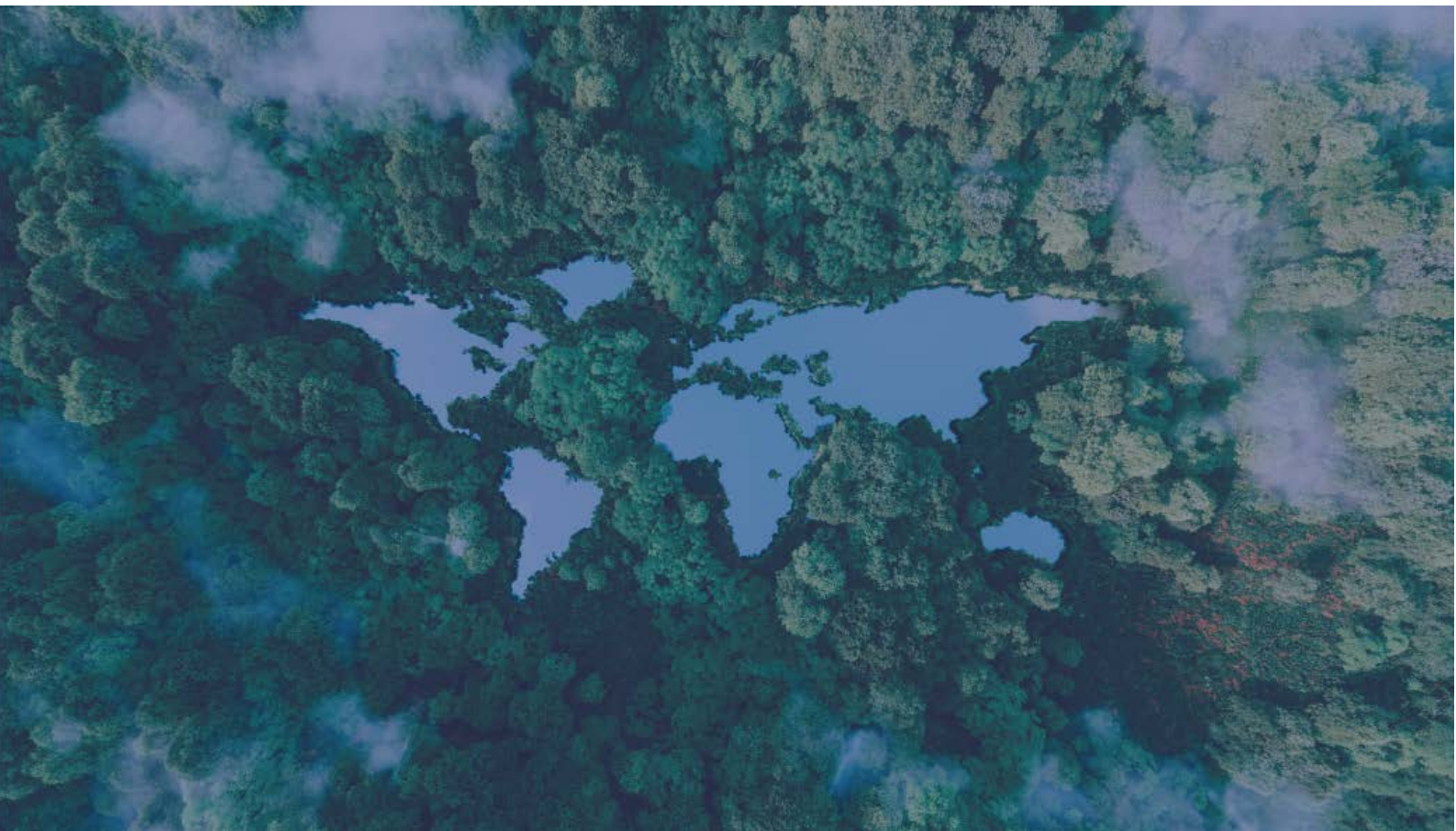




**British Institute of  
International and  
Comparative Law**

# Global Perspectives on Corporate Climate Legal Tactics: India National Report

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**British Institute of  
International and  
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# List of Abbreviations

## Abbreviations

BSR	Business responsibility report
BRSR	Business Responsibility and Sustainability Report
BRR	Business Responsibility Report
BMWM	Biomedical Waste Management
CGWA	Central Ground Water Authority
CSR	Corporate Social Responsibility
CSO	Civil Society Organizations
ESG	Environmental, Social, and Governance
EIA	Environment Impact Assessment
EPR	Extended Producer Responsibility
HC	High court
HCF	Health care facilities
LODR	Listing Obligations and Disclosure Requirement
LTEO	Long Term Ecological Observations
MCA	Ministry of Corporate Affairs
MOEFCC	Ministry of Environment, Forest and Climate Change
NGT	National Green Tribunal
NEDRC	Non-Executive Directors Regulatory Committee
NAPCC	National Action Plan on Climate Change
NCAP	National Carbonaceous Aerosols Programme.
NRC	Nomination and Remuneration committee
NGRBC	National Guidelines on Responsible Business Conduct
NOC	No Objection Certificate
NEERI	National Environmental Engineering Research Institute
RLEK	Rural Litigation and Entitlement Kendra
SC	Supreme Court
SAPCC	State Action Plan on Climate Change
SCC	Supreme Court Cases
SEBI	Securities and Exchange Board of India
SR	Superior voting rights
UNFCCC	United Nations Framework Convention on Climate Change
UNMDGs	United Nations Millennium Development Goals
v/vs.	Versus

## List of cases referred to in this report

- A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) ((2001) 2 SCC 62)
- Court on its own Motion v. State of Himachal Pradesh (2014 SCC OnLine NGT 1)
- Gaurav Bansal v. Union of India (National Green Tribunal (Principal Bench, New Delhi) Gaurav Kumar Bansal v. Union of India, (July 23, 2015))
- Goel Ganga Developers (India) (P) Ltd. v. Union of India ((2018) 18 SCC 257)
- Hanuman Laxman Aroskar v. Union of India ((2020) 12 SCC 1)
- Hanuman Laxman Aroskar v. Union of India ((2020) 12 SCC 1)
- Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission ((2015) 12 SCC 61).0020
- In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh (2020 SCC OnLine NGT 129)
- Indian Council for Enviro-legal Action and others v. Union of India and others, (1996) 3 SCC 212
- K. Guruprasad Rao V. State of Karnataka and Ors ((2013) 8 SCC 418)
- M.C. Mehta And Anr vs Union Of India & Ors. ((1987 AIR 1086))
- M.C. Mehta v Union of India (AIR 1988 SC 1037)
- M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388
- M.K Ranjitsinh vs Union of India (2021 SCC OnLine SC 326)
- Mahendra Pandey v. Union of India (2019 SCC OnLine NGT 518)
- MC Mehta v Union of India (1987 SCR (1) 819)
- Municipal Corporation Ratlam vs Shri Vardhichand, 1980 AIR 1622
- N.D. Jayal v Union of India ((2004) 9 SCC 362)
- Orissa Mining Corpn. Ltd. v. Ministry of Environment & Forests ((2013) 6 SCC 476)
- Rajiv Dutta v. Union of India (2019 SCC OnLine NGT 843)
- Ridhima Pandey v. Union of India (2017 SCC OnLine NGT 30)
- Rural Litigation and Entitlement Kendra Vs State of UP, (1985 SCR (3) 169)
- Society for Protection of Environment & Biodiversity v. Union of India (2017 SCC OnLine NGT 981)
- Sterlite Industries (India) Ltd. v. Union of India ((2013) 4 SCC 575)
- Sundarrajan v. Union of India and Ors. ((2013) 6 SCC 620)
- Sushil Bhatt v. Moon Beverages Ltd (2022 SCC OnLine NGT 76)
- T.N. Godavarman Thirumulkpad v. Union of India & Ors., ((1997) 2 SCC 267)
- Th. Majra Singh And Ors. vs Indian Oil Corporation And Ors, (AIR 1999 J K 81)
- Union Carbide Corporation vs Union Of India, (1989 SCC (2) 540)
- Vellore Citizens Welfare Forum v. Union of India ((1996) 5 SCC 647)

# Introduction and Methodology

## Introduction

Since the last few decades efforts have been made at global level to prevent the disastrous effects of environmental pollution. At present the increase in climate change litigation is a pertinent issue faced globally. The 1972 'United Nations Conference on Human Environment' held in Stockholm warned the world about the need for sound management of the environment. One of the most important contributions of this conference was to put for the environmental concerns at forefront and suggest a need for a dialogue at international level on environmental issues between the developed and developing nations. After 20 years of this conference, a new blueprint for international action on the environment was laid down by the 'United Nations Conference on Environment and Development' [Earth Summit] held in Rio de Janeiro in 1992. This conference recognised the need to integrate and balance economic, social and environmental concerns. At present, the issues related to climate change and its global implications are concerns for every nation in the world. There is an increase in climate litigation all across the world. The report published by the United Nations Environmental Programme in cooperation with the Sabin Centre for Climate Change Law at Columbia University, suggests that climate litigation has become more common at worldwide. The report suggests high concentration of such cases in high income countries in comparison to cases listed in countries in global south.<sup>1</sup> The increasing climate litigation is a major concern now for the countries and has become important component of the governance that aims to regulate factors impacting climate change at Global, regional and local levels by exerting pressure on the executive and legislative branches of government to act on the same. While most of the cases of Climate litigation are directed towards governments or other domestic authorities to take action, Corporate Climate Litigation aims to hold companies accountable for their actions impacting anthropogenic climate change. Moreover, climate litigation is not exclusively limited to legal proceedings as it can potentially include all other activities that aim to reduce climate-related damage as well as to stop climate-damaging projects.

The Civil Society Organization (CSO) in the Global North are engaged in nature preservation and associated with wilderness movement. However, in India, environmental activism follows a different discourse called environmentalism of the poor.<sup>2</sup> As far as India is concerned, there are not many cases which can be directly

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<sup>1</sup> Available at <https://www.unep.org/news-and-stories/press-release/surge-court-cases-over-climate-change-shows-increasing-role>, accessed on at 12th February, 2023.

<sup>2</sup> *Climate Change, Civil Society, and Social Movement in India*. Available from: [https://www.researchgate.net/publication/338041904\\_Climate\\_Change\\_Civil\\_Society\\_and\\_Social\\_Movement\\_in\\_India](https://www.researchgate.net/publication/338041904_Climate_Change_Civil_Society_and_Social_Movement_in_India) [accessed May 02 2023].



linked or categorized as climate litigation. A very sound environmental jurisprudence, principles of environmental justice have been developed over a period of time due to judicial activism which covers diverse issues related to the environment. In light of this fact the present research analyses the status of corporate climate litigation in India.

## Methodology

For the present work the analytical approach has been followed. The major statutory provisions related to corporate liability for climate risk, environmental protection, legal and policy framework directly and indirectly related to corporate climate litigation have been analyzed. The relevant and remarkable judgments of the Supreme Court of India and National Green Tribunal have been analyzed keeping the aim of the present comparative research into focus i.e. to identify and examine the unique aspects of climate litigation involving corporate actors. While analyzing these cases the three main research areas have been kept into focus i.e. cause of action, procedure and evidence and remedies provided in such cases. As far as India is concerned, the majority of the landmark cases are related to violation of human right to environment and judicial intervention was sought under article 32 of the Constitution of India<sup>3</sup>.

The present study has tried to cover both the horizontal and vertical climate litigation cases. Vertical Climate Actions are concerned with the relationship between private individuals and the state as it aims to address questions pertaining to State Policy and Climate Change. Horizontal Climate Actions are concerned with actions brought by individuals against companies holding them accountable for their emissions and pollutants impacting climate change.

The next part of the report deals with the legal and policy framework for Environment protection and climate change in India.

## Acknowledgements

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<sup>3</sup> The Constitution of India, Art. 32.

# 1. Causes of Action

There are various causes of action which can potentially be used to bring forth corporate climate litigation in India. Before dwelling into each of them in detail, a brief summary of the most effective cause of action along with certain examples would be:

## i. Strict and Absolute Liability

- **Legal Definition:** This principle, articulated in the landmark case of *M.C. Mehta v. Union of India (Oleum Gas Leak case)*, dictates that a company engaged in hazardous or inherently dangerous activities is absolutely liable for any harm resulting from these activities, regardless of the company's intent or negligence.
- **Application in Climate Litigation:** This principle is highly relevant in cases where corporate activities, particularly in sectors like mining, chemical manufacturing, or heavy industries, lead to environmental degradation or contribute to climate change. The absolute nature of the liability ensures that corporations cannot evade responsibility due to technicalities, making it a powerful tool in environmental lawsuits.
- **Effectiveness and Value:** This cause of action is highly effective in climate litigation due to its stringent nature. Even if a lawsuit does not result in a favorable verdict, invoking strict and absolute liability can bring significant public attention to corporate environmental malpractices and potentially influence policy changes or drive corporate behavioral shifts towards more sustainable practices.

## ii. Violation of Environmental Laws

- **Legal Basis:** This involves holding corporations accountable for breaching environmental laws and regulations, such as the Environmental Protection Act, 1986.
- **Application in Climate Litigation:** This is evident in cases like *Tamil Nadu Pollution Control Board vs. Sterlite Industries*, where companies are sued for non-compliance with environmental standards. It's especially relevant for actions that directly contribute to climate change, like excessive emissions or illegal waste disposal.
- **Effectiveness:** This cause of action is potent due to the clear legal standards set by environmental laws. It compels corporations to align their operations with these standards, making it a practical approach to environmental protection.

### iii. Constitutional Provisions

- **Legal Framework:** Based on the interpretation of the Constitution, particularly Article 21, which encompasses the right to a clean environment.
- **Use in Climate Litigation:** As in *M.C. Mehta v. Union of India* (Ganga Pollution Case), these provisions allow for broad-based litigation aimed at systemic changes in environmental governance and corporate responsibility.
- **Impact:** This approach is highly impactful for driving policy and regulatory changes. Though the success rate in court might vary, the value lies in raising public awareness and prompting governmental action.

### iv. Public Nuisance and Negligence

- **Legal Context:** This tort claim addresses harm caused to the public due to corporate activities.
- **Climate Litigation Application:** Demonstrated in cases like *Ratlam Municipality v. Vardhichand*, where entities are held accountable for causing public nuisance or neglecting environmental responsibilities. It's applicable in situations where corporate actions lead to widespread environmental damage or health hazards.
- **Effectiveness and Challenges:** This approach can be effective in highlighting environmental misdeeds and compelling corporations to amend their practices. However, it might face challenges in proving direct causation and quantifying damages.

### v. International Environmental Law

- **Framework:** Involves leveraging India's commitments to international environmental treaties and conventions.
- **Use in Litigation:** This is more theoretical in the Indian context but can be instrumental in cases involving transboundary pollution or global environmental commitments.
- **Impact and Limitations:** While potentially influential, this cause of action might face hurdles due to the complexities of integrating international norms into domestic legal proceedings.

### vi. Corporate Social Responsibility (CSR) Non-Compliance

- **Framework:** Based on the Companies Act, 2013, which mandates certain CSR activities for eligible companies.
- **Use in Litigation:** Applies when companies fail to adhere to their CSR obligations, including environmental responsibilities.
- **Impact:** While direct legal consequences may be limited, it can significantly influence public perception and corporate behaviour.

## A. Climate Change Law/Environmental Law Statutory Provisions

In India, there is no specific law related to climate change. Environmentalism in India comprehensively covers the majority of the concerns related to environment and climate. The robust legal and policy framework with active judicial intervention has shaped environmental jurisprudence in India.

### i. National Action Plan on Climate Change

Climate change specific policy is nascent in India as there is no climate specific legislation. The policy framework in the form of the National Action Plan on Climate Change<sup>4</sup> was launched in India in 2008. It envisages co-benefits approach to address climate change. This action plan has eight broad sub-components which includes:

- The National Action Plan on Climate Change (NAPCC) coordination,
- State Action Plan on Climate Change (SAPCC),
- National Institute on Climate Change Studies & Actions, National Carbonaceous Aerosols Programme (NCAP),
- Long Term Ecological Observations (LTEO),
- International negotiations and capacity building.

The National Action Plan on Climate Change (NAPCC) is a comprehensive strategy developed by the Government of India to tackle the adverse effects of climate change in the country. The plan outlines eight missions that focus on various aspects of climate change, such as solar energy, sustainable development, energy efficiency, sustainable habitat, and water conservation. These missions aim to reduce greenhouse gas emissions, promote sustainable lifestyles, promote low-carbon development, and enhance the country's resilience to climate change impacts. The success of the NAPCC will significantly contribute to India's efforts to combat climate change and ensure a sustainable future.

- 1) Eight Missions are:
- 2) National Solar Mission
- 3) National Mission for Enhanced Energy Efficiency
- 4) National Mission on Sustainable Habitat
- 5) National Water Mission
- 6) National Mission for Sustaining Himalayan Ecosystem
- 7) Green India Mission
- 8) National Mission for Sustainable Agriculture
- 9) National Mission on Strategic Knowledge for Climate Change.

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<sup>4</sup> Available at <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/dec/doc202112101.pdf>  
[Accessed on April 3, 2023]

Apart from this policy framework, there is a web of environmental laws in India which comprehensively cover varied issues related to the environment. The concerns and issues related to climate change are mainly brought before the court and talked by the court as environmental concerns. This broadening of the scope of environmental concerns does not necessitate the separate climate change law in India. The Ministry of Environment and Forest was established in 1985 with the aim to protect the environment and flora and fauna. The State Pollution Control Boards and the Central Pollution Control Board were established under the Water (Prevention and Control of Pollution) Act, 1974 are active role players for controlling environmental pollution in India. Mainly the Constitutional provisions and judicial intervention have remarkably contributed in such environmental and climate related matters.

#### *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission*<sup>5</sup>

In this judgement, a group of companies engaged in the business of production, manufacturing, selling non-ferrous metals, zinc and their by-products, were ordered to purchase minimum energy from renewable sources by the the High Court of Rajasthan in 2012.

The order of the High Court was based on the regulatory mechanism which includes The Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 and Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations 2010.

The issue before the Supreme Court was whether such an obligation can be imposed on corporates.

The primary evidence used by the court in this case are:

- National Electricity Policy
- Tariff Policy 2006
- Electricity Act 2003
- Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007
- Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations 2010

The validity of the renewable energy purchase obligation under the 2007 and 2010 Regulations were upheld by the apex court. The Supreme Court also approved the promotion and co-generation of electricity from renewable energy sources emphasising the constitutional mandates which focus on larger public interest and clean

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<sup>5</sup> (2015) 12 SCC 611

environment. The court observed that it is the duty of the state and its instrumentalities to protect the environment and thus to ensure health of the citizens and residents of the area. To achieve this objective, the state has framed the respective electricity policies and regulations".<sup>6</sup>

This is a landmark judgement and example of Horizontal Climate Litigation as the Supreme Court observed India's commitment to "the National Action Plan on Climate Change" and the importance of generation and consumption of green energy. The Court referred Article 21, 48 A and 51A(g) of the Constitution of India. Further, the Court held that the Regulations are consistent with the international obligations of India, as India has ratified to the Kyoto Protocol. Hence the companies were directed to uphold the orders of the High Court of Rajasthan.

## ii. **Water (Prevention and Control of Pollution) Act, 1974**

The Act majorly focuses on preventing and controlling water pollution due to industrial and other processes. Section 2 (e) of the Act defines water pollution as follows:

" "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;..."<sup>7</sup>

The Act provides for the establishment of Central Pollution Control Board and State Pollution Control Board as statutory authorities to take measures for prevention and control of water pollution. The State Pollution Control Board is empowered to make application to courts for restraining apprehended pollution of water in power and streams of wells.<sup>8</sup> The state pollution control board is empowered to grant consent to establish and consent to operate to industries after verifying the compliance to the standards set by the pollution control boards<sup>9</sup>. The regular monitoring of the industries by the pollution control board is another remarkable feature. Both the acts provide for penal provision for offences committed under the acts.

If the violation continues, in such a case additional fine may be levied that is extendable up to ₹ 5000 for every day of such continuation.

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<sup>6</sup> Ibid

<sup>7</sup> Section 2 (e) of the Water (Prevention and Control of Pollution) Act, 1974 available at <https://cpcb.nic.in/upload/home/water-pollution/WaterAct-1974.pdf>, accessed on 23<sup>rd</sup> March, 2023.

<sup>8</sup> Ibid section 33.

<sup>9</sup> The Water (Prevention and Control of Pollution) Act, 1974, § 25.

To guarantee compliance with its requirements, the Water (Prevention and Control of Pollution) Act, 1974 imposes a number of punitive measures and responsibilities. If a person violates a State Board order prohibiting them from immediately restraining them from discharging poisonous, harmful, or contaminating material into a stream, well, or other area of land, rendering it unfit for use, they may be sentenced up to six years in prison, a fine, or both. It also provides penalties for prohibiting the use of a stream or well for disposing of polluting matter. In addition, the Act holds polluters strictly liable whether or not they intentionally caused pollution. The polluters are responsible for covering the expenses of clean-up as well as any environmental harm they may have caused.

### **iii. The Air (Prevention and Control of Pollution) Act 1981.**

To ensure that its rules are followed, the Air (Prevention and Control of Pollution) Act of 1981 establishes a few criminal penalties and obligations. When harmful pollutants are released into the environment or when industrial facilities are set up or operated without the proper permits or when a vehicle is used in an unsafe manner, the law stipulates that there will be penalties. These include up to six years imprisonment and/or fines of up to 5,000 rupees, or an imprisonment of one and a half years that may be extended. A court (not below a Metropolitan Magistrate or a Judicial Magistrate of the First Class) may grant a request from the relevant State Pollution Control Board to prevent the offender from releasing the air pollution. The polluter will be required to refund the State agencies for the expenditures in addition to interest.

### **iv. The Environment Protection Act, 1986.**

Any act that causes pollution of air, water, or land or any other damage to the environment in violation of the Environmental Protection Act, 1986 is punishable with 5 years' imprisonment and a fine of up to Rs. 1,00,000/-.

The Environment Protection Act enacted in 1986 is an umbrella legislation which covers detailed provisions empowering the central government to make necessary rules to protect the environment<sup>10</sup>. It also contains a very comprehensive definition of environment.<sup>11</sup>

Section 15(1) of the Environment (Protection) Act, 1986 imposes a penalty of imprisonment that is extendable up to five years along with the fine that is extendable up to ₹ 1 lakh for infringing or violating the provisions of the Environment (Protection) Act, 1986.

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<sup>10</sup> See, Section 3 and 5 and 6 of the Environment protection Act, 1986

<sup>11</sup> Ibid section 2(a) (a) "environment" includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

The Environmental Clearance process laid down under the Environment Impact Assessment (EIA)<sup>12</sup> notification is also one of the effective legal measures in preventing environmental harm.

### ***Tamil Nadu Pollution Control Board vs. Sterlite Industries (I) Ltd<sup>13</sup>.***

In this case, a company, Sterlite Industries was operating a copper smelter plant at the Industrial complex at Thoothukudi, Tamil Nadu. In 1994 the No Objection Certificate (NOC) was granted to it under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The Environmental Clearance was also granted to it. Initially the plant was given permission to produce blister copper and sulphuric acid. The Environmental Clearance granted to it was challenged in the High Court of Madras (Writ Petition Nos.15501-15503/1996). Meanwhile the Tamil Nadu Pollution Control Board granted further consent to production of two more products, namely, phosphoric acid and hydrofluorosilicic acid. In 2013, the residents started complaining about health issues like irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. The Tamil Nadu Pollution Control Board issued an order of the closure of the unit under section 31A of the Air Act, 1981. This order was also further challenged in the court. This case involves the issues related to impact of the industrial process on the people's health and role of the statutory authority.

## **v. Notifications and Rules under the Environment Protection Act. 1986**

### ***a. The Environment Impact Assessment Notification 2006.***

This notification also provides scope for the public consultation process in the environmental decision making. It is one of the mandatory and important steps of the EIA process in India. All developmental activities, industrial projects, mining projects mentioned under schedule I of the EIA notification are required to undergo the EIA process. So, the EIA process is one of the most powerful tools to compel corporates to take appropriate measures to prevent environmental harm including climate change.

### ***b. The Plastic Waste Management (Amendment) Rules, notified in 2022***

The waste management rules notified under Environment Protection Act, 1986 also contain provision for environment protection. The Plastic Waste Management (Amendment) Rules, notified in 2022 are amendments to Plastic Waste Management Rules 2016. The Rules mandate the generators of plastic waste to take steps to minimize generation of plastic waste. It also emphasizes on preventing littering of plastic waste

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<sup>12</sup> Environment Impact Notification 1994 as amended in 2006 was passed under the powers granted to the Central Government under section 3, 5 and 6 of the Environment Protection Act, 1986.

<sup>13</sup> 2019/INSC/220



and aims to ensure segregation of waste at source level. The rules impose responsibilities on waste generators, retailers, and manufacturers of plastic waste to manage plastic waste. The rules introduced the concept of Extended Producer Responsibility (EPR) which means the responsibility of a producer of plastic for the environmentally sound management of the product until the end of its life. Reuse of rigid plastic packaging material has been mandated in the guidelines to reduce the use of fresh plastic material for packaging.

The Rules have been enforced by the Ministry of Environment, Forest and Climate Change in exercise of the powers conferred by sections 6, 8 and 25 of the Environment (Protection) Act, 1986 (29 of 1986) and hence punishment for violation of these Rules also lies under the EPA.

#### ***c. The Biomedical Waste Management Rules, 2016***

The Biomedical Waste Management Rules, 2016 is based on the concept of 3R, namely, reduce, recycle, and reuse.

#### ***d. Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016***

It defines hazardous waste and its types. As per Rule 23 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, “the occupier, importer or exporter and operator of the disposal facility shall be liable for all damages caused to the environment or third party due to improper handling and management of the hazardous and other waste.” The rules also provide that the occupier and the operator of the disposal facility shall be liable to pay penalties as levied by the concerned State Pollution Control Board for any violation of the provisions under these rules.

#### **vi. The Forest Conservation Act, 1980**

Apart from the above-mentioned laws, the provisions under the Forest Conservation Act, 1980 also mandates the compliance to secure forest clearance<sup>14</sup> before a forest land is converted to non-forest purpose<sup>15</sup>.

#### **vii. Biodiversity Act 2002**

It was enacted with the objectives of protecting and conserving the biodiversity in India and for sustainable use of biological resources. It also ensures the fair and equitable distribution of benefit sharing and protecting the rights of the indigenous communities.

It provides for the establishment of the Biodiversity Board. Section 7 of the Act, provides that any citizen of India or a body corporate, association or organisation registered in

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<sup>14</sup> The Forest Conservation Act, 1980, § 2.

<sup>15</sup> Ibid.

India shall not obtain any biological resource for commercial utilisation except after giving prior intimation to the state biodiversity board concerned. Section 24(1) of the act further lays down that when any such intimation made as mentioned in section 7, the State Biodiversity Board may consult the local bodies concerned, make inquiries and after reviewing if it deems fit grants permission.

#### **viii. The National Green Tribunal Act, 2010.**

The National Green Tribunal established under the National Green Tribunal Act, 2010 is empowered to adjudicate any matter related to the environment and has civil jurisdiction. It is empowered to deal with any issue related to the right to the environment. The Tribunal can apply the principle of polluter pay and precautionary principle in environmental issues. The tribunal has also played remarkable role in adjudicating a wide range of environmental issues.

#### **ix. The Electricity Act, 2003**

It consolidates the laws relating to generation, transmission, distribution, trading and use of electricity. It provides for establishment of Electricity Regulatory Commissions at both the central [Central Electricity Regulatory Commission, (CERC)] and state [State Electricity Regulatory Commission (SERC)] levels. Section 86 (e) of the act provides that one of the functions of the state commission is to “promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person. It also specifies for purchase of electricity from such sources and a percentage of the total consumption of electricity in the area of a distribution licensee”.

#### **x. The Public Liability Insurance Act, 1991**

In 1991, The Public Liability Insurance Act was enacted with the purpose to provide immediate relief to people affected by any incident related to hazardous waste or substances or such accidents. The owner has a duty to pay compensation to the sufferer of such an accident or tragedy. Section 2 (g) defines owner as a person who is handling and taking care of any hazardous substance at the time of the accident. He may be the partner of any firm or member of the association, director, manager, secretary, or officer of the company.

#### **xi. India and Clean Energy**

India holds the third-largest position in global electricity production, mainly relying on traditional energy sources such as coal, natural gas, and oil. Yet, renewable energy sources account for only a fifth of its power production. Given its vast population, India faces a high demand for energy, emphasized by its 26th rank in the World Bank's 2017 electricity accessibility list. Recognizing climate change's dire implications, the country introduced the National Action Plan on Climate Change and the National Solar Mission in 2008.

## Policies and Incentives for Renewable Energy:

In India's Constitution, the 'Electricity' sector is on the concurrent list, meaning both the Central and State governments can make policies and enact laws in this domain. Among various initiatives, the Pradhan Mantri Sahaj Bijli Har Ghar Yojana ('Saubhagya') stands out for focusing on rural electrification. Under this program, solar photovoltaic systems are supplied to isolated locations, allowing for self-sufficient energy use. Moreover, India is an active member of the International Solar Alliance and has a series of solar-related schemes.<sup>16</sup>

## Legislative Framework:

- Electricity (Amendment) Bill, 2018: This Bill seeks to amend the Electricity Act of 2003 by defining 'renewable energy' and requiring traditional coal-based power stations to also generate energy from renewable sources. Non-compliance incurs penalties.
- Draft Electricity (Amendment) Bill, 2020: This proposes the establishment of an authority responsible for dispute resolution regarding electricity contracts.
- Draft Renewable Energy Act, 2015: This aims to streamline inter-ministerial coordination and proposes creating the National Renewable Energy Committee and the National Renewable Energy Advisory Group.

India's ambitious pledge during the 2021 Glasgow Climate Summit was to shift 40% of its power generation to renewable sources by 2030. However, this transition failed to consider the environmental implications of electronic waste produced by the adoption of solar panels on a large scale. Acknowledging this oversight, the National Green Tribunal called for the formation of a Joint Committee. This Committee, involving the Ministry of Environment, Forest & Climate Change (MoEF & CC), and the Ministry of New & Renewable Energy (MNRE), is tasked with devising an action plan for the proper management of such e-waste.

While India's dedication to renewable energy is commendable, challenges remain. Land acquisition is a significant hurdle due to geographical and legal complexities. Additionally, power projects are capital-intensive, requiring stable financial institutions and active private sector investment. On the global stage, India has ratified significant international commitments, such as the Paris Agreement. India's commitment to the Paris Agreement includes a set of targets aimed at reducing greenhouse gas emissions and increasing the use of non-fossil fuel energy sources. Some of the key targets are to reduce the emissions intensity of the economy by 33-35% below 2005 levels by 2030,

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<sup>16</sup> These include the Pradhan Mantri Kisan Urja Suraksha evam Utthaan Mahabhiyan (PM-KUSUM) for solar pumps for farmers, schemes for solar study lamps and power packs, and the Atal Jyoti Yojana (AJAY) for the installation of solar street lights.

achieve 40% of installed electric power from non-fossil-based energy resources by 2030, and create an additional carbon sink of 2.5-3 gigatonnes of carbon dioxide equivalent by 2030 through additional forest and tree cover. In 2021, Prime Minister Narendra Modi announced new targets at COP 26 in Glasgow, including increasing non-fossil fuel energy capacity to 500 gigawatts by 2030, meeting 50% of energy requirements from renewable sources by 2030, reducing total projected carbon emissions by 1 billion tonnes through 2030, bringing down the carbon intensity of the economy to less than 45%, and achieving net zero by 2070. The Union Cabinet has approved some of these targets, and India is committed to reducing emissions intensity of its GDP by 45% by 2030 from its 2005 levels.

#### **xii. Energy Conservation Act, 2001**

The Energy Conservation Act of 2001 was enacted by the Government of India with the objective of reducing the energy demand in the country by promoting energy efficiency and conservation. The Act laid the foundation for the institutionalization of energy-saving measures and established the Bureau of Energy Efficiency (BEE) to oversee and regulate the energy conservation and efficiency across various sectors of the economy.

Key Features of the Energy Conservation Act 2001:

- **Bureau of Energy Efficiency (BEE):** The Act established BEE as the nodal agency responsible for promoting energy conservation and efficiency. BEE is tasked with regulatory and advisory functions, such as setting energy standards and labeling design, developing energy conservation building codes, and conducting energy audits.
- **Designated Consumers:** The Act identifies large energy-consuming industries and establishments as "Designated Consumers." These organizations are mandated to adhere to energy consumption norms, undergo energy audits, and implement energy-saving measures.
- **Energy Auditors and Managers:** The Act provides for the certification of energy auditors and energy managers. These professionals play a crucial role in assessing the energy performance of Designated Consumers and suggesting measures for energy conservation.
- **Standards and Labeling:** One of the significant features of the Act is the introduction of energy performance standards and labeling for appliances and equipment, which aids consumers in making informed decisions.
- **Energy Conservation Building Codes (ECBC):** Under the Act, ECBC has been developed to set minimum energy standards for new commercial buildings. States have the discretion to adopt these codes and customize them according to local conditions.
- **Policies and Schemes:** The Act enables the development of various policies and schemes to promote energy efficiency in different sectors like transport, lighting, and agriculture.

- **Fines and Penalties:** The Act prescribes penalties for non-compliance with its provisions, including fines and imprisonment for severe offenses.
- **Monitoring and Reporting:** Designated Consumers are required to monitor their energy consumption and report it regularly. They are also expected to implement energy efficiency measures and report on their effectiveness.
- **Energy Savings Certificates (ESCerts):** The Act introduced the concept of energy saving certificates that can be traded between entities, thereby incentivizing energy-saving measures.
- **State Energy Conservation Funds:** The Act encourages states to set up their energy conservation funds to support energy conservation initiatives.

There are some landmark judgments dealing with the energy sector.

### *Manohar Lal Sharma v. Principal Secretary*<sup>17</sup>

The case of *Manohar Lal Sharma v. Principal Secretary* is one of the pivotal legal actions related to what is popularly known as the "Coal Allocation Scam" or "Coalgate" in India. This case was heard by the Supreme Court of India and the judgment was delivered in 2014. It is one of the landmark cases that significantly impacted the allocation of natural resources, particularly coal blocks, in India.

The controversy arose when the Comptroller and Auditor General of India (CAG) published a report in 2012 alleging that there was an "inefficient" and potentially "illegal" allocation of coal mining blocks between 2004 and 2009. The report claimed that the allocations had led to a massive loss to the state exchequer due to the absence of competitive bidding.

- **Petitioner:** Manohar Lal Sharma, a lawyer and public interest activist.
- **Respondent:** Principal Secretary to the Government of India, among other institutional parties.

The case raised questions related to constitutional law, administrative law, and specifically the principles that should govern the allocation of scarce natural resources like coal.

The Supreme Court of India, in its 2014 judgment, declared that all coal block allocations made from 1993 up to 2010 were illegal and suffered from the "vice of arbitrariness." The court cited that these allocations were not done in a manner that is fair, transparent, and objective. A subsequent part of the judgment also led to the cancellation of a total of 214 out of 218 coal block allocations made during that period.

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<sup>17</sup> (2014) 9 SCC 516

- 1) **Transparency and Governance:** The judgment led to a policy overhaul, requiring the government to adopt a more transparent and competitive process for the allocation of coal blocks and other natural resources.
- 2) **Impact on the Energy Sector:** Though the case was not directly related to renewable energy, the disruptions in coal block allocations pushed the energy sector to rethink its dependencies and explore alternatives, including renewable sources.
- 3) **Financial Consequences:** Companies that had secured coal blocks and had begun operations or made investments faced significant financial and operational setbacks. Some companies also faced further legal actions for fraud and other illegal activities.

### *Gujarat Urja Vikas Nigam Limited v. Renew Wind Energy (Rajkot) Private Limited*<sup>18</sup>

The case involves Gujarat Urja Vikas Nigam Limited, a bulk power procurer, and Renew Wind Energy, a Wind Power Developer (WPD). They had entered into a Power Purchase Agreement (PPA) under the 2010 Renewable Energy Certificate (REC) Regulations. The Central Commission later amended the REC Regulations, which led the respondent, Renew Wind Energy, to seek modifications to the PPA. The State Commission agreed with Renew Wind Energy and mandated that the changes should apply to all similar wind power generators. The appellant, Gujarat Urja, unsuccessfully appealed to APTEL, a higher authority, and then sought a review, which was also dismissed.

The Supreme Court emphasized the global shift towards renewable energy, driven by the urgent need to combat climate change. The obligation to increase renewable energy consumption was rooted in Gujarat's specific regulations. According to these regulations, if an entity did not meet its renewable energy obligations, it would face consequences. The court further clarified that no prior approval by the State Commission was required for parties freely entering into PPAs related to renewable energy.

The court pointed out that no one could identify any part of the PPA that conflicted with existing regulations or model PPAs. Nor was it shown how Multi Year Tariff Regulations applied to renewable energy PPAs. Consequently, the court held that APTEL's decision, which was based on the idea that the State Commission's approval was necessary for such PPAs to operate, was not sustainable.

The judgment thus underscores the significance of renewable energy while providing clarity on how regulatory frameworks should interact with PPAs. It ruled in favour of the appellant, invalidating both the State Commission's and Appellate Tribunal for Electricity's (APTEL) decisions to amend the PPA.

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<sup>18</sup> (2023) SCC OnLine SC 411

### *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission*<sup>19</sup>

This case deals with remarkable judgment of the Apex Court in the year 2015 regarding applicability of regulations related to Renewable Purchase Obligations (RPO). In this case the RPO regulations were challenged by many companies such as Hindustan Zinc Ltd., Grasim Industries Ltd. Ambuja Cements Ltd. These regulations were enacted by Rajasthan Electricity Regulatory Commission.

Under Section 86(1) (e) of the Electricity Act, 2003, Regulatory commission had clearly specified purchase obligation from other renewable energy sources. As per the Petitioner's submission, the State regulatory commission is not empowered to mandate this.

The High Court of Rajasthan rejected this plea and passed a judgement in the year 2012 ordering the companies having captive generation power plants to purchase minimum energy from renewable sources. petition filed by the petitioner in 2012. The Renewable Energy obligation (RE obligation) was imposed on the captive generation entities for purchasing minimum energy from renewable sources and to pay a surcharge in case of shortfall in meeting the RE obligation.

The order of the High Court was opposed by the captive generation companies and they filed an appeal before the Supreme Court contending that they have established the captive generation plant as per the terms laid down in the Electricity Act, 2003.

The Court observed that the State and its instrumentalities are under a duty to protect the environment in order to ensure that the citizens/residents of the area lead a healthy life. The Regulations cannot in any manner be regarded as a restriction on the fundamental rights guaranteed (to Hindustan Zink Ltd.) under Articles 14 and 19(1)(g) under the Constitution of India.

The Court stated that the Regulations framed by the RERC were to achieve the constitutional duties of the State under Article 48A read with Article 51A (g) of the Constitution of India. These provisions are in consonance with the principles enshrined in the Electricity Act of 2003.

This landmark Supreme Court judgement makes it mandatory for industries with captive power plants (where the consumer owns at least a 26 percent stake in the power plant and consumes at least 51 percent of the energy it produces annually) to procure a percentage of their energy from renewable sources, but also empowers state electricity regulators and agencies to impose penalties on organizations that fail to meet obligations.

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<sup>19</sup> (2015) 12 SCC 611

### *M.P. Power Management Co. Ltd. v. ReNew Clean Energy (P) Ltd*<sup>20</sup>

The Appellant initiated a procurement process for 300 MW power from solar energy. ReNew Clean Energy won the bid and was allocated 51 MW capacity at a fixed tariff. A Power Purchase Agreement (PPA) was signed between both parties, with ReNew Clean providing a bank guarantee. However, difficulties arose when ReNew Clean failed to secure the requisite land to establish the power plant. They were initially allotted land by the government, but that land was encroached. ReNew Clean was then permitted to change the project's location.

Due to various delays, including difficulties in land acquisition and civil disturbances, the Appellant terminated the PPA and invoked the bank guarantee, citing a failure to meet 'Conditions Subsequent' within a stipulated time as per clause 2.5.1 of the PPA. A penalty was also imposed on ReNew Clean. In response, ReNew Clean filed a Writ Petition challenging the termination and encashment of the bank guarantee.

The High Court set aside the termination of the contract but maintained the invocation of the bank guarantee. The court observed that while the delay in completing the project existed, it was not substantial enough to warrant contract termination, especially given the unpredictable issues that ReNew Clean faced. It, however, upheld the penalty imposed, stating that the PPA allowed for such a penalty in case of delays.

The Appellant appealed the High Court's decision, arguing that they were within their rights to terminate the contract due to delays that exceeded the nine-month extension period laid down in the PPA. The Supreme Court dismissed the appeal, stating that while penalties could be imposed for delays as per the PPA, the outright termination of the contract was deemed arbitrary under the circumstances.

This case suggests the responsibilities of the State to promote renewable energy which ultimately contributes to mitigate climate change.

## **B. Human Rights Law**

The majority of the cases related to the environment have been decided by the Supreme Court and High Courts of India under the writ jurisdiction i.e., under Article 32 and 226 respectively. Through this jurisdiction both the Supreme Court and High courts have intervened in the human rights issues related to the environment. The corporate liability towards the environment has been also fixed through certain provisions under the framework of corporate laws in India.

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<sup>20</sup> (2018) 6 SCC 157



There are certain provisions under the corporate law regime which contain mandatory clauses for the environment and climate protection and the liability on the part of the corporate bodies.

There are certain such mandates under Environment Sustainable Governance. Regulators and corporations worldwide have increasingly adopted a comprehensive approach to evaluating businesses. This approach involves assessing conventional economic indicators like shareholder returns and considering factors such as the impact on the environment, dedication to social causes, and the effectiveness of corporate governance and safeguarding of shareholder rights. This trend has emerged partly due to the notion that corporations have a special responsibility as members of society but primarily due to the realization that Environmental, Social, and Governance (ESG) factors are critical components that must be included in a company's risk assessment framework to enable an accurate evaluation of the business. Developing ESG laws and regulations in India is in its early stages, emphasising safeguarding the environment and workplace conditions and limited integration of the monitoring and transparency measures characteristic of current ESG regulation. Although several laws cover a broad range of ESG-related subjects. For instance: According to Section 134(3)(m) of the Companies Act 2013, the Board's report must include specific information on energy saving. These details must include any actions or their effects on energy conservation, steps taken to use alternative energy sources, financial investments in energy-saving equipment, attempts to adopt new technologies, etc. According to Section 166 of the Companies Act 2013, a director of a company is required to act in good faith to advance the Company's objectives for the benefit of all of its members as well as in the best interests of the business, its employees, the shareholders, the community, and for the preservation of the environment. Before the Companies Act of 2013 was enacted, the preceding Companies Act of 1956 did not have a provision similar to Section 166, and the guidance provided by common law was limited in scope. During this time, directors were only obligated to act in the best interest of the Company's shareholders. Section 134 of the Companies Act specifies the information that must be included in financial statements and board reports. As per Section 134(3), any statements presented during a general meeting must be accompanied by a board of directors' report. This report should include information on energy conservation, as well as details on the development and implementation of a risk management policy. Furthermore, Rule 8(A) of the Companies (Accounts) Rules, 2014 requires that the board's report include information on energy conservation, such as the steps taken to conserve energy, the impact of these measures, efforts to utilize alternative energy sources, and capital investments in energy conservation equipment. This particular indicator has been disclosed extensively in the annual reports of publicly traded companies. The Companies Act, Section 135, when read in conjunction with the Companies (Corporate Social Responsibility Policy) Rules, 2014, makes it mandatory for businesses that meet a certain threshold in terms of their net worth, turnover, or net profit to establish a

Corporate Social Responsibility (CSR) committee that will be in charge of overseeing the CSR policy. This duty is intended to ensure that the Company fulfils its mission of providing benefits to its members. To be eligible, companies must invest at least 2% of their annual average net profits from the previous three fiscal years in CSR initiatives. The members of the CSR committee, the details of the CSR policy, an explanation of any unused money, and other pertinent information must all be included in the report that is delivered to the board.

As per the Securities and Exchange Board of India (SEBI) (Listing Obligation and Disclosure Requirements) Regulation, 2015, Section 17(1)(b), If the chairperson is a non-executive director who is not a promoter, a relative of a promoter, or a person in a management position, the Listing Obligation and Disclosure Requirements Regulations state that one-third of the board of a listed entity must be independent directors; if not, at least half of the board must be independent directors. Section 177 of the Companies Act 2013 mandates that an audit committee be established by the board of every listed Company and certain classes of public corporations. The committee must have a minimum of three directors and a majority of independent directors. Additionally, according to Regulation 18 of the Listing Regulations, an Audit Committee for a listed corporation must have independent directors make up at least two-thirds of its membership. On the other hand, every audit committee member must be an independent director if a listed firm has outstanding superior voting rights (SR) equity shares. Furthermore, it mandates that the person in charge of the audit committee must be an independent director. A Nomination and Remuneration Committee (NRC) must be established by the board of every listed Company and certain classes of public corporations under Section 178 of the Corporations Act of 2013. The NRC must comprise of three or more non-executive directors, not less than half of whom must be independent directors. The corporation's chairman, whether an executive or non-executive, may be appointed as a member of the NRC, but they are not authorised to hold the chair office. In addition, in line with Regulation 19, a listed company's Non-Executive Directors Regulatory Committee (NEDRC) must be led by an independent director and contain at least two-thirds of independent directors. The top 100 listed companies in India by market capitalization were required to file a Business Responsibility Report (BRR) in 2012, summarising their non-financial performance across ESG factors. SEBI is the regulatory body for the country's capital markets. The Business Responsibility and Sustainability Report (BRSR), effective with the fiscal year 2022–2023, was extended in May 2021 in contrast to the BRR. SEBI has mandated that the top 1,000 listed companies by market capitalization include a BRSR that details the ESG-related actions they have undertaken in their annual report. Regulation 34(2)(f) of the Listing Regulations and its circular titled "Business responsibility and sustainability reporting by listed entities" (BRSR Circular), both dated May 10, 2021, also include this obligation.

The entities that have not yet submitted their reports can do so voluntarily. The BRSR represents an endeavour to guarantee that investors are provided with uniform disclosures about environmental, social, and governance (ESG) parameters.

The BRSR initiative can be seen as a modern evolution of previous sustainability reporting practices. Sustainability reporting has been in place in Indian companies for over a decade, with the Ministry of Corporate Affairs (MCA) releasing the National Voluntary Guidelines (NVG) on Social, Environmental, and Economic Responsibilities of Business in 2011, which were aligned with the United Nations Millennium Development Goals (UNMDGs). Following the NVG's example, the Securities and Exchange Board of India (SEBI) implemented the Business Responsibility Report (BRR) in 2012.

The MCA introduced the National Guidelines on Responsible Business Conduct (NGRBC) in March 2019. These guidelines are based on the principle of trusteeship from the teachings of Mahatma Gandhi and highlight the obligation of businesses towards society. The framework contains nine principles to guide the actions of Indian company boards. The principles emphasize sustainable delivery of goods and services, consideration of stakeholders' interests, environmental protection and restoration efforts, and promotion of inclusive growth and equitable development.

To adhere to the NGRBC principles, the MCA recommended a new reporting framework called the Business Responsibility and Sustainability Report (BRSR) in August 2020. The BRSR would be a comprehensive repository for all non-financial disclosures, encompassing ESG parameters and essentially serving as an updated version of the existing Business Responsibility Reporting (BRR).

SEBI has released a consultation paper titled "Format for Business Responsibility and Sustainability Reporting" (BRSR) to seek public feedback following the MCA's recommendation of the BRSR reporting framework. The BRSR Paper outlines significant modifications to the current BRR disclosure requirements, focusing on improving the quality of disclosures and addressing challenges corporations face while implementing BRR. To this end, comprehensive guidance notes have been included for both the BRSR and the BRSR Lite. The proposal suggests incorporating a combination of quantitative and qualitative data-driven inquiries in BRSRs to address the inconsistency in the quality of disclosures observed in BRRs. Additionally, it is recommended that the BRSR be filed electronically and integrated with the filings submitted on the Ministry of Corporate Affairs portal (MCA21).

## C. Tort Law

### i. Public and private nuisance

#### *M.C. Mehta v Union of India (Ganga Pollution Case)*<sup>21</sup>

In 1985, MC Mehta, a renowned public interest litigant, filed a writ petition to prevent environmental pollution of the river Ganga as he called upon state agencies to prevent leather tanneries and the municipal corporation of Kanpur from disposing of industrial and domestic effluent in the river. He pleaded to the Supreme Court to restrain the respondent industries from releasing effluents into the Ganga River till the time they establish certain treatment plants for treating toxic effluents to control and stop water pollution.

Relying on the provisions of Constitution of India and the Water (Prevention and Control of Pollution) Act, 1974, the Court obligated the Central and State Authorities to take active steps for preventing the pollution of Ganga by declaring it to be a tortious liability on the polluters as a public nuisance as all the tanneries were needed to set up a primary treatment plant in case they could not set up a secondary treatment plant and a tannery which cannot establish a primary treatment plant would not be allowed to function because of their immense adverse effect and this shall outweigh any inconvenience caused to the management and its labour on account of its closure and financial costs. The court interpreted the term “Trade Effluents” which includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any trade or industry, other than domestic sewage and held that the discharge of such trade effluents into the river would be ‘public nuisance’ as it is an act or an omission that obstructs, damages or causes inconvenience to the right of the community and it interferes with the general community interest or the comfort of the public at large.

The case is an example of both vertical and horizontal climate litigation as it calls upon the State to take action on private players impacting the environment similar to the case *Milieudefensie et al. v. Royal Dutch Shell*<sup>22</sup> wherein the court held a “duty of care” against the Shell group of companies, being the major fossil fuel companies, to control its Greenhouse Gas Emissions.

Similar approach was followed by the apex court in the case of *Indian Council for Environmental Action vs Union of India and Ors.*<sup>23</sup> The group of chemical industries owned by Mr. O.P. Agrawal, located near Bichhri village on the north side of Udaipur district in Rajasthan were engaged with production of H-Acid and the resultant untreated effluents

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<sup>21</sup> AIR 1988 SC 1037.

<sup>22</sup> ECLI:NL:RBDHA:2021:5337.

<sup>23</sup> 1996 SCC (3) 212

from the same caused severe water pollution in all aquifers surrounding that area. The live-stock, agriculture and availability of potable water were severely affected by this pollution. Initially the matter was reported as a public nuisance and action was initiated but failed in bringing any remedy. Finally, the matter was reported to the Supreme Court wherein the chemical industries were held liable and exemplary damages were awarded applying the principle of polluter pays. This is another example of action brought against the perpetrator industries through action in the form of exemplary damages in matters related to public nuisance. The Supreme Court also reminded the State Pollution Control Board to take appropriate measures in this case.

## ii. Negligent failure to mitigate or adapt to climate change

### *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission*<sup>24</sup>

In this case, the Supreme Court emphasizes an obligation on the part of the petitioner to purchase energy from renewable resources. It indicates the emphasis on the duty to adopt the measures to mitigate climate change.

This is a landmark judgement and example of Horizontal Climate Litigation as the Supreme Court observed India's commitment to "the National Action Plan on Climate Change" and the importance of generation and consumption of green energy. The Court held that the Regulations are consistent with the international obligations of India, since India has ratified to Kyoto Protocol.

### *Gaurav Bansal v. Union of India*<sup>25</sup>

In this case, the applicant prayed for steps to be undertaken to implement the National Action Plan on Climate Change, and that State governments should finalize and implement the State Action Plans and be restrained from violating them.

The petitioner argues that the respondents should be directed to place on record the relevant material and documents relating to the action taken to implement the National Action Plan on Climate change. It was also prayed that the State Governments should be restrained from acting in violation of the said plan.

The NGT in its final order only directed the State governments to prepare their respective draft plan to be approved by the Ministry of Environment, Forest and Climate Change and have the same approved expeditiously. Further, the tribunal held that in future specific violation of NAPCC, its impact and consequences, could be filed before it.

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<sup>24</sup> (2015) 12 SCC 611

<sup>25</sup> National Green Tribunal (Principal Bench, New Delhi) Gaurav Kumar Bansal v. Union of India, (July 23, 2015)

### *Mahendra Pandey v. Union of India*<sup>26</sup>

In this case, the National Green Tribunal gave order to the Delhi Government to produce necessary documents relating to action taken by it to implement National Action Plan on Climate Change.

#### iii. Negligent or strict liability for failure to warn or inform

The most remarkable judgment is Bhopal Gas Tragedy case<sup>27</sup> wherein based on the principle of *parents patrie* was used and compensation was sought for the victims.

On December 2 1984, an escape of methyl isocyanate gas from a Pesticide plant of Union Carbide India Ltd. in Bhopal, killed 1700 people and injured many other people of the city. The matter was brought before the court by the Indian government on behalf of the victims applying the principle of *parens patriae*<sup>28</sup>. Under this doctrine, the Indian government asserted the right to sue Union Carbide on behalf of the individual plaintiffs<sup>29</sup>. It is an example of mass tort action for the public nuisance. The Bhopal Gas leak triggered many litigation disasters<sup>30</sup>. Through court the settlement was made and Union Carbide Corporation paid \$465 million" to the Indian Supreme Court. The legal battle continued for the victim's claims even after this decision. This case has shown the necessity to fix the corporate accountability in such disasters. The victims were more than estimated at the time of deciding the interim relief. It was a matter between the Union Carbide and the victims and the state intervened and fought on behalf of the victims. This is a case more focused on human rights issues due to negligence on the part of the corporate entity and failure in duty to take care.

The environmental harm due to Oleum gas leakage was dealt with by the Apex Court in *M.C. Mehta v. Union of India and Ors*<sup>31</sup> popularly known as Oleum gas leakage case. Shriram Food and Fertilizer Company was held responsible for leakage of oleum gas from one of its plants and health hazards caused by it to the nearby residential areas. The company was held absolutely liable for this act and exemplary damages were awarded by the court. This is an example where the court has provided exemplary

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<sup>26</sup> 2019 SCC Online NGT 518

<sup>27</sup> Union Carbide Corporation vs Union of India, 1989 SCC (2) 540.

<sup>28</sup> According to the Doctrine of Parens Pitrae, the State has the power to have a third-party standing in lawsuit involving its citizens when the suit is related to the State's functions as a sovereign to look after the interests and well-being of its citizens. The Union of India became sole plaintiff on behalf of the victims in this matter under The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

<sup>29</sup> see Hawkes, Lisa Moscati (1988) "Parens Patriae and the Union Carbide Case: The Disaster at Bhopal Continues, Cornell International Law Journal: Vol. 21: Iss. 1, Article 5. Available at: <http://scholarship.law.cornell.edu/cilj/vol21/iss1/5> accessed on 4th March 2023.

<sup>30</sup> S. Murlidhar, Unsettling Truths, Untold Tales the Bhopal Gas Disaster Victims 'Twenty Years' of Court room Struggles for Justice [Bhopal Gas Leak Disaster- Legal Issues] available at <https://www.ielrc.org/content/w0405.pdf>, accessed on 6<sup>th</sup> March 2023.

<sup>31</sup> AIR 1987 SCR (1) 819

damages holding a company liable for violation of human rights and entertaining the petition under article 32 of the Constitution of India. The court has established a principle of absolute liability for the industrial units which are dealing with hazardous substances.

#### iv. Trespass

##### *Forward Foundation vs. State of Karnataka*<sup>32</sup>

The NGT's principal bench, chaired by Justice Swatanter Kumar, imposed fines on May 7, 2015, amounting to Rs 117.35 crore and Rs 22.5 crore on Mantri Techzone Pvt. Ltd and Core Mind Software and Services Ltd, respectively. This sum, equivalent to 5% of the project cost, was deemed 'compensation for their default' by the NGT. The companies were penalized for unauthorized constructions within a Special Economic Zone (SEZ) project and other areas, impacting ecologically sensitive land between Agara and Bellandur Lakes. The development encroached upon wetlands and storm-water drains, posing a threat to the ecosystem. The NGT established an eight-member committee, but later found their report 'vague' and incomplete. The NGT's own experts were then dispatched for an on-ground investigation, accompanied by committee members. Despite the company's appeal for a reduction, the NGT upheld the fines on May 4, 2016. However, Core Mind's penalty was reduced from 5% to 3% due to preparatory steps rather than actual construction.

##### *S.P. Muthuraman vs. Union of India (OA No. 37/2015); along with Manoj Mishra vs. Union of India*<sup>33</sup>

On July 7, 2015, the NGT's Principal bench fined seven builders in Tamil Nadu approximately Rs 76 crore for unauthorized constructions, levying fines as 5% of the project cost. The activities were undertaken based on ex post facto Environmental Clearances (ECs), facilitated by two Office Memorandums (OM) from MoEF&CC. The NGT deemed these OMs ultra vires the Environment Protection Act of 1986 and EIA Notification of 2006, quashing them and imposing fines. The developers fined included Y. Pondurai (Rs 7.4 crore), Ruby Manoharan Property Developers (Rs 1.8 crore), Jones Foundations (Rs 7 crore), SSM Builders and Promoters (Rs 36 crore), SPR and RG Construction (Rs 12.6 crore), Dugar Housing (Rs 6.9 crore), and SAS Realtors (Rs 4.5 crore). The fines were aimed at compensating for environmental damage and controlling degradation caused by these projects. A Committee, including SEIAA and TNPCB officials, was formed to assess ecological damage and investigate pollution-

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<sup>32</sup> 2015 SCC OnLine NGT 5.

<https://www.sconline.com/blog/post/2015/05/21/penalty-imposed-upon-two-companies-for-commencing-construction-on-lake-banks-before-obtaining-environmental-clearance-2/>

<sup>33</sup> 7 July 2015, NGT



control measures, which resulted in qualitative observations. On July 10, 2015, the NGT fined Akshardham Temple authorities for expansion activities on Yamuna floodplains in Delhi, levying a 5% fine based on the project cost.

#### v. Impairment of public trust resources

In *Vellore Citizens Welfare Forum vs Union of India & Ors.*<sup>34</sup> the Apex court applied the principle of polluter pays and precautionary principle along with the concept of sustainable development and held the tanneries liable and awarded huge damages. Untreated effluents from the tanneries were discharged in agricultural land and in Palar river which affected the water supply to nearby residents and affected large areas. As per the Tamil Nādu Agricultural University Research Centre 35000 hectares of land was affected. It also polluted 350 wells in that area. The Court has awarded a fine of Rs. 10,000 to each polluting tannery and cost of compensation for individual sufferers and loss to ecology separately. The court applied the principle of sustainable development and was reminded to strike the balance between economic development and health of the people.

The Indian Supreme Court has also reminded the government about its role as trustee and not that of owner in preserving the natural resources. In the case of *M.C. Mehta v. Kamal Nath*<sup>35</sup>, the court applied the public trust doctrine and asked the state to preserve the resources like trustee. In this case Suo Moto action was initiated by the court based on the information published in the newspaper the Indian Express on February 25, 1996 as “Kamal Nath dares the mighty Beas to keep his dreams afloat”. The Span Hotels Pvt. Ltd., a private company has taken land on lease and built motels on the forest land adjacent to River Beas. The lease was granted for 99 years. Kamal Nath was Minister-in -Charge of Department of Environment and Forest at the time when lease deed was signed between the Himachal Pradesh Government and the Span Hotel Pvt. Ltd. and had a direct link with the Span Motel. The Span Hotel had started construction and encroached 27.12 bighas of land including forest area. This encroachment and construction resulted into diverting the flow of river Beas. The matter was argued before the court by advocate M.C.Mehta considering this act of encroachment by the Motel as violation of fundamental right under article 21<sup>36</sup> and violation of fundamental duties under article 51A (g)<sup>37</sup> of the Constitution of India. The Public trust Doctrine, the polluter pays doctrine were applied by the apex court in this case and exemplary damages were awarded.

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<sup>34</sup> AIR 1996(5) SCC 647.

<sup>35</sup>(1997) 1 SCC 388.

<sup>36</sup> The Constitution of India, 1950, Art. 21.

<sup>37</sup> The Constitution of India, 1950, Art. 50.



### *Association for Protection of Democratic Rights v. The State of West Bengal and Others*<sup>38</sup>

The original petition challenged the government of West Bengal's plans to cut hundreds of trees, some up to 150 years old, in order to construct roads over bridges and widen roads. The court had to consider whether the plan of the government of West Bengal was in accordance with the constitutional right to a healthy environment and India's sustainable development commitments.

The Court observed that many of these trees were of Historical Trees with Irreplaceable Value. The loss of these trees cannot be compensated by compensatory afforestation. The Court also observed that the right to clean and healthy environment guaranteed under Article 21 of the Constitution of India and the responsibility of the state to protect natural resources under Article 48 A. In addition to this, India is also a party to international treaties, agreements and conferences and has committed itself to sustainable development and growth."<sup>39</sup>

The Court emphasized the need to consider the impact of such projects on carbon sequestration and climate change. According to the court, the issue is significant from the perspective of climate change which is a growing national and international concern.

The Court sought to strike a balanced approach between the development of roads and infrastructure and protecting the valuable and irreplaceable aspects of the ecosystem. The court also recognized that in certain cases of deforestation, compensatory afforestation might not be the solution and avoiding felling of trees altogether may be necessary. Moreover, the court also recognized India's commitment to fight climate change and the State's obligations under the National Action Plan on Climate Change and directed its expert committee to consider the same.

#### **vi. Fraudulent misrepresentation**

In India, there has been litigation and case law pertaining to fraudulent misrepresentation against companies, but there is no clear indication that such litigation has been specifically used to prevent action against climate change. The cases and legal principles in this area primarily focus on broader issues of corporate fraud and misrepresentation, rather than being directly linked to climate change mitigation or prevention.

For instance, the case of Gaurav Kumar vs. Serious Fraud Investigation Office in 2019 dealt with allegations against companies involving fraudulent activities like using names of individuals as directors/shareholders without their consent and infusing unaccounted

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<sup>38</sup> SLP(C) 25047/2018 decided on 25march 2021.

<sup>39</sup> Ibid

money into the mainstream. This case highlights the approach taken by Indian courts and authorities in addressing corporate fraud, but it does not directly relate to climate change actions.

Moreover, legal principles in India recognize that a company is a legal entity distinct from its shareholders and directors. However, under certain circumstances, the corporate veil can be pierced to reveal the identities of the individuals behind the corporation, especially in cases involving wrongdoing or fraud, as discussed in the case of *Mukesh Hans & Another vs Smt. Uma Bhasin & Others*. This principle could potentially be applied in cases where companies engage in fraudulent activities that impact environmental regulations or climate change actions, although such applications would depend on the specific circumstances of each case.

#### **vii. Civil conspiracy**

There have not been any cases or even precedents wherein the principles of civil conspiracy have been used to bring litigation against corporates of any form in India.

#### **viii. Product liability**

The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 encourages the reduction of hazardous waste generation and encourages its recycling and reusing. They also specify strict guidelines related to the import and export or even storage and transportation of hazardous wastes. Some specific hazardous wastes mentioned in the Rules are not permitted to be imported. In case a particular import is deemed illegal, the importer is required to re-export the waste in question at his own cost within 90 days of its arrival in India. These rules, emphasises the liability of the importer of the hazardous waste.

#### ***Aditya Dubey Versus Amazon Retail India Private Limited Ors*<sup>40</sup>.**

The case involves enforcing the concept of Extended Producer Responsibility under Plastic Waste Management Rules, 2016. The petitions target Amazon, Flipkart, and companies like Coca- Cola for violating plastic waste management regulations. Previous discussions revealed regulators' inaction, leading to a directive for the Central Pollution Control Board (CPCB) to investigate. CPCB report advised implementing the Polluter Pays principle, suggesting environmental audits and compensation recovery. The order mandates further action, requiring an action report before the next hearing, overseen by CPCB officials.

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<sup>40</sup> Original Application No. 997/2019 with Original Application No. 28/2020

### ix. Insurance liability

The Public Liability Insurance Act, 1991 provides for environmental relief funds under Section 7. The act provides under section 3(1) for third party insurance for immediate relief on no fault liability principle in case of death or injury to any person other than workman, public or damage to property resulting from accident while handling hazardous substances.

#### *Gyan Prakash vs. Ministry of Environment, Forest and Climate Change*<sup>41</sup>

An original application was filed to the National Green Tribunal to highlight the non-utilization of more than Rs. 800 crores granted to the Environment Relief Fund under the Public Liabilities Insurance Act, 1991 (hereinafter referred to as the “PLI Act”) for victims of accidents in the process of handling hazardous substances. The funds remained unutilized as the Collectors are assigned with the task of publishing the accidents, the victims were unaware of the remedies and relief provisioned for them. In response to this application, the tribunal in its order (dated 20<sup>th</sup> Nov’ 2020) directed the Ministry of Environment, Forest and Climate Change to investigate this matter and take necessary action. In the order it was emphasised that there is a need to link the Liability Risk Policy with industries with the Water, Air and Environment, Protection Acts and Rules. Further, it was directed that such consents must not be granted till the policy is achieved. The Legal Services Authorities both at the State and Centre were also directed to investigate the matter and take necessary action. Overall, the Tribunal identified that the Collector was ignorant in not publishing the accidents and the objectives of the Act were not met.

#### *Jawahar Lal Sharma vs The State of Jharkhand Through Its ... on 14 July 2017*<sup>42</sup>

In a Public Interest Litigation (PIL) filed by Jawahar Lal Sharma, the court addresses allegations against M/s Tata Steel Ltd. for not implementing the Public Liability Insurance Act, 1991, in Jamshedpur and failing to subscribe to an insurance policy. The court acknowledges the petitioner’s concerns but suggests the purpose of the present PIL may be more about publicity than genuine public interest. Despite Tata Steel not being a party respondent, the court dismisses the writ petition and orders the petitioner to pay a cost of Rs. 25,000 within six weeks.

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<sup>41</sup> MANU/GT/0299/2020

<sup>42</sup> W.P. (PIL) No. 503 of 2017

## x. Unjust enrichment

### *Sushil Bhatt v. Moon Beverages Ltd.*<sup>43</sup>

In this Case, the National Green Tribunal held both PepsiCo and Coca-Cola liable for pollution of groundwater in India as the tribunal condemned three bottling units of having violated environmental laws by operating without the required "No Objection Certificate" (NOC) to withdraw ground water which is issued by the Central Ground Water Authority (CGWA). Consequently, Coca-Cola's Indian bottler, Moon Beverages, has been US\$ 2 million and PepsiCo's bottler, Varun Beverages, has been fined US\$ 1.3 million by the National Green Tribunal.

The primary evidence used in this case are:

- Committee Report dated 01.10.2020
- Joint Committee Report dated 08.04.2021

The Court directly applied Section 15 of the Environment Protection Act 1986. It was stated in this section that "extraction of ground water for commercial use by industries, infrastructure units and mining projects without a valid NOC from appropriate authority shall be considered illegal and such entities shall be liable to pay environmental compensation for the quantum of ground water so extracted." Moreover, under Section 16, stricter provisions of penalty for non-compliance of NOC conditions have also been incorporated in the revised guidelines.

This case is an example of Horizontal Climate Litigation as multinational giants like PepsiCo and Coca-Cola have been held liable for non-compliance as well as compensation for the damage caused by them.

## D. Company and Financial Laws

Laws have already been dealt with above under Human Rights law and corporate negligence.

### *M.K Ranjitsinh vs Union of India*<sup>44</sup>

In this landmark judgement, the Supreme Court has explicitly laid down the liabilities of Corporates towards the environment arising from the provisions of the Companies Act, 2013. Subsequent to India's commitment towards renewable energy since the UNFCCC Climate COP26 in Glasgow in 2021, there have been various solar and wind power projects set up across the states of Gujarat and Rajasthan. Consequently, High Tension power lines have also been set up which have had an adverse impact on many

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<sup>43</sup> 2022 SCC OnLine NGT 76

<sup>44</sup> 2021 SCC OnLine SC 326

species of birds migrating through these regions, including the endangered Great Indian Bustard.

The Court has directed all the concerned companies to underground all the power lines in regions threatening these birds and has imposed an injunction on the installation of new power lines as well. Considering the issue of financial costs of the guidelines for the private companies, the court laid emphasis on Section 135 and Section 166(2) of the Companies Act, 2013 as the former imposes corporate social responsibility on companies having specific amount of turnover and Section 166(2) imposes a liability on the directors of the companies to act in good faith in the best interests of environment amongst other things.

This judgement is a pioneer in Corporate Climate litigation in India as it is an example of both horizontal and vertical litigation, as even though protection of endangered birds would not necessarily be a step towards preventing climate change, the case has laid down a precedent on corporate accountability towards the environment. Similar to the Caremark Judgement, the judgement imposes a positive obligation on the corporates to ensure protection of the environment as the directors are required to act in “good faith” in the interests of the environment in this case as well.

***In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh***<sup>45</sup>

The case deals with the gas leak incident and liability for the same. There was an incident occurred in a village near Vishakhapatnam, Andhra Pradesh on the early morning of 7<sup>th</sup> May 2020, killing about 13 people and making thousands of people sick and unconscious after being exposed to the gas. A harmful deadly styrene monomer vapor leaked out of a storage tank in LG Polymers which is a chemical plant owned by South Korea based LG Chemicals. The Andhra Pradesh Government announced compensation for Rs. 1 Crore to all the families affected by the incident while the High Court<sup>46</sup> also took *suo moto* cognizance of the incident and ordered the government ordered to seize the company premises of the LG Polymers chemical plant, to not allow the shifting of the assets, machinery and contents of the factory and also ordered the Directors of the Company to surrender their passports as they were not allowed to leave the country.

Primary Evidence used by the NGT in this case was Report of the Joint Committee constituted by the Tribunal dated 28.5.2020:

On 8th May 2020, the very next day of the incident, the NGT also took *suo moto* cognizance of the case the purpose and power to provide relief and compensation to

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<sup>45</sup> 2020 SCC OnLine NGT 129

<sup>46</sup> Poisonous gas leakage in Visakhapatnam, In re v. *Suo Motu* WP (PIL) No. 112 of 2020

victims of environment damage, restitution of property and restoration of environment. The NGT imposed both strict and absolute liability on LG polymers for storing such a dangerous substance such as styrene monomer vapor and directed LG Polymers India Pvt., Limited to forthwith deposit an initial amount of Rs. 50 Crore, with the District Magistrate, Vishakhapatnam. When the order of the NGT was challenged before the Supreme Court, the Supreme Court upheld the NGT's order and directed the appellant company to raise its concerns before NGT itself.<sup>47</sup>

This case is a classic example of horizontal climate change litigation as the NGT's order shows how the court has invoked the tortious liability on the company for storing the hazardous material within its premises and imposing on the company both absolute and strict liability for the leak and the environmental damage and consequential loss including to life and public health in this case. The Caremark judgement is similar in ratio as it entails the corporate to exercise a "Duty of Care" whilst conducting their operations.<sup>48</sup>

## E. Consumer Protection Laws

The Consumer Protection Act, 2019 in India is primarily designed to address consumer grievances related to products and services. It includes provisions for compensation, product liability, punitive damages, and the right to seek redressal in cases of fraud, misrepresentation, or breach of warranty. While the Act does not explicitly address climate change or environmental issues, creative legal strategies might involve interpreting its provisions to cover environmental harm as a form of 'service' failure or misrepresentation. This could potentially include cases where companies falsely advertise their products or services as environmentally friendly or 'green' when they are not, thus misleading consumers. However, this approach would require a novel legal interpretation and there is no established precedent for using the Consumer Protection Act in this way for climate litigation in India.

## F. Fraud Laws

### *Naim Sharif Hasware vs. M/s Das Offshore Co.*

The Tribunal imposed a hefty fine of Rs 25 crore on Das Offshore, citing the company's deliberate violation of various steps in the Environmental Impact Assessment (EIA) process, such as site selection and public hearings. The Tribunal noted that the company had engaged in acts of suppression of facts or fraud. This violation led to the destruction of mudflats and mangroves during the development of an offshore fabrication yard

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<sup>47</sup> LG Polymers India Pvt. Ltd. v. Andhra Pradesh Pollution Control Board, Civil Appeal Diary No. 11327/2020, order dated 19/5/2020.

<sup>48</sup> Caremark Intern Inc Derivative Litigation, 698 A.2d 959, 967 (Del. Ch. 1996)

near the Rajapuri creek in Maharashtra's Raigad district. The bench determined that the company should face legal consequences for its role in environmental degradation and imposed a substantial penalty of Rs 25 crore. The rationale behind arriving at this specific amount was not elaborated upon.

In response, Das Offshore filed an appeal in the Supreme Court. In an order dated April 17 2015, the Supreme Court issued an interim stay on the NGT's judgment. The SC's order stipulated that the stay would be in effect if the appellants deposited Rs. 12 crore with the Court within four weeks from that date. According to Mukesh Verma, who served as counsel in the case, the company complied with the Court's directive by depositing the required amount.

## G. Contractual Obligations

### *Maharashtra State Electricity Distribution Co. Limited vs. Adani Power Maharashtra Limited and Ors.*<sup>49</sup>

The Supreme Court case of Maharashtra State Electricity Distribution Co. Limited vs. Adani Power Maharashtra Limited revolved around a "Change in Law" clause in a Power Purchase Agreement. This case involved compensation claims by Adani Power due to changes in the coal supply policy, which affected their costs. The Supreme Court upheld Adani Power's entitlement to compensation, emphasizing that generating companies should be restored to the same economic position they would have been in if the "Change in Law" had not occurred. This case illustrates how contractual obligations, especially clauses related to changes in law or policy, can potentially be leveraged in corporate climate litigation. By interpreting these clauses in the context of environmental changes or regulatory shifts related to climate change, similar arguments might be made for compensating or penalizing corporations based on their environmental impact or compliance with new environmental regulations. This approach would involve creatively applying contractual law principles to address climate-related changes and their economic impacts.

## H. Planning and Permitting Laws

The Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 contain provision for industry to obtain No Objection Certificate from the State Pollution Control Board for operating the industrial unit. It also provides a mandate for industries to seek Consent to Establish and Consent to Operate the industry<sup>50</sup>. In *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.)*<sup>51</sup>, the

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<sup>49</sup> (20.04.2023 - SC): MANU/SC/0416/2023

<sup>50</sup> See Section 25 of the Water (prevention and Control of Pollution) Act, 1974.

<sup>51</sup> [1999]1SCR235

respondent industry decided to set up a vegetable oil factory in the village of Peddashedpur in Andhra Pradesh. The proposed land for the establishment of this unit was falling within a radius of 10 kms from two major reservoir which were main source of drinking water for nearly five million people. This industry was falling in the list of hazardous industries which was declared by the Ministry of Forest and Environment, Government of India,

The State pollution Control Board of Andhra Pradesh did not grant permission for this plant. Aggrieved by this order of the pollution control board, the respondent approached the State Government. The State Government granted an exemption. This exemption was challenged by the Society of Preservation of Environment and Quality Life (SPEQL), which obtained a stay order from the Court and the NOC granted to the industry was quashed. The respondent appealed to the Appellate Authority and from there to High Court of Andhra Pradesh. Finally, the matter was argued before the Supreme Court.

The Supreme Court upheld the decision of the High Court and held that allowing such an exemption would be arbitrary and violative of Article 21 and the Precautionary Principle of environmental protection.

This case is an example of Horizontal Climate Litigation wherein the Court has ensured that an industry is not granted NOC to set up its operations simply because of assurances of observing safety norms as the risks of setting up such an industry to the environment make it an infeasible project. The Court has ensured a hard-lined and uncompromising approach in this case towards the safety and protection of the water reservoir in the face of industrial development.

#### *Sterlite Industries (India) Ltd. v. Union of India*<sup>52</sup>

The primary issue in this case before the Supreme Court was whether the appellant company, which had a copper smelter plant in Melavittan Village of Tuticorin, was rightly been ordered to shut down by the Tamil Nadu Pollution Control Board and the NGT and whether it was liable to pay compensation for causing environmental pollution in the region.

The primary evidence used in this case are:

- NEERI report of 2005
- The joint report of TNPCB and CPCB filed pursuant to the order dated 27.08.2012
- NEERI report of 2011

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<sup>52</sup> (2013) 4 SCC 575



- NEERI report of 1999
- Annual Report 2011 of the Appellant-company

As the company had initially followed all the directions of the statutory bodies and had been granted license accordingly, the court did not order the closure of the factory. However, the court ordered the company to pay compensation for the pollution caused by it. After analyzing the various issues particularly, the pollution that had been the result of the manufacture of copper cathodes and rods and contravention of the provisions of the Air Act, the appellant company was directed to pay a compensation of INR 100 Crores for polluting the environment in the vicinity of the plant. The Court referred the three principles: Precautionary Principle, Polluter Pays Principle and Sustainable Development while deciding this case.

This is an excellent example of effective horizontal climate litigation as the Court imposes a hefty compensation on the pollutant company and it levies a duty of care similar to the Caremark Judgement principle on the corporates for the harm caused by it on the environment.

#### *Krishan Kant Singh vs. Triveni Engineering Industries Ltd*<sup>53</sup>

Triveni Engineering Industries, a UP-based sugar and distillery company, was fined Rs 25 lakh by the NGT's Principal bench for its contribution to Ganga pollution alongside other industrial units along the river's UP stretch. Despite the company's anti-pollution efforts, the NGT held it liable for past pollution and breaching consent orders. Determining the compensation amount proved challenging due to uncertainty about pollution extent and consequences. Consequently, the Tribunal employed a form of guesswork to direct payment, divided equally between CPCB and UPPCB. The sum was to be utilized for pollution prevention, control, and environmental restoration near the industry. Similarly, in another case involving DSM Sugar Distillery Division in Sambhal district, the NGT, chaired by Justice Swatanter Kumar, imposed a Rs 1 crore environmental compensation on the company. The penalty was levied for continuous operations that violated pollution parameters and affected groundwater and soil. However, inconsistencies and a lack of clear calculation methods in determining the fines have raised questions about the arbitrary nature of the penalties.

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<sup>53</sup> (2015) 12 CK0020

## I. Other Causes of Action

*Debasish Banerjee v. West Bengal Pollution Control Board & Ors.*<sup>54</sup>;

The Applicant sought compensation for the death of his deceased daughter. It was alleged that the said death occurred due to suffocation resulting from leakage of gas from the gas line belonging to the Greater Calcutta Gas Supply Corporation Limited (GCGSCL). The NGT observed that the death was caused due to severe pollution caused by the leakage in the old pipeline of the GCGSCL through which coal gas was being supplied to consumers. Based on the investigation conducted by the police, the Tribunal further noted that the crack from where the gas had leaked was on account of wear and tear signifying negligence on part of the GCGSCL in maintaining the pipeline. It is pertinent to mention that NGT in this case has held that in cases of civil nature like the present one, it is the principle of preponderance of probability that would be applicable. The NGT directed GCGSCL to pay to the Applicant a compensation of INR 6.4 million for the death of Applicant's daughter.

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<sup>54</sup> Order dated 29 July 2020

## 2. Procedures and Evidence

### A. Actors Involved

#### i. Claimants

In India, Climate Action Claims are brought by various types of plaintiffs such as:

- Private Individuals as concerned citizens in the form of Public Interest Litigation.
- Non-Governmental Organizations again in the form of PILs.
- Concerned Authorities such as the State or Central Government performing its duties to safeguard the environment of India and hold the polluters accountable.
- The Courts taking Suo moto cognizance of matters of general public importance.

#### *MC Mehta v Union of India (Taj Trapezium Case)*<sup>55</sup>

In this case, M.C. Mehta, a renowned public interest litigant, filed a petition in reference to the threat to the beauty of the famous Taj Mahal monument due to discharge of air pollutants by coal using 292 industries situated near it. The Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention And Control Of Pollution) Act 1974 and Environmental Protection Act 1986 and their objectives were referred to stop such pollution and to direct these polluting industries to convert into natural gas as industrial fuel.

After conducting its own investigation, the Supreme Court, while expounding on the Precautionary Principle and the Polluter Pays Principle, held that it was necessary to strike a balance between industrial development and environmental protection and the State should take the necessary steps to ensure sustainable development. The Court further held that all 292 industries shall change over to the natural gas as an industrial-fuel and the industries which were not in a position to obtain gas connections shall stop functioning with the aid of coke/coal in the Taj Trapezium Zone and may relocate themselves.

This case is an example of Vertical as well as Horizontal Climate litigation as the court has used the State's power to regulate private actors causing environmental pollution and is analogous to the case of *Milieudefensie et al. v. Royal Dutch Shell*<sup>56</sup>. *Vellore Citizens Welfare Forum v. Union of India*<sup>57</sup> and *M.C. Mehta v Union of India (Ganga Pollution Case)*<sup>58</sup> are some more examples of it.

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<sup>55</sup> 1987 SCR (1) 819.

<sup>56</sup> ECLI:NL:RBDHA:2021:5337.

<sup>57</sup> (1996) 5 SCC 647

<sup>58</sup> AIR 1988 SC 1037.

## ii. Defendants

There is no bar on whom the action can be brought against. In the climate action litigation have been brought against the following:

- The State authorities (both Central and State) for their own actions or lack of actions to prevent climate disasters or connivance with main polluters.
- *N.D. Jayal v Union of India*<sup>59</sup>
- Individuals directly causing environmental damage due to their own projects and professions.
- Corporations and groups of corporations owing to industrial pollution and exploitation of natural resources to cause climate change.

### *M.K Ranjitsinh vs Union of India*<sup>60</sup>

In this landmark judgement, the Supreme Court has explicitly laid down the liabilities of Corporates towards the environment arising from the provisions of the Companies Act, 2013.

### *Rajiv Dutta v. Union of India*<sup>61</sup>

The petitioner was astonished by the annual occurrence of catastrophic forest fires spreading across the States of Uttarakhand and Himachal Pradesh, and this astonishment motivated him to file a PIL to the tribunal in accordance with Sections 14 and 15 of the National Green Tribunal Act of 2010. The case concerns massive, unchecked forest fires that are destroying the States of Uttarakhand and Himachal Pradesh and jeopardizing the ecological sustainability of a biological zone that is already at risk. Carbon dioxide (CO<sub>2</sub>), carbon monoxide (CO), methane (CH<sub>4</sub>), organic aerosols and black carbon, non-methane organic compounds, nitrogen oxides (NO<sub>x</sub>), and sulphur dioxide (SO<sub>2</sub>) are among the emissions caused by forest fires. These emissions have an impact on how effectively solar energy is absorbed by the atmosphere and its surface, with consequent temperature consequences. The glaciers of Uttarakhand, which are the source of many important rivers in north India, are particularly vulnerable to forest fires because 'black carbon' has blanketed them, hastening their melting. The States of Uttarakhand and Himachal Pradesh claimed that 2016 had a severe moisture deficit in the soil and in the forest areas, creating circumstances that were conducive for the incidence and propagation of forest fires.

The NGT acknowledged that the respondents' case had substance, but demanded that the Fire Management Plan and Crisis Management plan for forest fires be adequately

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<sup>59</sup> (2004) 9 SCC 362

<sup>60</sup> 2021 SCC OnLine SC 326

<sup>61</sup> 2017 SCC OnLine NGT 30

planned and implemented beforehand. The NGT observed that considering the appearance of Forest Fire Management Plans, the States of Uttarakhand and HP have not implemented the necessary preventive measures. Loss of forest biodiversity, deterioration of the environment, and hence, the environment, and the air quality especially have a long-term negative impact on public wellness. As a result, the NGT instructed the Central Government and the corresponding State Governments to create a national strategy and set of rules for the prevention and management of forest fires. To effectively combat and avoid forest fires, the various States must develop and carry out a forest fire management strategy.

The primary evidence used by the court in this case are:

- Indian Meteorological Department (IMD) data.
- Data on Forest Fires from Forest Survey of India.
- Newspaper reports of Times of India, New Delhi edition dated 1st May 2016 and 3rd May, 2016.
- State of India's Forest report, 2015
- Forest Fire Disaster Management Report published by National Institute of Disaster Management.
- A Report published by the Ministry of Environment and Forest and Climate Change on black carbon in 2011.

This is an example of vertical climate litigation as the deficiency in government's policies have been raised before the court similar to the case of Urgenda Foundation v. State of the Netherlands. On the discourse about climate change, the Court stated that climate changes may increase wildfire frequency, extent, and amount of high severity fire and Fire emissions contribute to climate change by: (1) increasing greenhouse gas concentrations, thereby increasing atmospheric radiative forcing, (2) increasing aerosol concentrations, thereby increasing reflectivity of incoming solar energy, and (3) changing the earth's albedo by depositing more light absorbing particles (e.g., black carbon) at the earth's surface.

### **iii. Third-party intervenors**

In most cases, the State itself may be a third-party intervenor in such cases as they could either aid the plaintiff in bringing an action against a defendant or could be one of the defendants due to originally granting the primary defendant with the permit of carrying on its projects and hence being partly compliant for the environmental damage.

### *M.C. Mehta v Union of India (Ganga Pollution Case)*<sup>62</sup>

In 1985, MC Mehta, a renowned public interest litigant, filed a writ petition to prevent environmental pollution of the river Ganga.

### *Vellore Citizens Welfare Forum v. Union of India*<sup>63</sup>

In this case, an NGO named 'Vellore Citizen Welfare Forum' filed a Public Interest Petition under Article 32 of the Constitution.

### *Society for Protection of Environment & Biodiversity v. Union of India*<sup>64</sup>

In this case before the NGT, the applicant, an environmental society, filed a case before the NGT raising objections to the 2016 draft notification of the Ministry of Environment, Forest & Climate Change that exempts building and construction projects from the environmental clearance requirement.

## **B. Elements of the Procedural Framework**

### **i. Standing**

While adjudicating on Standing, the Courts have primarily asked 2 questions:

- Whether all the other statutory remedies have been exhausted by the plaintiff before approaching the Court.
- Whether the plaintiff has come before the court as being a concerned citizen affected by the actions of the pollutant or if the plaintiff has approached the Court with mala fide intentions.

The Supreme Court relaxed the rule of locus standi due to which in many environmental cases, the matters have been brought before the court under Public Interest Litigation. In *R. L. & E. Kendra v. State of Uttar Pradesh*<sup>65</sup> a simple letter written to the apex court was treated as PIL. In this case, two writ petitions, brought before the Supreme Court under Article 32<sup>66</sup> of the Constitution of India as public interest litigation. The main prayer was to prevent and stop illegal mining activities and resulting pollution from it. The Court ordered closure of illegal lime stone quarries in Doon Valley in Musoorie Hills in this case. The court relaxed the locus standi concept in this case. The court also relied upon the committees formed by it to investigate the matter and submit the status report of the mining activities.

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<sup>62</sup> AIR 1988 SC 1037.

<sup>63</sup> (1996) 5 SCC 647

<sup>64</sup> 2017 SCC OnLine NGT 981

<sup>65</sup> (1985) 2 SCC 431.

<sup>66</sup> Art.32 of the Constitution of India confers the right to move the Supreme Court for enforcement of the fundamental rights and it also empowers the Supreme Court to grant appropriate remedies for the same.

The most remarkable judgment is Bhopal Gas Tragedy case<sup>67</sup> wherein based on the principle of *parents patrie* and allowed the state to represent the victims.

In *Ridhima Pandey v. Union of India*<sup>68</sup> the Petitioner brought the case up before the NGT under Section 2(m) of the National Green Tribunal Act, 2010 which authorizes claims that raise "a substantial question relating to the environment" as the Petitioner argues that India's environment related laws and international agreements, obliges the State to take greater action in order to mitigate Climate Change. The issue before the court was whether India has sufficient Statutory provisions to ensure mitigation of the Climate Change crisis?

The primary evidence used by the Court in this case are:

- Trends in Global Emissions: 2016 Report
- Paris Agreement
- 34th CAG report of 2015

The Tribunal observed that the authorities acting under the Environment (Protection) Act, 1986, have to perform their obligation of impact assessment as per a statutory scheme. The issue of climate change is certainly a matter covered in the process of impact assessment. Moreover, the Tribunal emphasizes that there is no reason to presume that the Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration in granting environment clearances.

While the petition was disposed of, it was an example of vertical climate litigation and the Tribunal had recognized the obligations of India under the Paris Agreement to mitigate Climate Change. However, the court held that there were sufficient legal mechanisms to address these problems and the authorities had the power to order for impact assessments under the Environment (Protection) Act, 1986.

## ii. Justiciability

In India, courts have generally recognized the justiciability of climate litigation and have actively adjudicated cases involving climate-related matters. Here are some key points regarding the justiciability of climate litigation in India: Through the Constitutional provisions, the Supreme Court has ensured environmental justice. The various High Courts have also relied upon the Constitutional provisions and protected right to environment. Environment.

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<sup>67</sup> Union Carbide Corporation vs Union of India, 1989 SCC (2) 540.

<sup>68</sup> 2019 SCC OnLine NGT 843

In *Kinkri Devi and Anr. V. State of Himachal Pradesh and Ors.*<sup>69</sup> the appellant sought intervention of the High Court of Himachal Pradesh to stop and control indiscriminate grant of mining leases and the unchecked and unscientific exploitation of the mines by the lessees, especially in the hilly tracts and regions of the Himalayas. The Court took serious note of the same. The Court intervened in this matter and observed that the judicial organ cannot remain silent in these types of cases.

Public Interest Litigation (PIL): India has a robust framework for public interest litigation, which allows citizens and non-governmental organizations to bring cases before the courts to protect public interest, including environmental concerns. Climate litigation often falls within the ambit of PIL, as it addresses issues of public importance and environmental protection.

In *Subhas Kumar v. State of Bihar*<sup>70</sup> it was observed by the Court that that “Right to live is a fundamental right under Article 21 of the Constitution of India, which also includes the right of pollution free water and air for full enjoyment of life.”<sup>71</sup>

In *Andhra Pradesh Pollution Control Board v. MV Naydu*<sup>72</sup>, *Vellore Citizens Welfare Forum v. Union of India*<sup>73</sup> *People's Union for Civil Liberties v. Union of India and Anr*<sup>74</sup> the Supreme Court clearly established that the right to environment flows from right to life under Article 21 of the Constitution of India.

Environmental Jurisprudence: The Indian judiciary has played a significant role in shaping environmental jurisprudence in the country. The Supreme Court and High Courts have expanded the scope of environmental rights and recognized the need for judicial intervention to address climate change and environmental degradation.

Constitutional Protections: The Indian Constitution guarantees certain fundamental rights that are relevant to climate litigation, such as the right to life (Article 21) and the right to a clean environment (Article 21 read with Article 48A). These constitutional provisions provide a basis for the justiciability of climate-related claims. Right to environment has been considered as a fundamental right in *Andhra Pradesh Pollution Control Board v. MV Naydu*<sup>75</sup>, *Vellore Citizens Welfare Forum v. Union of India*<sup>76</sup> *People's Union for Civil Liberties v. Union of India and Anr.*<sup>77</sup>

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<sup>69</sup> AIR1988HP4

<sup>70</sup> AIR 1991 SC 420, p 424

<sup>71</sup> Ibid

<sup>72</sup> AIR 1999 SC 812,p.825

<sup>73</sup> (1996) 5 SCC 647

<sup>74</sup> AIR1997SC1203

<sup>75</sup> AIR 1999 SC 812,p.825

<sup>76</sup> (1996) 5 SCC 647

<sup>77</sup> AIR1997SC1203



In *Attakoyal Thangal v. Union of India*<sup>78</sup>, the Kerala High Court has interpreted that right to free air and sweet water are attributes of right to life under Article 21.

In *Hinch Lal Tiwari v. Kamla Devi*,<sup>79</sup>, the Supreme Court observed that

“the material resources of the community, like, forests, tanks, ponds, hillocks, mountains etc., are nature's bounty. It was recognized that they maintain delicate ecological balance and need to be protected for a proper and healthy environment, for enabling the citizens to enjoy the quality of life, which is guaranteed under Article 21 of the Constitution.”<sup>80</sup>

The Indian Courts have applied the principles of Public Trust Doctrine, precautionary principle, polluter pays principle and other international conventions for environmental issues: The Indian courts have applied the public trust doctrine to environmental cases, recognizing that the state holds natural resources, including the environment, in trust for the people. This doctrine imposes a duty on the government to protect and preserve these resources, which includes addressing climate change and environmental issues.

**Environmental Statutes and Regulations:** India has enacted various environmental laws and regulations that provide a legal framework for addressing climate change and environmental concerns. Courts have the authority to interpret and enforce these laws, ensuring their justiciability in climate litigation cases.

**International Commitments:** India is a party to international agreements and conventions related to climate change, such as the United Nations Framework Convention on Climate Change (UNFCCC). These international commitments can influence the justiciability of climate litigation in India as courts may consider these obligations when interpreting and applying domestic laws.

### iii. Jurisdiction

In India, the jurisdiction of courts in climate litigation depends on the specific nature of the claims being made and the legal framework within which they fall. Here are the key courts and jurisdictions involved in climate litigation in India:

- **Supreme Court of India:** The Supreme Court is the highest court in the country and has the jurisdiction to hear climate-related cases. It has the power to issue writs for the enforcement of fundamental rights under Article 32 of the Constitution and has taken up several significant environmental and climate-related cases in the past.
- **High Courts:** Each state in India has a High Court that has jurisdiction over its respective state. High Courts have the power of judicial review and can hear climate litigation cases within their territorial jurisdiction. They can issue writs,

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<sup>78</sup> 1990 (1) KLT 580

<sup>79</sup> 2001 (6) SCC 496

<sup>80</sup> Ibid

hear appeals, and provide remedies in matters related to climate change and environmental issues.

- National Green Tribunal (NGT): The NGT is a specialized environmental court established under the National Green Tribunal Act, 2010. It has exclusive jurisdiction over matters related to environmental disputes, including climate change. The NGT has the power to hear and decide cases relating to the enforcement of environmental laws and grant appropriate remedies.
- District and Civil Courts: District and Civil Courts have general jurisdiction over civil matters, including some climate-related claims. Depending on the nature and value of the claim, cases related to climate change and environmental harm can be filed in these courts.

**Appellate Courts:** The appellate courts, including the Supreme Court and High Courts, hear appeals from lower courts, including the NGT, District Courts, and Civil Courts. Parties dissatisfied with the decisions of lower courts in climate litigation cases may seek appellate review to have their cases re-examined at a higher level.

#### iv. Group litigation

In India, group litigation is recognized and can be employed in climate litigation cases, albeit with certain limitations. The following are the factors taken into consideration by the Courts to allow group litigation:

- National Green Tribunal (NGT): The NGT Act, 2010, empowers the National Green Tribunal to hear and decide environmental disputes and grant appropriate reliefs. The NGT can entertain applications from a group of individuals or entities affected by environmental harm, including climate-related issues.
- Constitutional Rights: The Indian Constitution guarantees certain fundamental rights, such as the right to a clean environment (Article 21 read with Article 48A) and the right to life (Article 21). These rights can form the basis for collective actions seeking protection from climate change impacts.

#### *Orissa Mining Corpn. Ltd. v. Ministry of Environment & Forests*<sup>81</sup>

This case, also known as the Vedanta case, pertains to a proposal to develop an open cast bauxite mine by Vedanta Aluminum Limited on the upper reaches of the Niyamgiri hills in Orissa as the project would have a huge impact on the environment and the livelihoods of the local communities, destroying an important wildlife habitat, and threatening the traditional way of life of the Dongria Kondh tribe's communities, for whom these mountains are sacred.

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<sup>81</sup> (2013) 6 SCC 476

The case gained traction from international communities and organizations like Survival International and Amnesty International which advocated for the rights of the local communities in the region which would have adversely been impacted upon the clearance of forests for the purpose of this project. Drawing from the Constitution of India, Forest Rights Act, the Forest (Conservation) Act and the Environment (Protection) Act, 1986, the Court upheld the primacy of the rights of indigenous communities over the forests in their region and held that these communities have an inalienable right on these forests as their right to life depends on their right to these forests and as they have permanent in the forests for generations due to a symbiotic relationship with the entire ecosystem. Hence as per the Forest Rights Act, the Court held that the Gram Sabhas have the ultimate duty and power over forest management. The Court has treated the Gram Sabha as a statutory authority like MoEF as the gram Sabha can decide on forest rights, that decision is final, and the Gram Sabha has the power to decide on protecting forests and natural heritage.

This case is an example of Horizontal Climate Litigation empowering the indigenous local communities to decide on the fate of forests in their regions and holding companies like Vedanta accountable for business operations impacting the environment.

Some of the landmark judgments are Under the Code of Civil Procedure, 1908 (CPC) in India, group litigation is facilitated through the mechanism of representative actions. Representative actions allow a few individuals to file a lawsuit on behalf of a larger group or class of persons who share common interests or have similar claims against the same defendant(s). Order 1, Rule 8: Order 1, Rule 8 of the CPC provides for the filing of a representative suit. It states that one or more persons may sue or defend on behalf of, or for the benefit of, all persons having the same interest in one suit. The persons filing the suit are known as the "representative plaintiffs" or "representatives."

- Common Interest: For a representative action to be maintained, there must be a common question of law or fact and a community of interest among the members of the group. The claims of the representative plaintiffs must be typical of the claims of the entire group they seek to represent.
- Notice to Affected Persons: Once the representative plaintiffs file the suit, the court may direct notice to be given to all persons having an interest in the subject matter of the suit. The court may prescribe a specific period within which affected persons can apply to be added as parties to the suit or to opt-out of the representation.
- Court's Approval: The court has the discretion to allow or disallow a representative suit after considering the common interest and the adequacy of the representation. The court will evaluate whether the representative plaintiffs are suitable and will fairly protect the interests of the group members.

- **Binding Effect:** The judgment or decree in a representative suit is binding on all members of the group who were adequately represented, whether they were specifically named or not. The judgment operates as *res judicata* (a matter already judged) in subsequent proceedings between the same parties or their representatives.

### *Society for Protection of Environment & Biodiversity v. Union of India*<sup>82</sup>

In this particular case presented before the NGT, an environmental organization took legal action against the 2016 draft notification from the Ministry of Environment, Forest & Climate Change, which sought to exempt certain building and construction projects from environmental clearance requirements. The primary focus of this case revolved around the afore-mentioned 2016 draft notification. The National Green Tribunal deemed specific sections of this draft EIA notification as unlawful, particularly those that exempted particular building and construction projects from mandatory environmental clearance.

On a national scale, it's worth noting that the construction sector contributes to 22% of India's total annual carbon dioxide emissions and carries a substantial energy footprint. Environmental clearances, following a precautionary approach, necessitate the creation of an Environmental Impact Assessment (EIA) report. This report assesses carbon emissions linked to construction projects, their detrimental environmental effects, and proposes optimal strategies for reducing these emissions. This aligns with India's ambitious goals and has a direct connection to addressing climate change and achieving sustainable development goals (SDGs).

The Tribunal issued a directive to the Ministry of Environment, Forest & Climate Change (MoEF&CC), instructing them to thoroughly review their notification from December 9, 2016. They were tasked with taking appropriate actions to remove, amend, and rectify clauses within the notification that contradicted the principle of non-regression and posed a threat to environmental preservation.

This case serves as a prime example of Vertical Climate litigation, wherein the government's policies were successfully challenged. According to the tribunal's judgment, the government's pursuit of 'ease of doing responsible business' neglected the environmental repercussions that directly impact environmental preservation, climate change, and sustainable development. While recognizing the importance of providing housing for the economically disadvantaged, the court emphasized that the potential impact of such projects on climate change could not be disregarded.

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<sup>82</sup> 2017 SCC OnLine NGT 981

## v. Apportionment

Apportionment in climate litigation refers to the allocation of responsibility or liability among multiple defendants or parties for the damages or harm caused by climate change or environmental degradation. In India, the Courts have ensured proportionality and joint liability of damages for environmental actions in order to ensure each person/ organization is held liable for the actions, including the State itself. Hence even the State is sometimes held liable for corporate climate actions and made to redact its policies/ notifications regarding the same.

In *M.C. Mehta v. Union of India and Ors.*<sup>83</sup> it was clearly held by the court that regulation of traffic and public safety is of paramount importance and is part of ambit of article 21 of the Constitution of India. This observation of the Court suggests the extent of care and caution which are expected from the State Government and the public authorities while granting permission in exercise of their powers.

In *Rural Litigation and Entitlement Kendra and Ors. v. State of Uttar Pradesh and Ors.*<sup>84</sup> the Court observed the importance of preservation of the environment and held that “preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake.”.

## vi. Disclosure

In India, companies, especially those that are publicly listed, are subject to a range of disclosure requirements that could potentially be relevant in the context of corporate climate litigation. These requirements are designed to ensure transparency and protect investors by providing them with pertinent information about the company's operations, including any significant risks or material changes that could impact the company's financial health or operational stability.

- 4) **Business Responsibility and Sustainability Report (BRSR):** Starting from the financial year 2022-2023, the top 1,000 listed companies in India are required to prepare a ‘Business Responsibility and Sustainability Report’ as part of their annual report. This report includes detailed Environmental, Social, and Governance (ESG) disclosures, and it must be notified to the stock exchanges and published on the company's website.
- 5) **Materiality Thresholds for Disclosure of Events or Information:** The Securities and Exchange Board of India (SEBI) has set precise materiality thresholds for determining events or information that listed entities must disclose to stock exchanges. This includes events or information that meet certain criteria based on

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<sup>83</sup> (1997)8SCC770

<sup>84</sup> [1987]1SCR641

turnover, net worth, or the value of profit or loss. Any event or information meeting this threshold must be disclosed within specific time frames.

- 6) **Disclosure of Communication from Authorities:** Listed entities are required to disclose any communication received from regulatory, statutory, enforcement, or judicial authorities along with the relevant event or information, unless prohibited by the authority.
- 7) **Disclosure of Agreements:** Agreements that impact the management or control of the listed entity or impose restrictions or liabilities must be disclosed to the stock exchanges. This is applicable even if the listed entity is not a party to the agreement.
- 8) **Mandatory Disclosure Regarding Fraud/Default:** Listed entities are required to disclose instances of fraud or financial defaults, irrespective of their materiality. This includes cases involving the company's directors, senior management, or subsidiaries. Additionally, any arrest of these individuals, whether in India or abroad, must also be disclosed.

These disclosure requirements are part of a broader regulatory effort to increase corporate transparency and accountability, particularly in relation to ESG issues. In the context of corporate climate litigation, these disclosures could provide crucial information regarding a company's environmental impact and management of climate-related risks, potentially influencing the course and outcome of such litigation.

## C. Defences

- While the specific arguments can vary depending on the case's circumstances, here are some common arguments that are used by plaintiffs in corporate climate litigation in India:
- **Environmental Impact:** Parties may argue about the extent and nature of the corporation's impact on the environment, including greenhouse gas emissions, pollution, deforestation, or depletion of natural resources. They may present scientific evidence, expert opinions, and studies to establish the connection between the corporation's activities and climate change or environmental harm.
- **Violation of Environmental Laws:** Parties may contend that the corporation has violated applicable environmental laws, regulations, or permits, leading to climate-related harm. They may argue that the corporation failed to obtain necessary environmental clearances, exceeded emission limits, or violated pollution control standards.
- **Corporate Responsibility:** The issue of corporate responsibility and accountability may be raised. Parties may argue that the corporation has a duty to adopt sustainable practices, mitigate its environmental impact, and contribute to climate change mitigation and adaptation efforts.
- **Negligence:** Negligence claims might be made, asserting that the corporation failed to exercise reasonable care or breached a duty of care owed to the

plaintiffs or the environment. Parties may argue that the corporation should have taken steps to prevent or minimize climate-related harm.

- **Public Nuisance:** Parties may argue that the corporation's activities have caused a public nuisance by unreasonably interfering with the public's right to a clean environment. They may assert that the harm caused by the corporation's actions is widespread and affects a broad section of the public.
- **Strict Liability:** Parties may assert strict liability claims, contending that the corporation should be held liable for the harm caused, regardless of fault or negligence. They may argue that the corporation engaged in inherently dangerous activities or products that contribute to climate change or environmental degradation.
- **Failure to Warn:** In cases involving products or technologies, parties may argue that the corporation failed to provide adequate warnings or disclosures about the potential climate and environmental impacts associated with their products or operations.

Bhopal Gas Tragedy case. The residents of the Bhopal staying near the Union carbide plant were not made aware about the hazards of the gas and necessary measures to be taken in case of leakage of the gas.

- **Human Rights:** Arguments related to human rights may be raised, asserting that the corporation's activities have infringed upon individuals' rights to life, health, clean water, or a healthy environment as guaranteed under the Indian Constitution or international human rights conventions.
- **The Vellore Citizen Welfare Forum case, and Enviro-legal action v. Union of India Bichhari village case.** In both these cases the pollution caused by the industrial processes violated the human rights and fundamental right to get clean water.
- **Proportionate Liability:** In cases involving multiple defendants, parties may seek to establish proportionate liability, arguing that each defendant should be held liable for the proportion of harm caused by their respective actions or contributions to climate change.

Here are some common defences that can arise in corporate climate litigation in India:

- **Lack of Causation:** Defendants may argue that their activities did not cause or contribute significantly to the alleged climate change or environmental harm. They may contend that other factors, natural events, or third-party actions are primarily responsible for the claimed damages. Ganga Pollution case
- **Compliance with Laws and Regulations:** Defendants may assert that they have complied with all applicable environmental laws, regulations, permits, and standards. They may argue that their actions were undertaken within the legal framework and that they have obtained necessary environmental clearances or permissions.

- **Voluntary Measures and Best Practices:** Defendants may highlight their adoption of voluntary measures, industry standards, or best practices to mitigate their environmental impact. They may argue that they have taken reasonable steps to reduce emissions, implement pollution control measures, or promote sustainability.
- **State of the Science:** Defendants may contest the scientific evidence or expert opinions put forward by the plaintiffs, challenging the causal link between their activities and climate change or environmental harm. They may argue that the scientific understanding of climate change is uncertain or that there is insufficient evidence to establish a direct connection.
- **Statute of Limitations:** Defendants may assert that the claims against them are time-barred due to the expiration of the applicable limitation period. They may argue that the plaintiffs' action was not timely filed within the prescribed time frame.
- **Pre-emption:** Defendants may argue that the claims are pre-empted by national or state laws or regulations. They may contend that the relevant regulatory framework occupies the field, and the plaintiffs' claims are therefore barred.
- **Contributory Negligence:** Defendants may assert that the plaintiffs' own actions or omissions contributed to the alleged harm. They may argue that the plaintiffs failed to take reasonable steps to mitigate or prevent the damages they claim to have suffered.
- **No Duty of Care:** Defendants may contend that they do not owe a legal duty of care to the plaintiffs or the environment. They may argue that the alleged harm was unforeseeable, and they should not be held liable for the consequences.
- **Lack of Standing:** Defendants may challenge the plaintiffs' legal standing to bring the lawsuit, arguing that the plaintiffs do not have a sufficient legal interest or that they have not suffered a particularized harm directly attributable to the defendants' actions. *Shriram Food and Fertilizer case*
- **Act of God or Force Majeure:** Defendants may assert that the harm alleged was caused by unforeseeable natural events, acts of God, or force majeure events beyond their control. They may argue that they cannot be held liable for damages resulting from events they could not reasonably have anticipated or prevented.

## D. Evidence

While analysing the types of evidence used by the Court in environmental or Climate Litigation cases, one can observe a consistent pattern in the majority of them. As the judges themselves are not certain about various aspects of environmental science, they have summoned various expert committees and institutes such as the National Environmental Engineering Research Institute (NEERI) to understand and analyse the ground realities of the subject of the litigation. The Reports submitted by these



committees and institutes are heavily relied on in most of the cases involving allegations of environmental harm. In order to ascertain procedural and legal facts, the Court has analysed and used both literal and contextual interpretation of existing legislatures and legal notifications issued by the respective authorities. In some cases, international reports and statistical data analysing environmental pollution and climate change have also been relied upon by the Court to provide an overview of the situation with empirical data on climate change.

### *Hanuman Laxman Aroskar v. Union of India*<sup>85</sup>

In this case, the Supreme Court of India acted by suspending the environmental clearance for an airport project in Goa. The Court directed the authorities to reconsider their decision. The challenge to the approval came from two petitioners, citizen Hanuman Laxman Aroskar, and the NGO Federation of Rainbow Warriors. The Court invalidated the airport's regulatory compliance certificate, citing the government's failure to adequately address environmental concerns during the environmental evaluation process. The Court stressed that this case played a pivotal role in promoting sustainable development within the framework of the rule of law. It ruled that the government must strike a balance between environmental concerns and airport development goals, ordering the Expert Appraisal Committee to review the Environmental Clearance granted to the Airport.

The central question in this case was whether the concerns raised in the Court's previous judgment dated March 29, 2019, regarding the airport's environmental impact, including its contribution to climate change, and the recommendations of the Expert Appraisal Committee had been sufficiently addressed and rectified by the State. This would determine whether the Environmental Clearance for the airport should be granted.

The primary pieces of evidence considered by the court in reaching its decision included:

- 1) The Environmental Impact Assessment Report prepared by the EIA consultant.
- 2) The Kasturirangan Report of the High-Level Working Group on the Western Ghats.
- 3) The Airport Guidance Manual published by the Ministry of Environment and Forests in February 2010.
- 4) Google images depicting the Mopa region of Goa.
- 5) Minutes of the meeting of the Environmental Appraisal Committee held on April 23, 2019.

In the end, the Court lifted the suspension of the Environmental Clearance for the project. It directed the appointment of the National Environmental Engineering

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<sup>85</sup> Citation: (2020) 12 SCC 1

Research Institute (NEERI) to oversee compliance with the directions issued by the Court. The costs, expenses, and fees of NEERI were to be borne by the project proponent.

This case illustrates an instance of Vertical Climate litigation, as climate change was a prominent issue in the proceedings. The Court emphasized the necessity of establishing a zero-carbon emission operation at the airport to counteract the carbon emissions associated with its activities. The Court also advocated for initiatives such as the Green Infrastructure Development program, the adoption of less emission-intensive technologies, the promotion of renewable energy, the use of electric vehicles, and the implementation of Airport Carbon Accreditation. These measures were seen as crucial to reducing the airport's impact on climate change and greenhouse gas emissions, in line with environmental best practices governing Greenfield airports.

### *Goel Ganga Developers (India) (P) Ltd. v. Union of India*<sup>86</sup>

In this case, the initially applicant approached the NGT with a claim that the project proponent had engaged in construction activities that violated the Environmental Clearance granted for the project, as well as various municipal laws. The applicant requested the demolition of the illegal structures and urged the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board to take appropriate action against the project proponent for breaching the Environment Impact Assessment (EIA) regulations. The NGT accepted the application, prompting the matter to be brought before the Supreme Court. The key issues at hand were whether further construction should be permitted and whether damages could be assessed using the Carbon Footprint formula.

The primary pieces of evidence considered by the court included:

- 1) EIA Notification dated 04.04.2011 issued by the Ministry of Environment and Forests.
- 2) EIA Notification dated 14.09.2006 issued by the Ministry of Environment and Forests.
- 3) Environmental Clearance granted by the State Level Environment Impact Assessment Authority (SEIAA) for the project's expansion.

The Court ruled that the project proponent could not proceed with additional construction. They were only allowed to complete the construction of specific flats, shops/offices, a cultural center, and a clubhouse. The Apex Court upheld the NGT's decision that the project proponent could not proceed beyond these specific structures. Additionally, the Court determined that the project proponent, who had blatantly violated the law, should not escape accountability. In previous cases, this Court had

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<sup>86</sup> (2018) 18 SCC 257

typically awarded damages amounting to five percent of the project's cost. However, in this case, due to the project proponent's stubborn and unapologetic behavior, as well as their manipulation of officials and authorities, the Court ordered them to pay damages of one hundred crores rupees or ten percent of the project cost, whichever was higher.

Regarding the assessment of damages based on the carbon footprint, the Supreme Court of India clarified that courts should not introduce a new method for assessing and levying damages unless there is expert evidence on the matter or an established legal principle.

This case serves as an example of successful Horizontal Climate Litigation, as the company was held liable for the damages it caused and for its manipulation of authorities.

### *Court on its own Motion v. State of Himachal Pradesh*<sup>87</sup>

In this case, the Green Tribunal faced the complex challenge of addressing the adverse effects of climate change on the Rohtang Pass glacier in the Himalayas, which was experiencing severe pollution issues and environmental degradation over time. Notably, there was no specific legislation in India that directly regulated climate change, its adaptation, or mitigation measures. The central issue before the Tribunal was whether there were legal provisions available to address the impact of climate change on the Rohtang Pass glaciers.

The primary evidentiary sources considered by the Court included:

- 1) Report of the Expert Committee, as constituted by the High Court of Himachal Pradesh through an order dated October 12, 2010.
- 2) A study conducted by the Indian Institute of Forest Management, Bhopal.
- 3) Statistical data from the World Meteorological Organisation.

Faced with this challenge, the Green Tribunal adopted an innovative approach to tackle the problems associated with glacial pollution and recession. The Tribunal explored various aspects of air pollution laws, which fell within its jurisdiction and could indirectly address these issues. It specifically identified Black Carbon, a pollutant produced by vehicle emissions, as a significant contributor to the accelerated melting of Himalayan glaciers. Citing a study indicating that 40% of glacial retreat could be attributed to the impact of Black Carbon, the Tribunal concluded that reducing Black Carbon emissions could effectively mitigate glacial melting. Consequently, the Tribunal directed the state government to implement measures, including contributions based on the polluter pays principle, the restriction of heavy vehicle movement in the region, and the imposition of

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<sup>87</sup> 2014 SCC OnLine NGT 1

fees on other private and public vehicles. The funds collected were designated for pollution prevention and control, the development of an ecologically friendly market at Marhi, and initiatives related to reforestation and vegetative cover restoration.

This case exemplifies a form of vertical climate change litigation, where the court leveraged constitutional and environmental legislations in India to address climate change issues in the region. The Tribunal recognized the citizens' right to a clean and wholesome environment, derived from Article 48A (which mandates environmental protection by the state), Article 51A (which imposes a duty on citizens to protect and improve the natural environment), and Article 21 (which safeguards the fundamental right to life). Additionally, the Court acknowledged the adverse effects of global warming on the environment and glaciers and emphasized the need for the development of schemes and mechanisms to better preserve the glaciers in the interest of environmental and ecological equilibrium.

### *G. Sundarrajan v. Union of India and Ors.*<sup>88</sup>

In this case, the Central Government made the decision to establish a nuclear power plant in the southeastern region of India, specifically in Kudankulam, Tamil Nadu. This decision triggered significant public agitation and emotional reactions against the establishment and commissioning of the plant, leading to the filing of a Public Interest Litigation (PIL) challenging the High Court's order. The central legal question addressed in this case revolved around whether the establishment of the Nuclear Power Plant (NPP) contradicted public policy.

Several key central statutes were implicated in this case, including:

- The Atomic Energy Act, 1962
- The Environment Impact Assessment Notification, 1994
- The National Green Tribunal Act, 2010
- The Right to Information Act, 2005

The PIL was filed under Article 32 of the Constitution of India.

In its rationale, the Court emphasized that policymakers regarded nuclear energy as crucial for sustaining India's economic growth. The proponents of the project had met the necessary safety requirements and adhered to a set of practices based on nationally and internationally recognized safety standards. To provide guidance, the Court outlined 15 guidelines that the entities involved, such as the Ministry of Environment and Forests (MoEF), the State of Tamil Nadu, and the Tamil Nadu Pollution Control Board, should follow.

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<sup>88</sup> (2013) 6 SCC 620

It's worth noting that this case ventured into the realm of executive branch functions, as discussed in Part IV of the Constitution. The Court observed concerns about the quality of equipment from a particular source (vendor) and effectively determined the suitable vendors for the project. The Court adopted a utilitarian approach, where public policy was defined as achieving the greatest good for the largest number of people.

In a subsequent judgment concerning Interlocutory Applications, the Court ruled that there was no need for further directions or the formation of a committee because the respondents were already taking steps towards compliance.

This case serves as a classic example of vertical climate litigation, where the Supreme Court approved the establishment of the Kudankulam nuclear power plant by the Government once a checklist of conditions was met and appropriate approvals were granted.

### *K. Guruprasad Rao V. State of Karnataka and Ors*<sup>89</sup>

In this case, the Appellant sought to protect ancient monuments, giving precedence to their preservation over development activities. The Respondent had granted a mining lease near the Jambunatheshwar temple for the extraction of iron ore, which posed a threat to the temple's historical significance. Consequently, a Writ Petition was filed before the Court.

In this case, the Appellant prayed for several remedies, including the cancellation of the mining lease granted to Respondent No. 4, a mandamus directing official Respondents to halt mining activities within a 1 Km radius from the temple, and a direction to Respondent No. 9 to take steps for the restoration of the temple to its original state. The central question at hand was whether mining activities should be halted within a 1 Km radius of the temple.

The Court's ruling balanced the need for preserving ancient monuments with development interests. It accepted the recommendations and suggestions made by a Committee for the creation of a Core Zone and Buffer Zone to strike this balance effectively. The State Government was directed to implement the recommendations, including the creation of a Corpus Fund of Rs. 3,43,19,160, which would be utilized for the conservation plan of the Jambunatheswara temple. The Government was given two months to consider the Committee's report and issue appropriate orders.

In line with the concept of sustainable development, the Court ordered that no mining activities should occur within a 1 Km "core zone" of the temple or monument. In the buffer zone, which extended the next 1 Km, mining activities were permitted but under the supervision of expert agencies.

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<sup>89</sup> Civil Appeal No. 4823 of 2013

This case exemplifies vertical climate litigation, as the Appellant sought directions from the relevant authority in the interest of sustainable development.

Environmental harm cases often face challenges such as limited awareness among affected parties and lengthy court procedures. Notable expansion of locus standi (the right to bring an action) in public interest litigation has enabled public-spirited individuals to approach the court on behalf of victims. Key cases like Rural Litigation and Entitlement Kendra v. State of U.P., Vellore Citizens Welfare Forum v. Union of India, and the Bicchri village case have expanded the rule of locus standi.

Compensating victims is another challenge in such cases. While exemplary damages have been awarded in many judgments to deter polluters, adequately compensating victims based on their actual damages remains a challenge, as seen in cases like the Bhopal Gas tragedy, Vellore Citizen Welfare Case, and Bichhri Village case.

The lengthy and time-consuming court process and delays in the justice delivery system pose significant challenges. In some cases, irreparable harm occurs before judgments are delivered.

Determining the liability of polluters is also challenging due to difficulties in obtaining evidence. Technical committees are often appointed to investigate, and the court relies on their reports, which can be time-consuming.

Moreover, implementing court orders can be delayed when executing authorities are involved. Continuous mandamus orders have been issued in response to this challenge in various cases.

## **E. Limitation Periods**

There is no specific limitation period established for bringing climate litigation in India. The limitation period for filing a lawsuit generally depends on the nature of the claim and the relevant laws and statutes that govern it.

In India, the Limitation Act, 1963, is the primary legislation that prescribes the limitation periods for various civil claims. However, it does not specifically address climate litigation as a distinct category. Instead, the applicable limitation period would depend on the nature of the claim being brought within the context of climate litigation.

For example, if the climate litigation involves a claim for compensation for harm caused by environmental pollution, the general limitation period for tort claims may apply. Under the Limitation Act, the limitation period for filing a tort claim is typically three years from the date when the cause of action arose.

The general principles and limitations prescribed by the Limitation Act would also apply to climate litigation in India. However, the specific limitation period depends on the nature of the legal claim.

For instance:

- 1) **Civil Suits:** For most civil suits, the limitation period is generally three years from the date when the right to sue accrues. However, this can vary depending on the specific type of claim.
- 2) **Public Interest Litigation (PIL):** In environmental matters, including climate litigation, PILs are often used. The limitation periods for PILs are not as strictly enforced as for other civil suits, especially when it involves a matter of public interest or a significant environmental issue.
- 3) **Extension of Limitation Period:** The Limitation Act provides for certain circumstances under which the limitation period can be extended. This includes cases of disability, acknowledgment of liability, fraud, or mistake. If the aggrieved party was unaware of the cause of action due to fraud or a deliberate concealment of facts, the limitation period may start from the time when the fraud becomes known to the aggrieved party.
- 4) **Supreme Court's Powers:** The Supreme Court of India has the power to condone delays in filing if sufficient cause is shown and it is convinced that the delay was not due to gross negligence or deliberate inaction.

The Supreme Court has acknowledged the concept of continuous harm or continuing wrong in several cases. This principle essentially holds that in certain situations where a wrongful act causes harm that is ongoing in nature, each day that the wrong continues gives rise to a fresh cause of action. Here are a few notable examples where the Court has recognized this concept:

- 1) **State of Madhya Pradesh vs. Bhailal Bhai (1964):** In this landmark case, the Supreme Court held that in the case of a continuing wrong, a fresh period of limitation begins to run at every moment of the time during which the breach continues.
- 2) **Union of India vs. Tarsem Singh (2008):** The Court held that the concept of continuous wrong would come into play in cases where there is a continuing breach of contract or violation of rights.
- 3) **Raja Lakshmeshwar Singh vs. The State of Bihar (1952):** In this case, the Supreme Court recognized that in situations of continuing wrong, each day gives rise to a new cause of action.
- 4) **Sarla Mudgal vs. Union of India (1995):** This case dealt with the issue of bigamy under Hindu law and the Court acknowledged the concept of continuing offense in this context.

This principle can be used in Corporate Climate Litigation in India as the harm to the environment is not momentary but aggregates over the years to cause greater harm to the region.

However, it's important to note that environmental and climate litigation cases can be complex, and the specific circumstances and legal arguments involved may influence the determination of the applicable limitation period.

## 3. Remedies

In corporate climate litigation in India, various pecuniary (monetary) and non-pecuniary (non-monetary) remedies may be available depending on the specific circumstances of the case. Here are some common examples:

### A. Pecuniary Remedies

- 1) **Compensatory Damages:** The court may award compensatory damages to the affected parties to compensate them for any financial losses or harm suffered as a result of the corporate activities causing climate damage. This could include the costs of environmental remediation, health expenses, economic losses, or property damage.
- 2) **Restitution:** In cases where the corporation has unlawfully benefited from its actions causing climate harm, the court may order the corporation to disgorge its profits or pay restitution to the affected parties.
- 3) **Fines and Penalties:** The court may impose fines and penalties on the corporation for violating environmental regulations or engaging in activities that contribute to climate change. These penalties serve as a deterrent and punishment for non-compliance.
- 4) **Injunctive Relief:** The court may issue injunctions or restraining orders to prevent the corporation from engaging in certain activities or to require specific actions to mitigate climate damage. For example, the court may order the corporation to cease operations, implement pollution control measures, or adopt sustainable practices.

### B. Non-Pecuniary Remedies

- 1) **Declaratory Relief:** The court may provide declaratory relief by issuing a judgment that establishes the rights and liabilities of the parties involved in the case. This can clarify legal obligations and responsibilities regarding corporate activities impacting climate change.
- 2) **Injunctive Relief:** Apart from its pecuniary aspect, injunctive relief can also have non-pecuniary implications. For instance, a court may order the corporation to disclose relevant information, publish environmental impact reports, or engage in public consultation processes. These measures aim to enhance transparency, public participation, and corporate accountability.
- 3) **Corrective Measures:** In addition to monetary compensation, the court may direct the corporation to undertake corrective actions to rectify or mitigate the environmental harm caused. This could include implementing pollution control technologies, restoring ecosystems, or adopting sustainable practices.



## C. Most Successful Remedies

The most effective remedies in terms of Corporate Climate Litigation have been the following:

### *Injunctions:*

Corporates have been imposed with permanent or temporary injunctions that have halted their process until they have remedied the faults in their productions causing the damage and have effectively compensated for the damage caused by the pollution.

Some examples of the same are:

- 4) **M.C. Mehta vs Union Of India & Others, 1986 - Taj Trapezium Case:** This case is an example of an injunction in the form of a relocation order for industries causing pollution. The Supreme Court ordered more than 200 factories in the Taj Trapezium Zone, which were causing pollution and thus damaging the Taj Mahal, to either switch to natural gas or relocate to another area. The order sought to protect the Taj Mahal from further degradation due to industrial pollution.
- 5) **Vellore Citizens Welfare Forum vs Union of India & Ors, 1996:** This landmark case led to the formulation of the 'Precautionary Principle' and 'Polluter Pays Principle' in India's environmental jurisprudence. The Supreme Court ordered the closure of several tanneries in the state of Tamil Nadu, which had been discharging untreated effluent into agricultural fields, waterways, and roads, causing significant environmental harm and public health issues.
- 6) **Recent Sand Mining Cases:** There have been several cases where the National Green Tribunal (NGT), a specialized forum for environmental disputes, has imposed temporary bans or restrictions on sand mining due to its adverse environmental impact, particularly on river ecosystems. For instance, in 2013, NGT imposed a blanket ban on all river-sand mining without environmental clearance.

### *Heavy Financial Fines:*

In some cases, the compensation has been quite heavy and as a result the companies have faced heavy losses and have been forced to close down and remedy the causes of compensation. Some examples of the same are:

**Sterlite Industries (India) Ltd. v. Union of India:** (2013) 4 SCC 575) As the company had initially followed all the directions of the statutory bodies and had been granted license accordingly, the court did not order the closure of the factory. However, the court ordered the company to pay compensation for the pollution caused by it. After considering various dimensions and aspects of the case, and the most important being the pollution that had been the result of the manufacture of copper cathodes and rods and contravention of the provisions of the Air Act, the appellant company was directed

to pay a compensation of INR 100 Crores for polluting the environment in the vicinity of the plant.

**Sushil Bhatt v. Moon Beverages Ltd.** (2022 SCC OnLine NGT 76): In this Case, the National Green Tribunal held both PepsiCo and Coca-Cola liable for pollution of groundwater in India as the tribunal faulted three bottling facilities of having violated environmental laws by operating without the required "No Objection Certificate" (NOC) to withdraw ground water which is issued by the Central Ground Water Authority (CGWA). Consequently, Coca-Cola's Indian bottler, Moon Beverages, has been US\$ 2 million and PepsiCo's bottler, Varun Beverages, has been fined US\$ 1.3 million by the National Green Tribunal.

**Indian Council for Enviro-legal Action and others v. Union of India and others** ( Citation: (1996) 3 SCC 212) : In this case, the question before the Supreme Court was whether the various Chemical Industrial Plants around the Bichhri Village of Rajasthan should be held liable for environmental pollution caused by them in the region and to what extent?

In terms of evidence, the Court heavily relied on the reports of the National Environmental Engineering Research Institute (NEERI) to conclude that heavy environmental pollution, detriment to both nature and the residents of the village, was being caused by the emissions of these factories. Deriving from Article 21 of the Constitution of India and provisions of the Environmental (Protection) Act, 1986 along with the Tortious principle of Strict liability, the court applied the "Polluter Pays" principle and stated that the polluters in the case would be held absolutely liable for the harm caused by their actions on the environment and hence imposed heavy fines on the companies operating in the region.

## D. Most Problematic Remedies

In terms of problematic remedies, **financial sanctions** imposed on corporates can be quiet problematic because of the following reasons:

- 1) **Quantum of fine:** If the cost of the fine is significantly less than the profit a corporation stands to make from the activities causing the harm, some corporations may view the fine as a "cost of doing business". This means they may continue with the harmful activities, absorb the cost of the fine, and still make a net profit.
- 2) **Difficulty in Calculation:** Financial sanctions should ideally reflect the extent of the environmental damage caused, but it's often difficult to accurately calculate this. Environmental damage can have far-reaching and long-term effects, some of which may not be immediately apparent. Putting an appropriate monetary value on these impacts can be a significant challenge.
- 3) **Impact on Innocent Parties:** Large financial sanctions can impact not just the corporation, but also its employees, shareholders, and customers. These groups

may not have been responsible for the corporation's harmful actions, yet they can be affected if the corporation passes on the cost of the fine in the form of job cuts, reduced dividends, or increased prices.

- 4) **Bankruptcy Risk:** In some cases, the financial sanctions could be so severe that they risk bankrupting the company. This could lead to job losses and other economic disruptions. It might also reduce the chances of remediation if the company no longer has the resources to pay for clean-up or damage repair.

The Problems of Financial compensation was most appropriately seen in the Bhopal gas tragedy case. Union Carbide Corporation (UCC), the US company owning the factory, refused to accept liability for the disaster, arguing that it was an act of sabotage by a disgruntled employee. The Indian government and victims of the disaster disagreed, asserting that poor maintenance and safety standards at the plant led to the disaster.

After years of litigation, a settlement was reached in 1989 between UCC and the Indian Government. UCC agreed to pay \$470 million in compensation, a figure significantly lower than the \$3 billion initially claimed by the government. The immediate death toll was estimated to be around 3,800 according to UCC, though other estimates suggest the number to be significantly higher, around 10,000. Over the years, estimates of the long-term death toll have ranged from 15,000 to 25,000. To calculate the average amount received per affected person, if we take the conservative estimate of 500,000 affected individuals (this includes both deaths and injuries) and divide the \$470 million settlement by this number, it would amount to roughly \$940 per victim.

This amount was intended to cover the victim's past and future medical expenses, loss of earnings and livelihood, pain and suffering, and any other damages related to the gas leak. But considering the lifelong health complications, the loss of primary breadwinners in many families, and the subsequent socioeconomic impact, it's clear that the compensation was severely inadequate.

Moreover, the distribution of the compensation was fraught with issues, with many victims reportedly receiving much less than the average due to bureaucratic inefficiencies and corruption. In many cases, the amount received was as low as \$500 or less.

In summary, given the widespread and long-term impact of the disaster, the \$470 million compensation fell short in providing sufficient financial assistance to the victims, further exacerbating the tragedy of the Bhopal gas leak.

## E. Most Promising Remedies for The Future

- 1) **Compensation based on Carbon Footprint:** In a recent case of *Goel Ganga Developers (India) (P) Ltd. v. Union of India*, the question before the Court was whether Damages can be calculated by using the formula of Carbon Footprint? Even though the Court rejected the same, it is an idea that can be used in future to directly calculate the carbon footprint of the company and pay the restitution accordingly.
- 2) **Climate Risk Assessment:** Courts could order companies to conduct thorough climate risk assessments and incorporate these into their business plans and strategies. This would force corporations to consider the long-term impacts of climate change on their business and could incentivize more sustainable practices.
- 3) **Shareholder Activism:** Courts could empower shareholders to demand more climate-friendly practices from corporations. Shareholder resolutions or suits can be an effective tool for changing corporate behaviour.
- 4) **Green Bonds and Climate Financing:** Courts could encourage corporations to invest in climate mitigation and adaptation measures, potentially through the issuance of green bonds or other forms of climate financing.
- 5) **Restorative Justice:** Instead of merely penalizing corporations for their environmental harms, courts could mandate corporations to restore the environmental damage they've caused. This could involve clean-up operations, reforestation efforts, or investments in community projects to offset their emissions.
- 6) **Personal Liability of Directors and Officers:** Courts could enhance the personal liability of directors and officers for the failure to mitigate climate risks. This could encourage them to proactively address these issues in order to avoid personal legal repercussions.

## Concluding Remarks

In India, the corporate climate litigation has not been reported much but the issues related to climate are covered under the environmental law, article 32 and 21 of the Constitution of India along with Article 48A and 51A(g). The principles of tort have been combined with constitutional remedies and remedies awarded in the form of tort remedy.

The close analysis of important judgments related to environment and climate can be classified as cases of vertical and horizontal cases of climate change as follows:

### *List of Horizontal and Vertical Climate Litigation*

Horizontal Climate Action	Vertical Climate Action
<i>A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.)</i> ((2001) 2 SCC 62)	<i>Mahendra Pandey v. Union of India</i> (2019 SCC Online NGT 518)
<i>Goel Ganga Developers (India) (P) Ltd. v. Union of India</i> ((2018) 18 SCC 257)	<i>N.D. Jayal v Union of India</i> ((2004) 9 SCC 362)
<i>Hanuman Laxman Aroskar v. Union of India</i> ((2020) 12 SCC 1)	<i>K. Guruprasad Rao V. State of Karnataka and Ors</i> ((2013) 8 SCC 418)
<i>Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission</i> ((2015) 12 SCC 61)	<i>G. Sundarrajan v. Union of India and Ors.</i> ((2013) 6 SCC 620)
<i>Sterlite Industries (India) Ltd. v. Union of India</i> ((2013) 4 SCC 575)	<i>Court on its own Motion v. State of Himachal Pradesh</i> (2014 SCC OnLine NGT 1)
<i>Sushil Bhatt v. Moon Beverages Ltd.</i> (2022 SCC OnLine NGT 76)	<i>Hanuman Laxman Aroskar v. Union of India</i> ((2020) 12 SCC 1)
<i>MC Mehta v Union of India (Taj Trapezium Case)</i> (1987 SCR (1) 819)	<i>Ridhima Pandey v. Union of India</i> (2017 SCC OnLine NGT 30)
<i>M.C. Mehta v Union of India (Ganga Pollution Case)</i> (AIR 1988 SC 1037)	<i>Rajiv Dutta v. Union of India</i> (2019 SCC OnLine NGT 843)
<i>Orissa Mining Corpn. Ltd. v. Ministry of Environment &amp; Forests</i> ((2013) 6 SCC 476)	<i>Society for Protection of Environment &amp; Biodiversity v. Union of India</i> (2017 SCC OnLine NGT 981)
<i>M.K Ranjitsinh vs Union of India</i> (2021 SCC OnLine SC 326)	<i>Vellore Citizens Welfare Forum v. Union of India</i> ((1996) 5 SCC 647)
<i>In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh</i>	<i>Gaurav Bansal v. Union of India (National Green Tribunal</i>

(2020 SCC OnLine NGT 129)	(Principal Bench, New Delhi) Gaurav Kumar Bansal v. Union of India, (July 23, 2015))
<i>Union Carbide Corporation vs Union of India</i> (1989 SCC (2) 540)	<i>Rural Litigation and Entitlement Kendra Vs State of UP</i> (1985 SCR (3) 169)
<i>M.C. Mehta v. Kamal Nath</i> (1997) 1 SCC 388	<i>Municipal Corporation Ratlam vs Shri Vardhichand</i> 1980 AIR 1622
<i>Indian Council for Enviro-legal Action and others v. Union of India and others</i> ((1996) 3 SCC 212)	<i>T.N. Godavarman Thirumulkpad v. Union of India &amp; Ors.</i> ,(1997) 2 SCC 267
<i>M.C. Mehta And Anr vs Union Of India &amp; Ors.</i> (1987 AIR 1086)	
<i>Th. Majra Singh And Ors. vs Indian Oil Corporation And Ors.</i> , (AIR 1999 J K 81)	

While corporate climate litigation is increasing, it is for the most part covered under the available laws for environmental protection in India.

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