, File No. 22-65/2017-IA.III (Issued on June 19, 2018).

<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> CREDAI, NCR v. Union of India and Others, WP(C) No. 13252/2019.

<sup>74</sup> Ministry of Environment, Forest and Climate Change, Office Memorandum (Issued on October 20, 2020).

<sup>75</sup> Supra 69.

because of air pollution.<sup>76</sup> Out of this, 51 per cent of air pollution in India is caused by companies, resulting in a loss of more than Rs. 1.5 lakh crores per year. Besides this, 77 per cent of water pollution in India is caused by industrial waste and other effluents discharged from commercial establishments, which are almost all run by corporate firms.<sup>77</sup> Even other pollutions caused by companies can not be measured yet.<sup>78</sup> It remains a layman's calculation to understand that environmental responsibility under the umbrella of corporate social responsibility, as mentioned in section 135 of the Indian Companies Act 2013, is a little win against the damage caused. Although specific legislation is available to protect different parts of ecology, environmental clearance for an establishment under a corporate firm becomes a cakewalk as it fulfils several other interests of society.<sup>79</sup>

Therefore, CER in India, with relevant legal enforcement, has the scope to contribute to achieving the goals of a less polluted or pollution-free environment in India. Therefore, some dimensions need to be analysed to fit this concept within the legal framework of India. For that purpose, whether the existing laws are adequate or not, they need to be analysed. Whether the corporate firms are ready to accept this responsibility or not.

## 5. CER: INDIAN LEGISLATIVE INITIATIVES

Indian civilisation is one of the oldest civilisations, having a multicoloured society and one of the richest histories of business and trade.<sup>80</sup> The ancient and medieval periods of India reflected gradual development in respect of the protection of the environment.<sup>81</sup> Besides this, international organisations have also provided continuous guidance to develop legal provisions relating to the environment.<sup>82</sup> Based on these backgrounds, several municipal laws related to specific aspects of the environment have been developed and enforced.<sup>83</sup>

Previously, in the pre-independence era of India, pollution was mentioned as a health hazard and other issues.<sup>84</sup> Environmental hazards have been termed differently in different perspectives in the pre-independence era.<sup>85</sup> Sometimes it has been termed as smoke, heat, dust, noise, some smells, etc.<sup>86</sup> The then Calcutta (Now Kolkata) became the first province in British-ruled India to adopt legislation on smoke nuisance.<sup>87</sup> The legal provision was enforced to deal with smoke from jute mills in Calcutta.<sup>88</sup> Additionally, the Oriental Gas Company Act of 1857 has been implemented, which includes penal provisions for offences against gas leakage into water bodies.<sup>89</sup> The Indian Penal Code 1860 was enforced in 1862, which had various penal provisions on unlawful activities done by any individual or a company, affecting a specific part of the environment.<sup>90</sup> Code of Criminal Procedure 1898 also provided some provisions with respect to public nuisance, which could be used for environmental damage. The Sarais Act 1867, Elephant Preservation Act 1879, Indian Fisheries Act 1897, and more or less 23 other legislations have been enforced, which mention the fulfilment of penalties due to non-fulfilment of environmental responsibility.<sup>91</sup> Most of that legislations were continued after independence, also because of its relevance.<sup>92</sup>

<sup>76</sup> Catalysing Clean Air in India 2023, WORLD BANK GROUP, (Jun. 24, 2023, 12:19 PM)

<https://www.worldbank.org/en/country/india/publication/catalyzing-clean-air-in-india>.

<sup>77</sup> Dr. Neelam Gupta, Water Contamination: Still a Serious National Challenge, THE TIMES OF INDIA (Jun. 24, 2023, 10:50 AM),

<https://timesofindia.indiatimes.com/blogs/voices/water-contamination-still-a-serious-national-challenge/>.

<sup>78</sup> Arshdeep Singh & Jaypreet Singh Kohli, Effect of Pollution on Common Man in India: A Legal Perspective, 4 ADV. LIFE. SCI. TECH. 36 (2021).

<sup>79</sup> J. Patrick Meagher, Environmental Protection and Industries in Developing Countries: The Case of India since Bhopal, 3 GEO. INT'L ENVTL. L. REV. 18 (1990).

<sup>80</sup> Pawan Budhwar, Doing Business in India, 43(4) Thunderbird International Business Review, 553 (2001).

<sup>81</sup> Supra 34 at 359.

<sup>82</sup> Id at 361.

<sup>83</sup> Id at 365.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> P. Thakkappan Nair, (Ed). Calcutta in the 18<sup>th</sup> Century: Impressions of Travelers pp. 4,111 (Calcutta 1984)

<sup>88</sup> Arunava Sinha, Mill-Towns in Calcutta Conurbation in the Late Nineteenth and Early Twentieth Century, 7 INT'L RES. J. MGMT. SOC. HUM. 299 (2016).

<sup>89</sup> Supra 34 at 364.

<sup>90</sup> Id at 365.

<sup>91</sup> Id.

<sup>92</sup> Arun Kumar Nayak, Environmental Movements in India, 31 J. DEV. SOC. 260 (2015).

After India's independence, environmental interest was secondary, as rapid economic development was considered a basic necessity for the nation.<sup>93</sup> Industrialisation was one of the major hopes to achieve that economic goal, and corporate firms have a key role in this purpose.<sup>94</sup> Environmental concern remained at the bottom of the policy of the governments and other stakeholders.<sup>95</sup> Because of this, significant developments to protect the environment have been made after the United Nations Conference on the Human Environment in 1972.<sup>96</sup> From the Constitution of India to the enactment of several new legislations, a comprehensive framework has been established.<sup>97</sup> Even governments have prepared policies to protect and restore the environment.<sup>98</sup>

## 5.1. DEVELOPMENT IN THE CONSTITUTION OF INDIA

In independent India, the Constitution of India has become the supreme law of the land and guides environmental protection as well as environmental responsibility.<sup>99</sup> India is one of the signatories to the United Nations Conference on the Human Environment (1972).<sup>100</sup> In this regard, specific provisions were inserted through the 42<sup>nd</sup> Constitutional Amendment Act of 1976.<sup>101</sup> Article 48A under the Directive Principles of State Policy (Part IV) of the Constitution of India has been inserted, which states that the State shall endeavour to protect and improve the environment and to safeguard the forests and the wildlife of the country.<sup>102</sup> Article 51A(g) under the Fundamental Duties (Part IV-A) has been inserted, which states that it shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures.<sup>103</sup> In this regard, a corporate firm is a legal person having similar duties according to the provisions of the Constitution of India.<sup>104</sup> Besides this, in the definition of the 'State', a company may also be included, which has been established under the Companies Act 2013, if performing responsibilities like a governmental authority.<sup>105</sup>

## 5.2. LEGISLATION ENFORCED AFTER THE INDEPENDENCE OF INDIA

Several legislations covering different environmental factors have been adopted according to Article 253 of the Constitution of India, which provides power to the Parliament of India to make any law for any of the whole or any part of the country for implementing any treaty, agreement or convention with any other country.<sup>106</sup>

### 5.2.1. THE WILDLIFE (PROTECTION) ACT 1972

In this Act, the definition of 'Person' has been amended by the Wild Life (Protection) Amendment Act 2022 and 'company or any authority or association or body of individuals' has been added.<sup>107</sup> This clarifies that the company plays a significant role as a legal entity in Indian society, as well as in the protection of wildlife.<sup>108</sup> This also implies that the law covers all activities of companies with respect to wildlife in India.<sup>109</sup> The word 'person' has been mentioned in several

<sup>93</sup> Nimish Adhia, The History of Economic Development in India since Independence, 20 EDU. A. 18 (2015).

<sup>94</sup> Medha Kudaisya, 'A Mighty Adventure': Institutionalising the Idea of Planning in Post-colonial India, 1947-60, 43 MOD. A. STUD. 942 (2009).

<sup>95</sup> Glyn Williams & Emma Mawdsley, Postcolonial environmental justice: Government and governance in India, 37 GEOFORUM 665 (2006).

<sup>96</sup> Sadhna Gupta, From Stockholm 1972 To 2022: Holistic and Multidisciplinary Approach of India to Attain Sustainability, 3 J. THEM. A. 80 (2022).

<sup>97</sup> Id.

<sup>98</sup> Michael R. Reich & B. Bowonder, Environmental Policy in India: Strategies for Better Implementation, 20 POL. STUD. J. 645 (1992).

<sup>99</sup> Khushi Katre, Environment Protection and Indian Constitutional Law, 6 INT'L J. L. MGMT. & HUMAN. 3486 (2023).

<sup>100</sup> Id at 3487.

<sup>101</sup> Id at 3488.

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> V. S. Deshpande, Rights And Duties Under The Constitution, 15 J. IND. L. INS. 103 (1973).

<sup>105</sup> Priyesh Pathak, "State" under Part III of the Constitution of India: A Study of Interpretation by Judiciary, 3 INDIAN J. INTEGRATED RSCH. L. 8 (2023).

<sup>106</sup> Shraddha Kulhari & Sujoy Chatterjee, Is India's federalism a threat to its WTO obligations? Through the prism of Article 253, 1 IND. L. REV. 70 (2017).

<sup>107</sup> Wild Life (Protection) Act 1972, S. 2(24).

<sup>108</sup> Paul Shrivastava, The Role of Corporations in Achieving Ecological Sustainability, 20 ACAD. MGMT. REV. 949 (1995).

<sup>109</sup> Anju Baroth & V. B. Mathur, Wildlife conservation through Corporate Social Responsibility initiatives in India, 117 CUR. SCI. 406 (2019).

provisions of the Act, which have been enforced to protect wildlife from companies and others.<sup>110</sup> Section 58 of the Act deals with offences committed by companies, which clarifies that companies have to take responsibility for violations of the law.<sup>111</sup>

### 5.2.2. WATER (PREVENTION AND CONTROL OF POLLUTION) ACT 1974

This Act was enforced to prevent and control water pollution caused by various polluting sources.<sup>112</sup> According to Sections 3 and 4 of the Act, two representatives of the central government-owned companies must be on the central board, and two representatives of the companies owned by the state government must be on the state board. This reflects the responsibilities of the companies towards the prevention and control of pollution in water.<sup>113</sup> A similar provision can also be observed in the constitution of the joint board.<sup>114</sup> This Act also has a specific provision mentioning actions that can be taken against offences committed by companies.<sup>115</sup>

### 5.2.3. WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT 1977

This act mainly focuses on the consumption of water by industries to prevent or control water pollution by industrial wastes.<sup>116</sup> This also establishes the involvement of the companies in the discharge of waste.<sup>117</sup> This Act provides provisions relating to the punishments for several types of offences by companies.<sup>118</sup> However, the whole provision becomes idle, observing the amount of cess being charged for toxic and not readily biodegradable pollutants.<sup>119</sup> It costs just Rs. 15 to 30 per 1000 litres of water.<sup>120</sup>

### 5.2.4. THE FOREST (CONSERVATION) ACT 1980

This Act has been enforced retrospectively from 25<sup>th</sup> October 1980 to restrict the diversion of forests or the use of forest land for non-forest produce.<sup>121</sup> In this Act, non-forest purposes meant any purpose other than reforestation.<sup>122</sup> However, the legislation has been amended by the Forest (Conservation) Amendment Act 2023, which encouraged corporate firms to play a role in the conservation of forests.<sup>123</sup>

### 5.2.5. AIR (PREVENTION AND CONTROL OF POLLUTION) ACT 1981

According to Section 5(e) of the Act, two representatives from government-run companies or corporations shall be members of the State Pollution Control Board (SPCB).<sup>124</sup> Additionally, this act included penal provisions for offences committed by companies, demonstrating the companies' responsibility for engaging in or failing to prevent any of the mentioned activities.<sup>125</sup>

<sup>110</sup> Syed Ussain Saheb, Sepuri Sessaiah, et. al., Environment and Their Legal Issues in India, 1 INT'L RES. J. ENV. SCI. 48 (2012).

<sup>111</sup> Id.

<sup>112</sup> Namita Wahi, The Evolution of the Right to Water in India, 14 WATER 20 (2022).

<sup>113</sup> Prakash Chand, Environmental Protection and Regulations in India: Role of the Central Pollution Control Board, 64 IND. J. PUB. ADM. 7 (2018).

<sup>114</sup> Id.

<sup>115</sup> Water (Prevention and Control of Pollution) Act 1974, S. 47.

<sup>116</sup> Paritosh C. Tyagi, Policy, Law and Implementation of Industrial Wastewater Pollution Control, 24 WAT. SCI. TECH. 8 (1991).

<sup>117</sup> S. R. Wate, An Overview of Policies Impacting Water Quality and Governance in India, 28 INT'L J. WAT. RES. DEV. 271 (2012).

<sup>118</sup> V.K. Agarwal, Environmental Laws in India: Challenges for Enforcement, 15 BUL. NAT'L INS. ECOL. 228 (2005).

<sup>119</sup> Shreekanth Gupta, Shalini Saksena, et. al., Environmental enforcement and compliance in developing countries: Evidence from India, 117 WOR. DEV. 315 (2019).

<sup>120</sup> Water (Prevention and Control of Pollution) Cess Act 1977, Schedule II.

<sup>121</sup> Varun Mandanna Bheemaiah, A Critique on the Relevant Forest Laws and Policies of India, 2(2) INDIAN J. INTEGRATED RSCH. L. 6 (2022).

<sup>122</sup> The Forest (Conservation) Act 1980, S. 2.

<sup>123</sup> Garima Thakur, Exigency of an Overhaul in Forest Law: How the Forest (Conservation) Amendment Act, 2023, Has Transformed India's Forest Regime 16 NUJS Law Review 289 (2023).

<sup>124</sup> K. L. Vibhute, Environment, Development and The Law: THE Indian Perspective, 7 J. ENVTL. L. 145 (1995).

<sup>125</sup> Air (Prevention and Control of Pollution) Act 1981, S. 40.



### 5.2.6. ENVIRONMENT (PROTECTION) ACT 1986

This Act has become one of the most significant pieces of legislation, covering nearly all aspects of the environment.<sup>126</sup> The Act states that the Central government of India has the power of planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution.<sup>127</sup> This provides adequate power to enforce corporate environmental responsibility as a policy decision of the Central Government of India.<sup>128</sup> The Act has relevance relating to the activities of companies, as it plays a significant role in both the economy and society.<sup>129</sup> Several preventive provisions as well as penal provisions have been enforced that deal with the activities of the companies.<sup>130</sup>

### 5.2.7. PUBLIC LIABILITY INSURANCE ACT 1991

In this Act, 'Company' has been included within the definition of the term 'owner'.<sup>131</sup> This act provides immediate relief to individuals affected by a direct accident that occurs while handling any hazardous substance or an accident connected with such an incident.<sup>132</sup> This act also helped to establish an Environmental Relief Fund for relief provided by the Central Government.<sup>133</sup>

### 5.2.8. NATIONAL GREEN TRIBUNAL ACT 2010

The Act was enforced to deal with all the environmental disputes with the help of different resources and solution mechanisms.<sup>134</sup> This act opened accessibility to updated resources and reduced the complexities of the primitive judicial mechanism.<sup>135</sup> The Act states that a person means 'a company' also.<sup>136</sup> Therefore, it enforces several provisions on companies through this Act.<sup>137</sup> This Act provided three options for the company that created environmental damage.<sup>138</sup> Those are monetary relief, compensation for the environmental loss and restitution of the previous environmental condition.<sup>139</sup> This Act also provided a separate provision relating to the offences committed by companies.<sup>140</sup>

## 6. CER IN THE EYE OF THE INDIAN JUDICIARY

The judiciary plays a significant role in India in checking and balancing existing laws, reshaping laws and setting precedents to provide justice.<sup>141</sup> Articles 32 and 226 of the Constitution of India give the power to the Apex Court and all the High Courts to entertain legal disputes, including issues raised with respect to the environment.<sup>142</sup> It cannot be denied that Companies established under the specified provisions cause significant environmental pollution in India, as well as environmental accidents.<sup>143</sup> Such gradual anti-ecological activities not only create irreversible environmental

<sup>126</sup> P. M. Prasad, Environmental Protection: The Role of Liability System in India, 39 ECON. POLIT. WKLY. 258 (2004).

<sup>127</sup> Noorjahan Bava, Environmental Policy and Administration in India: Role of Government, Parliament and Supreme Court, 1 INDIAN J. PUB. ADMN. 75 (2004).

<sup>128</sup> Michael R. Reich and B. Bowonder, Environmental Policy in India: Strategies for Better Implementation, 20 POL. STUD. J. 645 (1992).

<sup>129</sup> Rajat Singh & Neha Gadgala, Environmental Regulations in India: Efficiency & Effectiveness, 5 INT'L J. L. MGMT. & HUMAN. 476 (2022).

<sup>130</sup> Priyanka Singh, Corporate Criminal Liability and the Environment, 3 INDIAN J. L. & LEGAL RSCH. 10 (2021).

<sup>131</sup> Public Liability Insurance Act 1991, S. 2(g)(iii).

<sup>132</sup> Vikram Raghavan, Public Liability Insurance Act: Breaking New Ground for Indian Environmental Law, 39 J. INDIAN. L. INS. 97 (1997)

<sup>133</sup> Public Liability Insurance Act 1991, S. 7A.

<sup>134</sup> Gitanjali Nain Gill, The National Green Tribunal of India: A Sustainable Future through the Principles of International Environmental Law, 16 ENVTL. L. REV. 187 (2014).

<sup>135</sup> Id.

<sup>136</sup> National Green Tribunal Act 2010, S. 2(j)(iii).

<sup>137</sup> Sudha Shrotria, Environmental Justice: Is the National Green Tribunal of India Effective, 17 ENVTL. L. REV. 173 (September 2015).

<sup>138</sup> Id.

<sup>139</sup> Id.

<sup>140</sup> National Green Tribunal Act 2010, S. 27.

<sup>141</sup> Sudha Shrotria, Good Governance and Environment Protection: The Role Played by the Judiciary in India, 6 INDIAN J. HUM. DEV. 295 (2012).

<sup>142</sup> Id at 288.

<sup>143</sup> Supra 82 at 7.

degradation but also huge economic loss for the State.<sup>144</sup> In the last century, the judiciary tried its best to clarify that the person who causes environmental pollution has to pay for the same.<sup>145</sup> The journey towards this movement began with the Bhopal gas leak tragedy.<sup>146</sup>

### 6.1. UNION CARBIDE CORPORATION V. UNION OF INDIA<sup>147</sup>

Union Carbide India Limited (UCIL), a company started with a battery assembly plant in Calcutta (Now Kolkata) in 1924.<sup>148</sup> Within the year 1983, the company was doing various industrial operations from 14 plants in India.<sup>149</sup> The company shut down its industry in Bhopal after facing losses in 1984.<sup>150</sup> On December 3, 1984, a tank containing Methyl Isocyanate (MIC) leaked from the Union Carbide plant in Bhopal, resulting in a massive disaster.<sup>151</sup> Because of the leakage, 3787 people have died, and more than five lakh residents of Bhopal have been affected.<sup>152</sup> The first case has been filed against the parent company, namely Union Carbide Corporation, in the United States District Court, New York, United States of America.<sup>153</sup> The Court accepted the ground of forum non Conveniens stated by the defendant, with the condition that the company will accept civil jurisdiction of the Indian Courts to hear the case.<sup>154</sup> Even the United States Supreme Court in 1993 declined to review the appeal and affirmed the dismissal of the petition in the New York District Court, United States of America.<sup>155</sup> On the other hand, the trial started in the Indian Court in 1988.<sup>156</sup> After lots of bargaining, the Company agreed to pay 470 Million Dollars as relief as directed by the Supreme Court of India.<sup>157</sup> The settled amount of relief given by the company and the amount of relief have been distributed.<sup>158</sup> In the meantime, the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 was enforced so that the company could not escape from its liabilities.<sup>159</sup> However, the massive environmental as well as human loss had already occurred, which was irreversible and could only be compensated for.<sup>160</sup> Over the last 40 years, various other issues related to the tragedy have been raised by victims, family members, activists, and others before the Courts of the United States of America and India.<sup>161</sup> This was a significant blow to the law-making institutions, highlighting the inadequacy of laws to safeguard people and the environment from the disastrous irresponsibility of companies.<sup>162</sup>

### 6.2. SHRIRAM FOODS AND FERTILISER INDUSTRY GAS LEAK TRAGEDY<sup>163</sup>

A public limited company, namely, Delhi Cloth Mills Limited, was running business in the name of Shriram Foods and Fertilisers Industries.<sup>164</sup> The company was engaged in manufacturing sodium hydroxide, chlorine, calcium hypochlorite, superphosphate, hydrochloric acid, sulphuric acid, anhydrous sodium sulphate, high-assertion hypochlorite, active fertilisers, vanaspati, and soap, among other products.<sup>165</sup> Within one year of the Bhopal gas leak

<sup>144</sup> Michael R. Anderson & Anees Ahmed, Assessing Environmental Damage under Indian Law, 5 REV. EUR. COMP. & INT'L ENVTL. L. 336 (1996).

<sup>145</sup> Satish C. Shastri, 'The Polluter Pays Principle' and the Supreme Court of India, 42 J. INDIAN L. INS. 113 (2000).

<sup>146</sup> C. M. Abraham & Sushila Abraham, The Bhopal Case and the Development of Environmental Law in India, 40 INT'L & COMP. L. Q. 334 (1991).

<sup>147</sup> 1990 AIR 273.

<sup>148</sup> Mary Ipe, Bhopal Gas Tragedy: Lessons for corporate social responsibility, 1 SOC. RES. J. 123 (2005).

<sup>149</sup> Id.

<sup>150</sup> Id at 124.

<sup>151</sup> Id.

<sup>152</sup> Dr. Prashant Kumar Srivastava, Legal Control of Industrial Pollution in India, 2 JUS. L. BUL. 45 (2023).

<sup>153</sup> Bharat Desai, The Bhopal Gas Leak Disaster Litigation: An Overview, 3 ASIAN YEARB'K INT'L L. 164 (1994).

<sup>154</sup> Id.

<sup>155</sup> Id at 166.

<sup>156</sup> Id at 167.

<sup>157</sup> Id at 175.

<sup>158</sup> Id.

<sup>159</sup> Id at 167.

<sup>160</sup> Id at 177.

<sup>161</sup> Jayanth K. Krishnan, Bhopal in the Federal Courts: How Indian Victims Failed to Get Justice in the United States, 72 RUTGERS U.L. REV. 705 (2020).

<sup>162</sup> Supra 174 at 164.

<sup>163</sup> M.C. Mehta v. Union of India, 1987 AIR 1086.

<sup>164</sup> Nimish Bassi, Case Comment on M.C. Mehta v. Union of India, 4 SUPREMO AMICUS 285 (2018).

<sup>165</sup> Id.

tragedy, hazardous oleum gas leaked from the plant of the company on 4<sup>th</sup> December 1985.<sup>166</sup> Due to the leakage, nearly 200,000 people were affected, and one person lost their life.<sup>167</sup> A writ has been filed before the Supreme Court of India on behalf of the victims by Advocate Mahesh Chander Mehta.<sup>168</sup> The case was referred to a five-judge bench due to a substantial question of law.<sup>169</sup> The apex court held that it has the power to provide remedial relief in suitable cases where a violation of a fundamental right is gross and affects a large number of persons, or where a person is poor or backward.<sup>170</sup> In this case, the court stated, referring to the case of *Rylands v. Fletcher*, if a person collects and keeps anything in his land, which may harm any other person or damage others' property, he shall be liable to compensate for the harm or damage caused.<sup>171</sup> So, it becomes the strict liability of the person who caused the damage.<sup>172</sup> However, the liability could not be applied where the material escaped due to an act of God.<sup>173</sup> However, the Hon'ble Court provided a new rule stating that an industry working with hazardous substances, which brings a potential threat to the health and safety of the workers and nearby residents, has absolute liability to those people, so that no harm shall be caused.<sup>174</sup> The establishment shall be responsible for taking all safety measures and absolutely liable to compensate if it causes any damage.<sup>175</sup>

### 6.3. KANPUR LEATHER TANNERIES CASE<sup>176</sup>

Advocate M. C. Mehta filed a public interest litigation against 89 respondents, including the Union of India and several other statutory authorities.<sup>177</sup> Initially, the petition cited issues relating to the river Ganga in Haridwar.<sup>178</sup> According to the petition, a toxic, flammable chemical layer has been established over the river because people throw matchsticks and oil into the river.<sup>179</sup> Other issues have also been raised in the petition, which the court directed the parties to address specifically.<sup>180</sup> The petitioner and Advocate M. C. Mehta mentioned the issue relating to the River Ganga in Kanpur.<sup>181</sup> The Hon'ble Supreme Court issued a notice to industrialists, municipal corporations, and town municipal councils through a newspaper publication.<sup>182</sup> The court ordered them to show cause as to why directions should not be issued against them, as they are bound to fulfil the fundamental duty laid under Article 51A of the Constitution of India to safeguard the environment.<sup>183</sup> Article 48A of the Constitution of India was also mentioned by the Hon'ble court, which empowers the State to take action to protect the environment.<sup>184</sup> Various sections from the Water (Prevention and Control of Pollution) Act, 1974, were also mentioned by the court, which was enacted to prevent and control water pollution.<sup>185</sup> The Hon'ble Supreme Court of India declared in the case that Ganga water pollution is a public nuisance.<sup>186</sup> The state board established under the Water Act did not take any necessary action against the discharge of

<sup>166</sup> Id.

<sup>167</sup> Soumyadip Panda, Acumen of Absolute Liability in India with Reference to Indian and Foreign Precedents, 2 INDIAN J.L. & LEGAL RSCH. 6 (2021).

<sup>168</sup> Id.

<sup>169</sup> Id.

<sup>170</sup> Yadavi Kiran, Absolute Liability: A Journey from Strict Liability, 5 INDIAN J.L. & LEGAL RSCH. 6 (2023).

<sup>171</sup> Id.

<sup>172</sup> Id.

<sup>173</sup> Id.

<sup>174</sup> Id at 7.

<sup>175</sup> Id.

<sup>176</sup> 1988 AIR 1115.

<sup>177</sup> Kelly D. Alley, Urban Institutions at the Crossroads: Judicial Activism and Pollution Prevention in Kanpur, 25 URB. ANTHRO. STUD. CUL. SYS. WOR. ECON. DEV. 358 (1994).

<sup>178</sup> Emma Tomalin & Julian Crandall Hollick, Making a radio documentary series about the river Ganges, 11 CONTEMPO. SOU. ASIA 218 (2002).

<sup>179</sup> Id.

<sup>180</sup> Id.

<sup>181</sup> Id.

<sup>182</sup> Poonam Kanwal, Public Interest Environmental Litigations in India: An Overview, 9 INT'L J. SOC. SCI. ECON. RES. 573 (2024).

<sup>183</sup> Id.

<sup>184</sup> Id.

<sup>185</sup> Sanchita Aggarwal, Problems, Limitations and Implementational Failures in Public Interest Environmental Litigation through an Analysis of the Kanpur Tanneries Ganga Pollution Case, 24 SUPREMO AMICUS 1009 (2021).

<sup>186</sup> Dr. Mukesh Garg, Water Pollution in India: Causes and Remedies, 2 INT'L J. PHYS. SOC. SCI. 565 (2012).

effluent.<sup>187</sup> Even the Central Government of India was negligent about the issue raised.<sup>188</sup> All tanneries must set up a water treatment plant; otherwise, they can not run the establishment.<sup>189</sup> In the judgment, the Apex Court also stated that industries should be responsible for the waste disposed of and should take necessary action to curb the same.<sup>190</sup>

#### 6.4. INDIAN COUNCIL OF ENVIRO-LEGAL ACTION V. UNION OF INDIA<sup>191</sup>

People of a small village of Udaipur District, namely Bichhri, were facing serious health issues and even death because of the use and consumption of contaminated groundwater.<sup>192</sup> They found that the contamination occurred due to improper discharge of toxic effluents from nearby industries.<sup>193</sup> Hindustan Agro Chemicals Limited, Silver Chemicals, Jyoti Chemicals, Rajasthan Multifertilizers and Phosphate India were found discharging various toxic effluents like oleum, single super phosphate, iron and gypsum-based sludge, etc.<sup>194</sup> These toxic effluents were percolated and mixed with the groundwater.<sup>195</sup> The Indian Council for Environment-Legal Action, a public-spirited body, filed a writ before the Supreme Court of India in 1989.<sup>196</sup> It was found that Hindustan Agro Chemicals Limited was producing different materials for which the company was not entitled, and got no objection certificate from the concerned Rajasthan State Pollution Control Board (RSPCB).<sup>197</sup> Besides this, four other industries did not have a 'no objection certificate' from the RSPCB—a report prepared and submitted by the National Environmental Engineering Research Institute.<sup>198</sup> The apex court directed the Ministry of Environment and Forests, Government of India, to appoint experts to inspect the area and take necessary remedial action.<sup>199</sup> It was also directed that the whole costs of the remedial procedure would be recovered from those companies.<sup>200</sup> In this case, the Hon'ble Supreme Court of India mentioned the rule of the 'polluter pays principle' as companies cannot escape liability for environmental pollution.<sup>201</sup> A fine of Rs. 38.68 Crores was imposed on Hindustan Agro Chemical Limited, and an additional fine of Rs. 10 lakhs were imposed for maintaining the litigation.<sup>202</sup>

#### 6.5. VELLORE CITIZENS' WELFARE FORUM V. UNION OF INDIA<sup>203</sup>

A non-governmental organisation, namely, Vellore Citizens Welfare Forum, filed a writ petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India.<sup>204</sup> According to the petition filed, tanneries and other industries in Tamil Nadu were discharging effluents into open lands, agricultural lands, road sides, and waterways, which ultimately merged into the Palar River, contaminating its water.<sup>205</sup> The river was the primary source of water for the daily needs of the area.<sup>206</sup> According to a report conducted by the Tamil Nadu Agricultural University Research Centre, Vellore, 35000 hectares of agricultural land have become unsuitable for agriculture because of the untreated

<sup>187</sup> Supra 182 at 359.

<sup>188</sup> Id.

<sup>189</sup> Id.

<sup>190</sup> Id.

<sup>191</sup> WP 967/1989.

<sup>192</sup> Abhishek Chatterjee, Shreya Chatterjee, et. al., Indian Council for Enviro-Legal Action vs Union of India, 2 JUS CORPUS L.J. 78 (2021).

<sup>193</sup> Id.

<sup>194</sup> Id.

<sup>195</sup> Id.

<sup>196</sup> Id at 80.

<sup>197</sup> Id at 79.

<sup>198</sup> Id.

<sup>199</sup> Id at 83.

<sup>200</sup> Id at 84.

<sup>201</sup> Id at 85.

<sup>202</sup> Id.

<sup>203</sup> 1996 AIR 2715.

<sup>204</sup> Shefali Soni, Vellore Citizen Welfare Forum v Union of India, AIR 1996 SCC 2715, 19 SUPREMO AMICUS 489 (2020).

<sup>205</sup> Kavindu Hewa Geeganage, Vellore Citizens' Welfare Forum and State of Tamil Nadu v. Union of India and Others, 1 S. ASIAN J. ENV'T L. & POL'Y 127 (2022).

<sup>206</sup> Id.

effluent discharge from those tanneries and industries.<sup>207</sup> It is also stated that tanneries use almost 170 types of chemicals in the tanning process.<sup>208</sup> Nearly 40 litres of water are needed to process one kilogram of finished leather.<sup>209</sup> This resulted in the discharge of massive amounts of untreated effluents from tanneries.<sup>210</sup> Even a survey conducted on 13 villages of Dindigal and Peddiar Chatram Panchayat Unions by a non-governmental organisation, namely, Peace Members, found that 350 wells out of 467 wells used for daily purposes and drinking water have become polluted because of the open discharge of untreated effluents.<sup>211</sup> Further, another technical report of hydrological investigations in Solur village was submitted, which also shows a similar situation in the area.<sup>212</sup> Despite the order of the Apex Court, only 33 tanneries set up an effluent treatment plant initially.<sup>213</sup> On 20<sup>th</sup> October 1995, the National Environmental Engineering Research Institute was directed to set up a team of experts for the examination of the environmental condition of the area.<sup>214</sup> According to the recommendation of the National Environmental Engineering Research Institute, several common effluent treatment plants were constructed; however, most of them later became non-functional.<sup>215</sup> The Hon'ble Supreme Court, observing the same, mentioned the obligation of sustainable development and the polluter pays principle to the polluters.<sup>216</sup> Further, in this case, 'the precautionary principle' was mentioned for the first time by the court.<sup>217</sup>

## 6.6. TAJ TRAPEZIUM CASE<sup>218</sup>

In this case, a specific area of about 10,400 square kilometres in the shape of a trapezium around the UNESCO heritage site, Taj Mahal and other places under the Agra Region of Uttar Pradesh and the Bharatpur region of Rajasthan was facing issues of environmental pollution.<sup>219</sup> Advocate M. C. Mehta, while visiting the Taj Mahal, observed that the white marble is becoming yellowed and blackened in some places.<sup>220</sup> He filed a writ before the Supreme Court of India.<sup>221</sup> After the issue was raised, several reports were submitted by the Varadharajan Committee and the National Environmental Engineering Research Institute.<sup>222</sup> According to the outcome of those reports, primary industries, including two power plants, almost 250 foundries, chemical and hazardous substance manufacturing industries, a refinery, and a railway shunting area within the specified area, are using coal for industrial purposes, which emits sulphur dioxide.<sup>223</sup> Further, in a report of the Central Pollution Control Board, various other polluting substances were also identified.<sup>224</sup> Based on those reports, the apex court initially ordered 511 industries to either relocate outside the specified area or to cease using coal and switch to natural gas, which was later reduced to 292 sectors.<sup>225</sup> In this aspect, Gas Authority of India Limited and Uttar Pradesh State Industrial Development Corporation were directed to build the required infrastructure under the rehabilitation and expansion project.<sup>226</sup> Industries that did not agree on the same were rehabilitated in Etah, Kosi and Salimpur of Uttar Pradesh.<sup>227</sup> In its judgment, the apex court stated that both the 'polluter

<sup>207</sup> D. Shanmuganathan & L.M. Warren, Status of Sustainable Development as a Principle of National and International Law: The Indian Approach, 9 J. ENV'TL LAW 388 (1997).

<sup>208</sup> Id.

<sup>209</sup> Id.

<sup>210</sup> Id.

<sup>211</sup> Id.

<sup>212</sup> Id.

<sup>213</sup> Id.

<sup>214</sup> Id at 390.

<sup>215</sup> Id.

<sup>216</sup> Id at 395.

<sup>217</sup> Id at 397.

<sup>218</sup> M. C. Mehta v. Union of India & Others, AIR 1997 2 SCC 353.

<sup>219</sup> Raveesha Chadha, Environment Laws and Policies in India, 4 INT'L J. L. MGMT. & HUMAN. 3377 (2021).

<sup>220</sup> Id.

<sup>221</sup> Id.

<sup>222</sup> Deepali Katiyar, The Taj Trapezium Case: An Analysis, 4 INDIAN J. L. & LEGAL RSCH. 1 (2022).

<sup>223</sup> Id.

<sup>224</sup> Id.

<sup>225</sup> Id.

<sup>226</sup> Priya Karmakar Das, Air Pollution in Metropolitan Cities in India, 4 INDIAN J. L. & LEGAL RSCH. 9 (2022).

<sup>227</sup> Id.



pays principle' and the 'precautionary principle' are essential features of 'sustainable development' and are accepted as part of the law of the land.<sup>228</sup>

## 7. INTERNATIONAL LEGAL DEVELOPMENTS

Environmental awareness is inherent in the thoughts of the human mind from ancient times.<sup>229</sup> However, in the modern scenario, almost all corporate and environmental laws have been developed with the assistance of international provisions accepted by signatory sovereign states that are members of international bodies.<sup>230</sup> The United Nations and other international bodies provided key points to safeguard the environment.<sup>231</sup> This global initiative was started with the establishment of the United Nations Environment Programme (UNEP) in 1972.<sup>232</sup> From the establishment of this authority to the present day, several international agreements covering different aspects of the environment have been signed by the member states.<sup>233</sup> Some provisions can also be observed, which give an idea towards the concept of CER.

According to the United Nations Conference on the Human Environment 1972, people have a responsibility to protect and improve the environment for present and future survival.<sup>234</sup> All the natural resources of the earth must be safeguarded for the benefit of the present and future by careful planning or management.<sup>235</sup> Renewable resources must be maintained, restored or improved.<sup>236</sup> People also have a responsibility to safeguard and manage wildlife and its habitat.<sup>237</sup> Various types of substances that affect the environment must be halted, and all the struggles of people against these activities must be supported.<sup>238</sup>

The United Nations Conference on Environment and Development 1992 provided several provisions suggesting that nations enforce environmental responsibility on people as well as companies.<sup>239</sup> The conference also mentioned that corporate firms must take ecological responsibility into their own hands.<sup>240</sup> According to the report of the conference, participating states have been said to enforce legal provisions for the environmental liabilities as well as for the restoration or compensation against the ecological damage caused by any individual or corporate firm.<sup>241</sup> In another provision of the report, the responsibility of the polluters has been mentioned for the protection of the environment and public interests.<sup>242</sup> Similarly, in Chapter 30, Agenda 21 of the Conference describes the role of business establishments and industries.<sup>243</sup>

The World Summit on Sustainable Development 2002 also mentioned environmental responsibilities of the private sector, including companies.<sup>244</sup> The summit has mentioned that the pro-environmental activities are one of the responsibilities of the corporate firms.<sup>245</sup>

At the 2012 United Nations Conference on Sustainable Development, the role of companies was mentioned. Corporate firms have been included under business and industries as major groups. At this conference, the roles of these major groups with respect to environmental, economic, and social factors have been discussed.<sup>246</sup> The environmental

<sup>228</sup> Supra 187.

<sup>229</sup> Gauri Shankar Gupta, Environmental Degradation and Relevance of Ance of Ancient Wisdom, 20(1) DEL. BUS. REV. 24 (2019).

<sup>230</sup> Laurence Boisson de Chazournes, Environmental Treaties in Time 39 ENV. POL. L. 293 (2009).

<sup>231</sup> Id.

<sup>232</sup> Id.

<sup>233</sup> Id.

<sup>234</sup> Report of the United Nations Conference on The Human Environment 1972, Principal No. 1.

<sup>235</sup> Id, Principal No. 2.

<sup>236</sup> Id, Principal No. 3.

<sup>237</sup> Id, Principal No. 4.

<sup>238</sup> Id. Principal No. 6.

<sup>239</sup> Report of The United Nations Conference on the Environment and Development 1992, Principal No. 13.

<sup>240</sup> Id.

<sup>241</sup> Id.

<sup>242</sup> Id, Principal No. 16.

<sup>243</sup> Id, Agenda 21, Chapter 30.

<sup>244</sup> Report of The World Summit on Sustainable Development 2002, Paragraph No. 26.

<sup>245</sup> Id, Paragraph No. 28.

<sup>246</sup> Report of The United Nations Conference on Sustainable Development 2012, Paragraph No. 43.

activities under the framework of corporate social responsibility have been mentioned.<sup>247</sup> This conference is also called Corporate for Participation and Green Economy Policies.<sup>248</sup>

In the resolution of the United Nations in 2015, companies have been suggested to take sustainable measures and practices for the sake of the environment.<sup>249</sup> The resolution also suggested a periodic report of the same.<sup>250</sup>

In 2022, businesses and industries were mentioned as major stakeholders in the international meeting held in Stockholm.<sup>251</sup> In the subject of achieving a healthy planet, a legal framework has been suggested to be enforced on the transnational corporations to hold them liable for the environmental damage caused by them.<sup>252</sup>

## 8. CONCLUSIONS AND RECOMMENDATIONS

Companies in India play a significant role in the environmental sector, as they generate substantial returns while providing minimal benefits to the environment in the process of creating stakeholder value. Additionally, it has adequate resources required to make a positive impact on the environment through specific activities and changes in regular processes. From the ancient Indian societal background to modern society, environmental protection, conservation, and other related factors have been significant aspects of society. In various religious backgrounds, the responsibilities of humans towards the environment have also been clearly outlined and are evident in the present scenario. A company is nothing, but a structure built by humans for some specific goals, which itself represents a person accepted from the legal point of view. So, it has similar responsibilities, which cannot be suppressed. Environmental responsibility is one of the responsibilities of corporate firms. Although in the present legal framework relating to companies, the environmental responsibility of corporate firms has been set under the umbrella of social responsibility. But the importance and requirement can not be fulfilled as it is getting some of the least vigilance from corporate firms as well as governments. There are some other concerns relating to the implementation of another legal provision to fulfil corporate environmental responsibility in India. Regular observation of the betterment of the environment is essential, and it requires the involvement of the enforcement mechanisms of the government.

With respect to economic factors, companies are connected to the local as well as international markets, and their stakeholders are part of the society whose interests may be affected by it. It can not be denied that owners generally try to divert any additional expenditure towards the consumers. Typically, another legal provision on corporate firms to fulfil environmental responsibility will require further economic support, which will be collected from the consumers. Besides this, the additional cost may reduce the market share of companies in India in cost-sensitive markets. Leaving economic factors aside, corporate firms have reached a critical point where environmentally friendly operations are also a significant factor that cannot be ignored. The massive effect of anti-environmental functions can be observed, which has resulted in natural disasters and climate change. In this alarming scenario, collective responsibility is paramount and corporate environmental responsibility is one of them. The role of governments and other institutions which having a duty to check and control activities of companies have been observed not as effective as required, and that is why existing legal provisions for the prevention and control of pollution in different parts of the environment can not be enforced effectively. Besides this, public-spirited environmental activists and the judiciary played a crucial role in the protection and restoration of the environment. During this period, it can be inferred from the numerous questions and complaints raised against corporate firms for their environmental impact that corporate firms can be considered one of the primary factors contributing to environmental pollution. With the help of new legal provisions on corporate environmental responsibility, companies shall perform directly to fulfil environmental responsibility. This may reduce complexity and make it easier to work for the environment, thereby establishing a corporate green image in the minds of consumers.

In this regard, the enforcement of legal provisions regarding corporate environmental responsibility in India can be a source of legal anxiety for corporate firms, as it may lead to an additional burden and pressure of another

<sup>247</sup> Id, Paragraph No. 46.

<sup>248</sup> Id, Paragraph No. 69.

<sup>249</sup> United Nations General Assembly, transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 (Issued on October 21, 2015).

<sup>250</sup> Id.

<sup>251</sup> United Nations, Stockholm+50: a healthy planet for the prosperity of all - our responsibility, our opportunity, A/CONF.238/INF/2 (Issued on August 1, 2022).

<sup>252</sup> Id.

environmental responsibility. However, in the long run, this responsibility may become an advocate for the company. Several companies in India and other countries voluntarily demonstrate environmental responsibility. Performance for the betterment of the environment provides a positive corporate image in society.

Some suitable recommendations may be provided in this regard to different functionaries in India. Recommendations can be provided to the legislature, judiciary and executives.

For legislatures, amendments can be made in the Companies Act 2013, which has no legal provision relating to the environment. Section 135A can be added for corporate environmental responsibility. In this regard, all the companies that are in a profitable condition shall have to perform on environmental responsibility. All of the performance shall be equivalent to not less than two per cent of the total profit. The environmental responsibility can be fulfilled by making some changes to the mode of operations and activities in an environmentally friendly manner. If the company has no scope to make improvements in its own activities, then it will perform for the betterment of the environment in the local area. Activities for the betterment of the environment can not be mentioned if performed outside India. In case of non-compliance, three types of steps can be taken. Firstly, a fine can be collected due to non-compliance with corporate environmental responsibility. Secondly, attachment of the property of the company can be done. Thirdly, immediate cancellation of registration and closure of the establishment can be done.

For executives, implementation is one of the significant factors for all the legal provisions. In the last few years, corporate environmental responsibility through circularity has been attempted to be enforced but has not been entirely effective. Following the amendment to the Companies Act 2013, which aims to implement corporate environmental responsibility, effective implementation is now required. This can be achieved through the periodic collection of information about the companies' performance to fulfil their environmental responsibilities. A district-wise office shall be made, which will keep a record of the corporate environmental responsibility-related performance of the companies. This mechanism shall share information and work collectively with the state pollution control boards, the Central Pollution Control Board, environmental activists, non-governmental organisations and research institutions.

The judiciary has played a significant role in safeguarding the environment from the activities of corporate firms. But several factors can be observed, which need to be analysed. Even after the establishment of the National Green Tribunal, speed is one of the critical factors. Still, procedures are very complex, which makes people avoid seeking justice in environmental factors also.