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CHALLENGES IN CORPORATE ACCOUNTABILITY FOR ENVIRONMENTAL DAMAGE

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1. Introduction

Corporate liability for environmental degradation has evolved into one of the most pressing issues in legal, economic, and social terms at the present time. Fast unescapable and highly serious in the long run are the unfolding practical consequences of environmental degradation, mostly through corporate activities, on ecosystems, biodiversity, and human health. Although there has been improvement in developing the legal frameworks and regulations for the redress of environmental harm, there is still significant inertia in corporate accountability in creating or worsening any environmental degradation incidents. This gaping hole in legal accountability keeps up the cycle of corporate irresponsibility and environmental damage with public suffering.[1]

[1] "Philippe Sands, *Principles of International Environmental Law* 202 (Cambridge University Press, Cambridge, 3rd edn., 2018)."

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The 21st century can only be known for one other unique thing that will surpass all its previous existences-the rapid destruction of the environment with very few corporations noticeably participating in such crises. Deforestation, air and water pollution, effects of climate change, and toxic waste spills have all left marks that would remain today and forever on how corporations footprint the environment. Urgency, therefore, has never been so high in enforcing corporate responsibility. Yet, despite the emergence of numerous international conventions, national laws, and corporate responsibility frameworks purporting to address environmental issues, the enforcement of these mechanisms remains significantly hindered.[2]

It is not only the nature of activities that are undertaken by corporations but also numerous factors that result in the complication of accountability of corporations towards harm of the environment. The challenges pose different aspects of accountability, such as legal, procedural, international, societal, and economic challenges. In the case of law alone, old laws and regulatory voids make it cumbersome to mark responsibility on corporations.[3] About the arising environmental issues like climate change, biodiversity loss, and ecosystem destruction, these complications in legal procedures only work at making it more difficult for poor citizens to claim environmental justice. Lack of proper and comprehensive international legal frameworks only adds up as multinational corporations perfect the art of exploiting legal loopholes and weak enforcement mechanisms to evade responsibility for environmental damage, withhold the fact that harm occurs.[4]

From a procedural perspective, the barriers to environmental litigation--including the burden of proof, the enormous costs of litigation, and slow court processes--are serious impediments to victims of environmental harm seeking justice. These barriers may be acute in developing countries, where communities may not have sufficient resources to challenge powerful corporations in court and the state may be reluctant to enforce environmental rules owing to political and economic reasons against such corporations.

Added to that, social and ethical concerns will inevitably complicate the question of corporate accountability even further. Although touted as one of the main vehicles to be used to drive corporations towards taking responsibility for social and environmental effects, Corporate Social Responsibility (CSR) remains voluntary, without effective enforcement mechanisms. It has become common practice among many corporations in engaging in some form of greenwashing: creating a false impression of how "green" or environmentally concerned the organization is without really doing anything to change the corporation as a whole. This is not to say that CSR cannot act as some form of motivation for corporate responsibility; it certainly can since the whole idea rhythmically matches the term corporate responsibility; its voluntary and nonbinding nature however, does not amount to an assurance of ensuring real accountability in practice-public knowledge and activism bolstered by social media and grassroots movements have also played an effective role in holding corporations to account, but activists and NGOs tend to carry heavy burdens such as persecution, legal suits or physical harm, especially within countries with poor environmental legislation or under totalitarian regimes.

Externalities, and again, the processes of globalization in consideration, are other geospatial classes that coincide with noises from the megamarkets of income and the power relations found therein, talking about the multinational corporations and the developing country economies. Foreign investment in these large companies is often seen to be one of the most strategic elements in the creation of a developing country's economy and

[2] "Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* 127 (Routledge, London, 2012)."

[3] Richard V. Percival and Robert Aagaard, *Environmental Law: Statutory and Case Supplement* 248 (Wolters Kluwer, New York, 2018)."

[4] "Zoe Robinson, "Corporate Environmental Liability" 35 Colum. J. Envtl. L. 499 (2010)."

employment. Therewith diversion toward the development of an economy relying heavily on corporate entities or such reliance on corporate entities will create a conflict between environmental stewardship and development. Consequently there is that governments can fear investing political capital in enforcing environmental laws or holding corporations to account would result in loss of investment or jobs. This dynamic generally contributes to a weak enforcement regime and weakens the legal protection on behalf of the environment and affected communities. For instance, with the Amazon rainforest case study, multinationals can at the same time shift liability for their activities by moving their operations to countries with weaker environmental protection standards; hence they would continue their environmentally harmful practices unhindered by regulation.

The necessity for reform in both domestic and international legal systems to influence corporate conduct with respect to environmental destruction is, however, gaining acceptance. The emergent legal principles, such as recognition of the rights of nature, ecological justice principles are gaining ground. These principles challenge the traditional anthropocentric focus of environmental law and call for a more wholesome ecocentric view concerning regulating corporate actions. Such efforts from countries and international organizations to address the loopholes are greatly determined by the legal structure and the political, economic, and social forces enabling corporations to escape all responsibilities.

This chapter attempts to search for the salient challenges that have been put forward as hurdles in the actualization of enforceability of corporate accountability regarding environmental damage. With these challenges seen from the legal, procedural, international, and societal points of view, this chapter shall go further into providing a comprehensive understanding of such obstacles. Moreover, the chapter shall brutish import on how the legal system, the international community, and the public activism could be rehabilitated so that they develop a more formidable configuration in holding corporations responsible for their environmental impact. It will do so as a groundwork for future discourses on the ways of reforming systems in order to enhance corporate social responsibility and make environmental damage subject to action as well as corporations subject to blame for the damage they commit.[5]

The last place of this chapter should be to make it apparent that ailment of big corporations in relation to environmental damage is by no means an issue confined to law but rather speaks volumes of global justice, morality, and sustainability. What all these pages speak of are real challenges that must be faced to make the world as it should be better: achievable, though not impossible. With suitable combination and very innovative thinking, great development opportunities resulting from massive government voices, civil society, and international organizations can make such visions a reality. Then it will be possible to see what kind of fairer balance can be struck in the world where a corporation can be prosecuted and punished like any other for all of its environmental misdeeds in furtherance of an appropriate and more assuredly sustainable and even just future to the global community.[6]

2 Legal and Regulatory Framework Challenges

The legal frameworks concerning corporate responsibility for the environment damage are not usually highly apt to cover a vast scale of complexities of environment problems today. New and emerging environmental problems like climate change, deforestation, and biodiversity loss have created novel unprecedented challenges for legal systems. This section examines the inadequacies of the current legal frameworks and the need for better regulations and enforcement mechanisms.

[5] "Lavanya Rajamani, "The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations" 28(2) J. Envtl. L. 337 (2016)."
[6] "Alan Boyle, "Human Rights and the Environment: Where Next?" 23 Eur. J. Int'l L. 613 (2012)."

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Lack of Legal Frameworks Addressing Emerging Environmental Issues

Existing legal frameworks are slow to adapt to emerging environmental issues, and this poses serious challenges to corporate accountability for environmental harm. Pollution laws, for example, are drawn narrowly, often relating to air and water pollution, without the breadth of application needed to address the wider detrimental ecological impacts resulting from activities by corporations. Traditional legal frameworks seem increasingly dated, especially as humanity faces new and unprecedented environmental threats such as global warming, biodiversity depletion, and widespread ecosystem destruction.[7]

For example, the legal systems of most countries have not yet explicitly included the notion of ecological justice or recognised the rights of nature, an emerging legal view that grants nature itself legal standing. Some progressive legal systems, for instance, Ecuador's and Bolivia's, have incorporated the rights of nature within the boundaries of their respective constitutions. Unfortunately, they mostly have a regional applicability: they are not universally adopted. Many expect the precautionary principle - that the proof of non-harm should rest with the corporate actor, especially in absence of clear scientific evidence - to replace this situation.

Legal frameworks are greatly impaired by a gap, a gap caused by the absence of laws targeting impacts on ecosystems that are broad and systemic in nature. Pollution and waste laws may exist in their numbers, but they rarely capture the indirect effects of industrial activities on natural habitats, biodiversity, or ecosystem services. Deforestation has direct drivers in agriculture, logging, and mining operations, and in many areas of the world, their impacts on the environment are left without regulation, leading to severe environmental degradation in these economies.

Case Study: The Amazon Rainforest and Corporate Responsibility

The Amazon rainforest is the most critical ecosystem in the world for climate regulation and biodiversity. Deforestation of the Amazon has been carried out primarily by large agro-corporations producing soy and cattle ranching. The absence of a coherent, global legal mechanism for holding these corporations accountable for deforestation has allowed these activities to continue with impunity.[8]

Weak enforcement of environmental protection laws in Brazil, in particular the Forest Code, renders them ineffective. On the other hand, with limited enforcement of laws to curb their operations, global demand for soy and beef has allowed multinational corporations to shift production to remote areas where enforcement is lax. Probably the best current illustration of the inability of the legal frameworks to evolve into emerging environmental issues is the inability for the international community to enforce binding regulations to hold corporations accountable for practices contributing to deforestation.[9]

The Challenge of Enforcing Corporate Accountability

Even with a legal framework in place, there is often still the problem of enforcement. The enforcement agencies charged with protecting the environment are very poorly resourced and staffed and highly influenced by political considerations in many countries. This is especially true with developing nations where environmental regulations are advantageous to attracting foreign investment. At times, the political will to apply environmental law is simply absent, especially where corporate interests weigh heavily in the national economy; often, there is a struggle between economic development and environmental protection, and governments receive pressure to resolutely

[7] "Patricia Birnie, Alan Boyle, et al., *International Law and the Environment* 139 (Oxford University Press, Oxford, 4th edn., 2021)."

[8] "Michael Faure, "Effectiveness of Environmental Law: What Does the Evidence Tell Us?" 36(2) William & Mary Envtl. L. & Pol'y Rev. 99 (2016)."

[9] "International Law Commission, *Draft Principles on the Allocation of Loss in the Case of Transboundary Harm* (UN, 2006)."

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ignore or diminish corporate environmental violations for the sake of economic growth and jobs. Multinational corporations, in particular, have the resources needed to escape liability or at least delay it—through lobbying for less onerous legislation, using legal strategies to prolong proceedings, and hiring expensive legal talent to oppose claims.

Example: Chevron in Ecuador

The Chevron case in Ecuador is strikingly illustrative of a conundrum of enforcement: the company was held responsible for extensive environmental injuries inflicted on the Amazon rainforest from 1964 to 1992. In 2011, a final ruling from Ecuador ordered Chevron to pay damages amounting to $19 billion; however, the company was able to delay the actual enforcement through a myriad of legal stratagems, ranging from appeals courts to challenges questioning the legitimacy of the ruling. This said, as of now, the communities affected in Ecuador still have not received any semblance of compensation in the real sense.[10]

The case pinpoints the gulf that exists between a legal finding and its enforcement. Even when a court holds a corporation to account, enforcement of compensation and rehabilitation schemes is obstructed by legal harassment, international jurisdictional impediments, and the ability of the multinational to muster significant resources to evade accountability.

Legal Loopholes and Corporate Structure

It takes a lot to hold multinational corporations accountable for even the most heinous environmental crimes. Not many people know that most corporations coil around complex webs of subsidiary structures often domiciled in countries with lax environmental legislation and regulatory oversight. Through such structures, they externalize the cost of their activities and literally evade liability by transferring responsibility to their subsidiaries for a whole plethora of reasons."[11]

Piercing the corporate veil is really a legal doctrine intended to allow the courts to hold parent companies responsible for their subsidiaries' actions. But as it usually happens, it is not so easy. Courts may not be willing to pierce the corporate veil, and often quite complicated corporate structures make it difficult to find a clear link between the parent company and the environmental damage brought about by its various subsidiaries.

Example: The Shell Case and Oil Spill Liability

A Shell case involving the 2010 Gulf of Mexico oil spill is a fine example of how corporate structure can shield liability. The oil spill was one of the worst environmental disasters in history, but Shell was able to deflect much of that blame onto BP, a subsidiary that was responsible for operating the drilling rig that caused the spill. The fact that multinational corporations can limit their liability by mandating subsidiaries to handle the most risky operations puts into question the very notion of corporate accountability.

Legal reforms will be needed to counter such challenges. For example, it should be possible to adopt a joint and several liability approach, thereby ensuring that both parent companies and subsidiaries are held liable for environmental harm, so that victims are able to seek redress irrespective of the corporate structure involved.[12]

Procedural Challenges in Environmental Litigation

Environmental litigation has increasingly become a way to hold corporations accountable for causing environmental destruction. However, the legal process for obtaining compensation for environmental harm is, more often than not, stymied by several procedural hurdles. These barriers can prevent

[10] "Ghanshyam Shah, *Environmental Jurisprudence and the Supreme Court: Litigation, Interpretation, Implementation* 81 (Orient BlackSwan, Hyderabad, 2014)."

[11] "Dinah Shelton and Alexandre Kiss, *Judicial Handbook on Environmental Law* 89 (UNEP, Nairobi, 2005)."

[12] "European Environment Agency, *The European Environment: State and Outlook* (EEA, 2019)."

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affected communities, NGOs, and other stakeholders from achieving their rightful claims, even though in many instances, the environmental damage may be over-conclusively proved. These barriers often comprise complex causation in law, high costs in litigation, protracted timelines for legal proceedings, and deliberate tactical use of the law in a manner that audibly delays or obstructs. To strengthen the workability of any environmental litigation and to enhance holding accountable companies for their environmental impacts, it is essential to bear in mind these challenges.[13]

Burden of Proof and Scientific Complexity

It is the burden of proof that constitutes one of the most significant procedural challenges for environmental litigation. In an environmental lawsuit, a plaintiff has to show that the action of the corporation directly and solely caused the environmental damage. However, such evidence is often elusive. Environmental injury is not causal in nature but rather collective in effects due to multiple actors who play their roles in ecosystem degradation, pollution, and other forms of damage to the environment. For instance, air or water pollution rarely stems from a single source, but rather a combination of emissions across various sources makes it questionable as to which particular company is responsible for the extent of pollution present.

The problems of causation have additionally been complicated by the scientific proof. Environmental injuries mainly take a long time to mature before any of the effects of corporate activity shows; in many cases, it may take years before their effect is seen. The link between actions of a corporation and specific environmental damage is often almost impossible to clearly demonstrate. Connections would entail detail scientific evidence through environmental studies, toxicological analysis, and expert testimonies.

Though such evidence is hard to come by, the threshold for proving sufficient environmental damage scientifically is very high in view of their expense, and the plaintiffs, specifically any local community or NGO, do not have enough funds to commission independent scientific work. On the other hand, corporates have ample amounts of money available for hiring sophisticated expert witnesses who can successfully challenge any evidences against the plaintiffs. Such a disparity in resources puts the entire litigation process into a huge imbalance, with almost all the burden of proof lying on the plaintiffs even where the environmental prejudice is obvious.[14]

Additionally, the corporations have had their experts work to undermine the claims of the plaintiffs and generally suggest that the environmental damage of which they complain was caused by another different activity unrelated to the operations of the corporation. Objections of this kind in expert opinion can prolong and complicate a case due to conflicting scientific evidence, making it all the more cumbersome for the courts to tax already stretched resources to wrestle with all reasonable possibilities in advancing any particular viewpoint. The cost considerations of acquiring and presenting expert scientific evidence therefore will weigh heavily on communities trying to litigate against these large corporations, especially in developing countries.

Thus, there is an urgent necessity to reform so as to ensure that plaintiffs would be able to seek access to scientific expertise to an appropriate level and the development of more appropriate legal mechanisms that deal with the scientific impediments of environmental litigation.

High Costs and Lengthy Litigation

Another major obstacle to effective environmental litigation is the high cost and long duration of legal processes. Environmental

[13] "World Bank, *Environmental and Social Framework* (World Bank Group, 2018)."

[14] "Shrivastava, *Bhopal: Anatomy of a Crisis* 97 (Paul Chapman Publishing, London, 1992)."

litigation is an expensive and time-consuming procedure, and this burden is particularly underlined for individuals and organizations lacking adequate financial resources. Legal costs, expert fees, travel costs, and other expenses associated with the action can mount very quickly, and communities or NGOs may find it difficult to pursue the legal action further.

Such a situation is hard to come across in developing countries, where not only legal expertise is limited but legal resources also scarce. Often it is the local communities that do not have the financial capacity to engage the multinational corporations with sizable legal budgets, who can efficiently postpone or evade litigation. Scientific evidence collection, legal advice, and litigation can be too costly for the already economically disadvantaged plaintiff.

The Bhopal Gas Tragedy of 1984 in India is one of the haunting examples where the time and costs of environmental litigation prevent justice from being achieved. Recalling a gas leak from the Union Carbide facility in Bhopal, the tragedy caused thousands of deaths and long-term environmental repercussions. Despite the magnitude of the tragedy, legal proceedings have been dragging on for decades, with many victims still awaiting justice. Complicated legal arguments, high costs, and long-protracted proceedings have created obstacles in these cases. Bhopal disaster victims have, therefore, not been compensated adequately, even after endless rounds of litigation, and the company declared liable has so far escaped any semblance of accountability.

In this way, Bhopal demonstrates that while the legal system is vital for justice in environmental damage, it tends to be inaccessible for local communities. The legal struggles that surround cases of environmental damage can last wherever from several years to several decades, depriving victims of timely relief. Furthermore, such local communities often do not have the means to finance litigation; hence multinational corporations can further drag their feet on the issue or evade liability altogether-making the injustice faced by victims worse.[15]

In essence, plaintiffs in environmental litigation require more support, whether in the form of funding mechanisms for legal costs or in establishing fast-track systems to settle environmental cases. Setting up legal funds or public interest litigation initiatives offering project grants for communities seeking justice would pave the way for all affected individuals and organizations pursuing their claims without adverse financial considerations. Moreover, a legal process aiding in the streamlining and reduction of delays in environmental litigation would guarantee that not too great a period of time is allowed to elapse while victims wait for justice.[16]

SLAPP Suits and Corporate Influence on Legal Proceedings

Increasingly, 'Strategic Lawsuits against Public Participation' have been also an emerging judicial hurdle in environmental litigation. Such SLAPP suits would be those legal actions brought about by corporations or powerful entities to intimidate, silence, or harass people, activists, or organizations that have spoken out against corporate wrongdoing. The idea not being to really win the case at all but rather to burden the defendant with the cost of litigation and emotional stress and thereby hoping that the threat of legal action will deter them from continuing their advocacy.

While SLAPP suits may not be bringing environmental litigation to an end, they have the potential to ground public interest litigation because of their value in suppressing efforts at holding corporations accountable for environmental harm. Environmental activists and NGOs attacking corporate practices are usually the most vulnerable to SLAPP because of weak legal safeguards for free speech or public interest litigation in some jurisdictions. The

[15] "Rajendra Pratap Gupta, "Greenwashing in Indian Industry: Legal Dimensions" 8 NALSAR Envtl. L. Rev. 57 (2020)."
[16] "Alan Dignam, "Corporate Social Responsibility: The New Corporate Veil" 33 Co. Law. 23 (2012)."

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premeditated use of SLAPPs would exhaust the resources of environmental organizations in delaying legal proceedings in addition to depriving them of future motivation to follow suit.[17]

For instance, SLAPP suits are being used in some countries by corporations against journalists reporting environmental violations and local communities pursuing legal remedies for damage caused to the environment. Though the underlying environmental damage may be well-documented, such lawsuits mostly involve defamation or some other types of claims that are almost impossible to defend against. Moreover, the legal threats are chilling enough to discourage public-interest litigation, as individuals and organizations may shy away from pursuing cases out of concern over financial ruin or damage to their reputations.[18]

In some jurisdictions, SLAPP suits have proliferated so much that they have now become instruments of corporate influence over the legal process. As it is, the fear of facing legal proceedings that are exceedingly costly and would last a long time is enough to push an activist or organization to abandon its endeavor no matter how valid their claims are. In this regard, many nations have resorted to the enactment of statutes that prohibit SLAPP suits and give rights to individuals to voice against corporate wrongdoing. Many of these statutes, however, do not provide much remedy to the individual concerned against SLAPPs, and they continue to act as mighty weapons for corporates to escape accountability.

SLAPP suits are increasingly being used, and this poses a very serious threat to environmental advocacy, public participation, and democratic rights. Legal reforms must therefore be undertaken to protect individuals and organizations from strategic legal actions aimed at silencing them. By reinforcing anti-SLAPP legislation and creating mechanisms for the expeditious and impartial adjudication of environmental claims, the legal system will empower those who seek to hold corporations accountable for environmental misdemeanors. Environmental litigation is therefore critical, as it holds corporations accountable for damages inflicted upon the environment. But it is beset with enormous procedural woes, which render the whole system not very constructive. The very burden of proof is juxtaposed against such enormous costs that even the most meritorious claims are laden with unfair weight, and upon top of it, there are SLAPPs: horrible in their punitive and cost-suing spirit. When SLAPP suits are floating in the air, it certainly makes life difficult for communities and NGOs to pursue claims for justice. In an environment where a lot of miserable challenges happen, these procedural challenges act as high walls for the especially vulnerable, particularly in developing ones, where resources are limited and legal institutions may not be very responsive.

Having multiple angles to address the challenges is important to disband the cost and duration of civil litigation for environmental causes, to create funding mechanisms for plaintiffs, and to build stricter legal protection against SLAPP suits. Furthermore, access to scientific expertise and empowering courts to handle complex environmental claims can create fair ground for these people seeking justice. By breaking down these barriers in the procedure, the wider scheme will be to help tilt the legal system more in favor of communities against the corporations that harm the environment and ensure that no environmental harm is left unattended.

3 International Challenges In Corporate Environmental Accountability

Environmental degradation caused by multinational corporations often inevitably goes beyond national boundaries, raising complex challenges for seeking accountability from them. With the global approach of corporate operations in consideration, it is a call for accountability on an international level as

[17] "Zoe Robinson, "Constitutional Personhood" 84 Geo. Wash. L. Rev. 605 (2016)"
[18] "United Nations Global Compact, *Guide to Corporate Sustainability* (UN Global Compact Office, 2020)."

environmental damages usually affect more than one country or ecosystem. However, the present international legal framework does not address quite adequately the corporate environmental responsibility and is also quite fragmented, besides being largely devoid of strong enforcement mechanisms. This part highlights the international challenges to be addressed for corporate accountability regarding environmental damage, such as fragmentation of international law weak enforcement mechanisms, and the problem of extraterritorial liability, with a specific focus on how their combination deprives corporate accountability of effectiveness.

Fragmentation of International Law

The fragmentation among international environmental laws remains one of the major barriers to corporate environmental accountability on the international front. The international environmental law, which exhibits comorbidities of environmental treaties, conventions, and agreements, engages specific environmental issues. These treaties and agreements operate without any sizeable coordination with no overarching one existent to uphold the global environmental damage claims against multinational corporations. In the absence of this cohesive architecture, it becomes really hard for the regulators and environmental protectionists to make corporations responsible for their actions.

There are various international treaties, for instance, the Paris climate change treaty, Basel Convention on control of hazardous wastes, and Convention on diversity, all aimed at particular environmental problems. Each of the agreements, despite being of vital importance to the specific environmental issue with which it deals, has a specific scope and application. While the Paris Agreement, which seeks to limit global temperature increase and avert dangerous climate change, sets ambitious common targets for the reduction of greenhouse gas emissions, it does not have any binding mechanisms by which corporations could be held accountable for their contribution to global warming.[19]

Similar fragmentation challenges hinder the Basel Convention's goal of governing hazardous waste's international movement. Guidelines for waste disposal and transboundary movement exist in the Convention and enforcement lies at the mercy of individual government cooperation. Where a country fails to enforce the provisions of the Basel Convention, corporations that operate within the jurisdiction are sometimes able to proceed with their harmful behavior without any consequences. The absence of a comprehensive regulatory mechanism allows multinational corporations to exploit loopholes within different legal systems for evading accountability, thereby aggravating enforcement impediments.

Moreover, the absence of a comprehensive set of international legal standards complicates the issues arising from the systemic nature of corporate-based environmental wrongs. Some transnational corporations are known to exploit the disparities that exist in different jurisdictions with respect to environmental regulations by "shopping" for preferences. This fragmentation essentially weakens the potency of each individual treaty and adversely affects the cohesion and effectiveness of global environmental protection initiatives.

A situation in which there is no unified approach to international corporate environmental accountability allows multinational corporations to slip through the legal liabilities for their actions, often exploiting breach the gaps between treaties or jurisdictions.

Weak Enforcement Mechanisms in International Law

Despite international accords and treaties existing to address environmental harm at a global level, enforcement mechanisms of such agreements tend to be weak. Most international environmental agreements are based on

[19] "Michael Faure and Nicole Niessen, "Environmental Compliance and Enforcement in Developing Countries" 44 ELR 10919 (2014)."

individual state obligations, which means that enforcement depends totally on the will of the states concerned and their ability to put such decisions into practice. Thus, the very basis upon which international law would punish a corporation is often undermined by the unwillingness or inability of states to act against very powerful corporate actors.

Like the Basel Convention, which aims at controlling the imports and exports of hazardous wastes, this Convention relies on the individual governments to implement their compliance within their jurisdictions. Unfortunately, this has resulted in a situation where many of the countries lack good enforcement of their environmental policies and, therefore, could do very little about the disposal of hazardous waste-the end result being that multinational corporations can do their business and do not lose out on such penalties. Similar to the Convention on International Trade in Endangered Species (CITES), which has many problems about regulation in trade concerning endangered species, there has been no uniform enforcement regarding member states.[20]

One more thing that the Paris Agreement lacks is its weak implementation machinery. While it provides for national plans to be adopted for greenhouse gas emissions reduction, it does not bind nations to punitive actions against non-performance. Such gaps in enforcement open up possibilities of holding companies unaccountable for their roles in climate change because such laws do not act upon countries since they would not enforce laws that harm major corporations residing in their countries. Some countries have even withdrawn or totally neglected international treaties, therefore breaking down world efforts toward the immediate environmental issues that need attention.

Most of the time, they escape from being indicted for damages directly or indirectly caused to the environment, especially when it comes to illegalities or breaches committed by multinational corporations. Such corporations continue to exploit ever-greener loopholes and thus maximizing benefits from weak regulations in certain jurisdictions. It must be noted, however, that no scope of law allows bearing accountability for transnational environmental damage by corporations.

Moreover, the ineffectiveness of international law is aggravated by the discord among various international organizations. UNEP gives guidelines for sustainable development, but has nowhere much to enforce it when it comes to being compliant with environmental standards. In contrast, even though the regional organizations such as the European Union have stronger enforcement mechanisms over their territories, they do not have enough power to impose compliance on a multinational acting outside the EU. This fragmentation of enforcement connects more tangled knots into attempts to hold corporations liable at the international level for harm to the environment.

Extraterritorial Liability and Access to Justice

One major international corporate environmental accountability challenge is extraterritorial liability. Multinational corporations operate from multiple countries and, consequently, environmental damage cross-border. The idea of forum non conveniens enables businesses to assert that lawsuits should be heard in more favorable legal jurisdictions, effectively denying justice for affected communities in the developing world. This legal quirk allows corporations to shoot down liability by cherry-picking legal venues where they can prevail on expected congenial rulings or lax enforcement of environmental laws.

Extraterritorial liability is a serious concern regarding environmental damage inflicted upon developing countries, for their local justice systems may remain ineffectual in the handling of complex environmental litigation. In many instances, multinational corporations could take

[20] "Richard V. Percival, "Liability for Environmental Harm and Emerging Global Environmental Law" 25 Md. J. Int'l L. 71 (2010)."

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undue advantage of this situation and employ their financial and legal tools to postpone or vaporize legal actions, thereby denying affected communities justice and sustaining a system in which they escape from accountability for the environmental damage they cause.[21]

The example of Vedanta Resources is the best illustration of the pursuance of extraterritorial accountability in Britain. A 2015 UK Supreme Court ruling held that a group of Zambian villagers could pursue a claim against Vedanta included the pollution caused by its subsidiary in Zambia, Konkola Copper Mines. The plaintiffs maintained that Vedanta, as a parent company, should answer for pollution caused by the subsidiary affecting water sources and local communities. The UK Supreme Court's decision to allow the case to be heard in the UK was an important cornerstone of anchoring the principle of extraterritorial liability, holding parent companies responsible for actions of their subsidiaries abroad.[22]

Yet it remains an exception. While groundbreaking then, many more multinational corporations could otherwise exploit the already weak environmental laws within that jurisdiction to frustrate any such effort by victims seeking to obtain justice for the environmental harms suffered. There are generally no consistent standards anywhere for extraterritorial liability, thus enabling corporations to evade responsibility for colossal environmental damages simply by choosing a forum that favors corporate interests rather than the rights of affected communities.[23]

4 Societal And Ethical Challenges

Although legal and regulatory systems contribute to confronting corporate environmental degradation, the more general societal and moral issues are also crucial to appreciating why so many corporations remain able to escape accountability. These issues arise from the interactions between corporate tactics, public opinion, and activism, with substantial ethical consequences to how corporations engage the world of nature and society. The shortcomings in corporate responsibility are usually aggravated by these social and ethical forces, which affect the way corporations conduct business, how their actions are viewed, and how well they are held responsible for causing harm to the environment.[24]

Corporate Social Responsibility and Legal Accountability

Corporate Social Responsibility (CSR) has become a key notion in promoting corporations to be responsible for their social and environmental consequences. CSR programs typically vow a commitment to environmentally friendly business operations, seeking to reconcile profit generation with social and environmental concerns. For companies, CSR provides a platform to establish a good public reputation, acquire environmentally friendly consumers, and receive goodwill from governments and investors. In recent years, the CSR idea has been highlighted especially in terms of tackling environmental issues, such as decreasing carbon footprints, embracing renewable energy practices, and reducing waste.

While the increasing visibility of CSR is a welcome sign, it has also raised the fear that most corporations use these programs as an instrument of greenwashing—a phenomenon whereby companies pretend to be pro-environment, while their practices do otherwise. Greenwashing is especially worrying since it gives an incorrect impression of corporate responsibility, deflecting the public and regulators' attention from the real environmental harm these companies might be inflicting. Although the discourse surrounding CSR advocates for positive transformation, its

[21] "Chatrapati Singh, P.K. Coudhary, et.al. (eds.), *Towards Energy Conservation Law* 78 (ILI, Delhi, 1989)."
[22] "Law Commission of India, *186th Report on Proposal to Constitute Environmental Courts* (Sept. 2003)."
[23] "Amanda Perry-Kessaris, "Corporate Liability for Environmental Harm" (2008) SSRN."
[24] "Corporate Environmental Responsibility: A Liability or Challenge" (2013)."

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application does not often achieve any substantial influence on corporate actions or environmental quality.[25]

One of the fundamental reasons that CSR fails to initiate meaningful environmental change stems from its voluntarism. CSR is not enforceable by law, and there is no benchmark or unified system that corporations are required to pursue regarding environmental sustainability. Consequently, businesses can freely boast of their dedication to sustainability without presenting tangible proof of actual transformation. CSR programs most of the time are used as a promotional tool instead of an active attempt to reduce environmental destruction. For example, big global companies can undertake public campaigns based on green supply chains, but these may prove to be a mere gesture that does not speak to the underlying drivers of environmental degradation or exploitative activities deeper in the supply chain.[26]

In others, companies can highlight a specific subset of environmental initiatives—e.g., cutting emissions in one sector of their business—while perpetuating unhealthy practices elsewhere. One example would be an enterprise that heralds its transition towards renewable sources of energy at its headquarters but engages in environmentally destructive mining or forest destruction methods elsewhere in developing nations. Such divergence between the public relations language used by businesses and their practices attests to the shortcomings of CSR in enforcing across-the-board environmental responsibility. Additionally, the absence of standardized indicators with which to measure the success of CSR initiatives makes it impossible for the public, regulators, or investors to accurately gauge the real efficacy of these efforts. Absent clear guidance and mandatory disclosures, CSR becomes, at best, a voluntary and typically superficial exercise in corporate responsibility, and at worst, a means of avoiding accountability for unsustainable operations.

The ethical considerations of CSR also pertain to how it affects poor and marginalized groups as well as ecosystems. Too often, CSR activities target corporate activity areas most in view for customers and shareholders, like packaging or energy conservation, and not the environmental and social harm induced by less-vocal areas of their operations. This selective participation in sustainability can produce a misleading story that companies are working hard to solve environmental problems, while they continue to overuse natural resources and workers in developing nations without proper protection.

For CSR to make a difference, it needs to go beyond voluntary and self-correcting measures. It requires governments to implement mandatory laws compelling corporations to become transparent and answerable for their social and environmental footprint. Moreover, such regulations must also have strong enforcement mechanisms in place to avoid greenwashing and ensure that CSR efforts lead to measurable environmental gains, not as a cosmetic public relations exercise.[27]

Public Awareness and Activism

Public awareness and activism have become crucial in making corporations accountable for their environmental activities. In the last few decades, social media and grassroots movements have raised environmental concerns to the forefront of global debates, empowering individuals and communities to call for corporate responsibility. From bringing attention to the destructive effects of Amazon deforestation to raising awareness about fast fashion's environmental costs, activists have utilized their platforms and voices to bring attention to corporate wrongdoing and its widespread effects. This increase in green activism has resulted in powerful corporate and policy shifts in certain cases, especially when

[25] "What is the Polluter Pays Principle?"
[26] "Interpreting the Polluter Pays Principle in the Trade and Environment Context" (2004) Cornell International Law Journal"
[27] "Sharmishtha Barde, "Lifting of the Corporate Veil for Environmental Degradation" (2018)."

consumer outcry has compelled corporations to change.

Yet, although public awareness and activism have achieved some successes, they also encounter serious obstacles, especially in nations with poor environmental legislation or restricted media freedom. Environmental activists and groups that reveal corporate malfeasance frequently encounter extreme personal, legal, and professional consequences. In certain areas, activists are intimidated, threatened, and even silenced by violence, as governments and corporations attempt to quash resistance to environmentally destructive practices. The assassination in 2018 of Brazilian environmental activist Marielle Franco, who was killed for her activism on behalf of the rights of marginalized groups, including those impacted by deforestation and land grabbing, illustrates the high level of risk that environmental defenders are exposed to in much of the world.

Additionally, where legal covers for activists and whistleblowers in such countries are weak, government institutions can be dominated by corporate interests, so it becomes challenging for activists to move freely. Under such circumstances, environmental activists are compelled to operate in the midst of a perilous and hostile terrain, where the legal apparatus serves not to safeguard, but to silence and intimidate dissent. In other cases, governments can become allies of corporations, closing their eyes to human rights violations or environmental degradation for the sake of economic growth.

The Strategic Lawsuits Against Public Participation (SLAPP) is yet another method that corporations employ to silence activism. SLAPP suits are instituted to intimidate and exhaust the resources of individuals, journalists, and organizations who challenge corporate malpractices. These suits, usually brought against environmental activists, are not filed to win the case but rather to deter additional action by overloading the defendant with large legal fees and drawn-out court appearances. In most instances, SLAPP suits prove effective in shutting up critics, as they become too expensive or time-consuming for the target to respond. The employment of SLAPP suits is a serious threat to environmental activism, especially in those jurisdictions where free speech and public interest litigation are poorly protected by law.

Nonetheless, activism has been a potent force in driving corporations toward greater environmental responsibility. In reaction to public pressure, numerous firms have moved to decrease their environmental footprint, enhance their supply chains, and be more open about their operations. The success of such activism, however, relies on the capacity of environmental groups, media, and the public to break through the obstacles of repression and corporate intervention. Thus, governments must ensure much stronger legal safeguarding of environment activists, media, and NGOs so that the latter can persist in their activites without suffering from retaliation.

Public awareness campaigns also have an important role to play in creating more corporate accountability. By educating consumers about the environmental effects of the products they buy, public awareness campaigns can encourage corporations to be more environmentally friendly. Public awareness, however, is not always sufficient in and of itself. Governments need to pass stronger laws and have more effective enforcement measures in place to hold companies accountable for the environmental effects of their actions.[28]

Overall, while public activism and awareness have succeeded in keeping corporations on their toes for causing environmental damage, they are not without their hiccups. The absence of legal recourse for activists, resorting to strategies such as SLAPP suits, and the ongoing threats to those who expose corporate malpractice continue to pose significant

[28] "Piercing the Corporate Veil: A Legal Mechanism for Accountability" (2024) VLAA."

barriers to real change. However, public pressure, when coupled with effective legal changes, can potentially push for substantive changes in corporate environmental accountability.

5 Conclusion

Corporate responsibility for environmental harm is not so much a legal or regulatory problem—it is firmly rooted in the fabric of economic systems, social values, and political will. While the world is struggling with mounting environmental challenges, such as climate change, loss of biodiversity, and general ecological degradation, the imperative of holding corporations to account has never been greater. Yet, as this chapter has noted, a number of longstanding and intricate issues impair the achievement of meaningful corporate accountability.

To begin with, the laws and regulations put in place to make companies answerable for environmental harm are outmoded and insufficient to tackle the fast-changing nature of environmental concerns. Classic environmental legislation, which was designed to solve particular problems such as water and air pollution, often does not consider larger environmental issues such as deforestation, loss of biodiversity, and the catastrophic effects of corporate-led climate change. The inability to incorporate ideas such as ecological justice and the rights of nature into national legal frameworks is a huge omission in our legal responses to environmental damage. This is exacerbated by the absence of an effective and consistent international legal regime that can effectively respond to transnational environmental challenges resulting from multinational corporations. International environmental law has been fragmented, and ineffective enforcement mechanisms have made it easy for corporations to escape regulation, and hence avoid being held responsible for environmental damage across the globe.[29]

Second, mechanisms of enforcement are still one of the most powerful barriers to corporate accountability. Even in places with sound legal institutions, they are usually compromised by insufficient resources, the absence of political will, and the dominant influence of multinational companies. In most developing nations, governments can be hesitant to enforce environmental regulations because the economic gains these companies offer outweigh them, including employment generation and foreign investment. This hesitancy generates a tension between economic development and environmental protection, often causing weak enforcement or even regulatory capture.[30] The Chevron case in Ecuador, in which a court verdict against the company's ecological devastation has not yet led to meaningful compensation for the affected communities, is an example of how enforcement failure perpetuates injustice. Corporations, with unlimited legal and economic resources, typically can stall cases, appeal rulings, and pursue legal tactics which render it in effect impossible to obtain redress in a timely manner for the victims. As such, therefore, the lacuna between formal rulings and on-the-ground implementation continues to constitute one of the most urgent tasks in promoting corporate accountability.[31]

Yet another central dilemma is in procedural aspects of environmental litigation. As shown throughout this chapter, the onus of proof in environmental cases tends to fall on the plaintiffs—communities and environmental groups who are often not well resourced to be able to afford expert witnesses or pay for the large scientific studies required to prove causation. In addition, the expense of litigation and the time required to resolve cases tend to

[29] "Environmental Enforcement and Compliance in Developing Countries" (2019)."
[30] "The Challenges of Enforcing Environmental Law in Developing Countries" (2025)"
[31] "Lavanya Rajamani, "The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations" 28(2) J. Envtl. L. 337 (2016)."

discourage individuals or communities from taking legal action. On other occasions, companies have used SLAPP (Strategic Lawsuits Against Public Participation) strategically in order to harass and silence opponents, discouraging them from bringing to light corporate malpractice. Such actions are not only harmful to the judicial system but also endanger the liberties of environmental campaigners and discourage seeking justice.

On the global scale, the challenges of holding transnational corporations liable for environmental damage are compounded by extraterritorial liability problems. The legal principle of forum non conveniens, through which corporations are able to evade litigation in courts where they can be subject to more stringent rules, undermines the attempt to deliver victims access to justice. Vedanta Resources' case in the UK is one of the exceptional cases where extraterritorial accountability was pursued successfully, but it is an exception, not the rule. The absence of uniform international standards for business liability means that victims of environmental harm in nations with less developed legal systems remain without means of redress.

In addition, the social and ethical issues of corporate environmental responsibility cannot be ignored. Even though Corporate Social Responsibility (CSR) programs have become increasingly prominent, numerous corporations employ CSR as a means of greenwashing, presenting themselves as environmentally responsible without fundamentally altering their practices. This shallow attention to environmental concerns mirrors the broader social challenge of keeping corporations accountable beyond their public persona and into the very business of their existence. Social media and grassroots movements have given citizens and NGOs the tools to reveal corporate malfeasance, but those who speak out are frequently subject to harassment, intimidation, and prosecution in reprisal. In nations with low media freedom or poor environmental laws, these are exacerbated, thus making effective corporate accountability impossible.

Ultimately, the impediments to corporate accountability for environmental harm necessitate multi-dimensional and concerted responses. National legal systems must change and adopt more progressive frameworks that recognize new environmental concerns and the rights of nature. International law also needs to be reinforced, with binding agreements that enforce corporate responsibility for environmental degradation and strong enforcement measures to make sure that compliance is achieved. Nations also need to allocate resources for environmental enforcement authorities to ensure that corporate infractions are dealt with effectively, irrespective of political or economic agendas. In addition, domestic and international legislations must be amended to eradicate the corporate veil that protects multinational companies from being held accountable for the activities of their subsidiaries. A move toward joint and several liability would ensure that parent firms and subsidiaries alike are held liable for environmental degradation, thus making corporations more accountable and limiting scope for evasion.

Apart from reforms in laws and regulations, higher social awareness and activism are also essential. The contribution of public pressure to shaping corporate actions cannot be overemphasized. Activism, in the form of social media movements or grassroots mobilization, has been effective in creating awareness of environmental concerns and demanding corporate responsibility. Nevertheless, for such activism to be effective, there should be enhanced legal protection for environmental whistleblowers and activists, especially in nations with authoritarian governments or poor legal protections. Governments need to understand that environmental activism is not a threat but an important part of a healthy

democracy that promotes corporate accountability.[32]

Simultaneously, the definition of CSR needs to be reworked. Corporations cannot be permitted to utilize CSR as a means of enhancing their image while hiding behind closed doors and perpetuating harmful activities. Mandatory legal stipulations that compel corporate environmental activities to be transparent and hold corporations accountable for what they say are necessary to ensure that CSR translates into concrete gains in environmental protection.

In summary, tackling the hurdles to corporate responsibility for environmental degradation calls for an holistic and multi-faceted strategy that encompasses overhauling legal systems, consolidating enforcement institutions, guaranteeing access to justice, and empowering civil society players to ensure corporate accountability. The struggle for corporate eco-responsibility is not purely a question of legal justice—it is a question of ensuring that future generations have a habitable earth to live on. Unless there is substantial change in holding corporations accountable for environmental devastation, the world will continue to grapple with the ruinous effects of uncontrolled corporate practices. It is thus necessary to call for reforms that target the drivers of corporate impunity and establish a legal, social, and economic context in which corporate responsibility for environmental destruction becomes the norm and not the exception.

[32] "Greenwashing Prevention in Environmental, Social, and Governance (ESG) Disclosures" (2024)"