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CORPORATE CRIMINAL LIABILITY AND ENVIRONMENTAL PROTECTION: A COMPARATIVE AND POLICY ANALYSIS

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Abstract

Corporate criminal liability has become a crucial tool in addressing environmental harms caused by industrialisation and multinational corporate activity. Traditional criminal law, focused on individual fault, initially resisted imposing liability on corporations. Yet the systemic, collective, and often transnational nature of environmental damage has driven the evolution of doctrines enabling corporations to be held criminally accountable. This article explores the historical development, doctrinal foundations, comparative enforcement, and policy reforms shaping corporate environmental liability. Comparative analysis shows diverse approaches: the U.S. applies broad vicarious liability; the UK has moved from identification doctrine to strict liability fines, India combines statutory and absolute liability frameworks, and France codifies corporate offenses under civil law. Enforcement challenges include inadequate penalties relative to corporate scale, evidentiary complexities, and limited prosecutorial capacity. Hybrid models, integrating strict, vicarious, and compliance-based approaches, are increasingly adopted to balance fairness and deterrence. The author in policy recommendations include proportional sanctions tied to turnover, recognition of compliance programs, specialized prosecutorial units, transnational cooperation, and restorative justice mechanisms. Effective corporate criminal liability thus not only enforces accountability but also fosters proactive environmental stewardship, aligning economic power with ecological responsibility and advancing intergenerational justice.

Key Words: Criminal Liability, Comparative Analysis, US,UK and India, Policy recommendations.

I

Introduction

Corporate criminal liability has emerged as a pivotal tool in the enforcement of environmental protection laws. As industrialization accelerates and multinational corporations expand across jurisdictions, the scope and severity of environmental harm have increased exponentially. Industrial activities—ranging from extractive industries to chemical manufacturing—contribute to pollution, habitat destruction, biodiversity

loss, and climate change.¹ The scale of such harm often exceeds the capacity of civil and administrative remedies, prompting the integration of criminal sanctions into environmental governance frameworks.²

The conceptual foundation for corporate criminal liability challenges traditional criminal law principles that locate culpability in human intent and action.³ Corporations, as artificial legal persons, lack physical bodies or minds, yet their decisions and omissions produce substantial environmental harm.⁴ The law has, therefore, evolved mechanisms—such as vicarious liability, identification doctrines, and statutory attribution—to reconcile the collective nature of corporate conduct with individual-oriented criminal doctrines.⁵

Historically, criminal law conceived of liability as a deeply personal matter. Responsibility for wrongdoing depended upon the intent (*mens rea*) and action (*actus reus*) of human actors, reflecting the anthropocentric focus of legal theory. Corporations, however, are artificial legal persons, lacking both physical bodies and minds. Despite this abstraction, corporate structures facilitate decision-making, strategic planning, and actions that can—and frequently do—result in substantial environmental harm. Consequently, legal systems have had to evolve, innovating doctrines such as vicarious liability, the identification doctrine, and statutory attribution to bridge the gap between the collective nature of corporate conduct and the individual-oriented principles at the heart of criminal responsibility.

The justification for imposing criminal liability on corporations in the environmental context is underpinned by three key considerations. First, there is the principle of deterrence: the threat of substantial penalties and

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¹Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability* 5–7 (2022).

²OECD, *Corporate Liability for Environmental Crime: An Overview* 9–10 (2021).

³Celia Wells & Juanita Elias, *Corporate Criminal Liability: A Ten-Year Review* 13 *Crim. L. Rev.* 849, 850.

⁴*Ibid.*, at 851.

⁵Pamela H. Bucy, *Corporate Ethos: A Standard for Imposing Corporate Criminal Liability* (1991) 75 *Minn. L. Rev.* 1095, 1100–01.

public condemnation can influence corporate choices in ways that civil penalties may not, prompting businesses to prioritize sustainable practices and compliance. Second, criminal law expresses moral condemnation: it affirms society's collective disapproval of conduct that imperils health, livelihoods, or the global commons, sending a message beyond mere regulatory infraction. Third, the presence of criminal sanctions fosters preventive governance: organizations are incentivized to implement compliance protocols, internal audits, and robust risk assessments that may prevent harmful conduct before it occurs.

Yet these justifications are not without challenge. The deep-seated anthropocentrism of criminal law—focusing on blameworthy individuals—often sits uneasily with the collective, systemic, and sometimes transnational nature of environmental wrongdoing by corporations. Many ecological harms result not from single decisions but from organizational culture, diffuse negligence, or calculated economic trade-offs that evade easy categorization within traditional fault models. Thus, the doctrinal evolution of corporate criminal liability has not only required legal ingenuity but also a rethinking of the philosophical

This article examines corporate criminal liability in the environmental context from three perspectives: (1) doctrinal evolution and theoretical justifications, (2) comparative enforcement approaches across jurisdictions, and (3) policy recommendations aimed at enhancing deterrence and compliance. Drawing upon case studies from India, the United States, the United Kingdom, and select civil law jurisdictions, the analysis seeks to identify both common challenges and innovative solutions.

Part II traces the historical and theoretical foundations of corporate criminal liability. Part III surveys the doctrinal approaches adopted by different legal systems. Part IV examines landmark enforcement cases to highlight strengths and weaknesses in practice. Part V presents a comparative analysis of these models. Part VI advances targeted policy reforms, and Part VII concludes by situating corporate environmental liability within the broader imperatives of intergenerational justice and planetary stewardship.

In sum, this article contends that corporate criminal liability is a vital—and continually evolving—instrument for environmental protection in the twenty-first century. While challenges remain, particularly in reconciling doctrinal sophistication with effective enforcement, the thoughtful

integration of criminal law into corporate regulation is indispensable to meeting the ecological and ethical challenges of our era.

II

Historical and Theoretical Foundations

The development of corporate criminal liability represents a relatively recent departure in the long history of criminal law. Early common law was reluctant to impose criminal responsibility on corporations, largely because these entities were considered incapable of moral blameworthiness and physical action.⁶ Criminal acts, especially felonies, were traditionally viewed as requiring a *mens rea* (guilty mind) and *actus reus* (guilty act) committed by a natural person.⁷

However, as industrialization accelerated through the nineteenth and twentieth centuries, courts began to recognize the practical necessity of holding corporations liable for regulatory offenses.⁸ This shift had its legal hallmark in the U.S. Supreme Court's decision in *New York Central & Hudson River Railroad Co. v. United States*, which endorsed vicarious liability for corporations based on the actions of employees acting within the scope of their employment.⁹ Such a doctrine acknowledged the realities of complex corporate operations and filled the enforcement gap where civil penalties were insufficient to deter serious misconduct.¹⁰

Theoretical justifications for corporate criminal liability in the environmental context have focused on several key rationales:

1. **Deterrence:** Criminal sanctions, especially when publicized, can effectively influence corporate behaviour by escalating reputational and financial risks.¹¹
2. **Moral Condemnation:** The criminal law conveys society's condemnation in manner civil or administrative sanctions cannot replicate.¹²

⁶*Supra note*, 3 at 6.

⁷*Ibid*, 9.

⁸OECD, *Corporate Liability for Environmental Crime*, 10.

⁹*New York Central & Hudson River Railroad Co. v. United States*, 212 U.S. 481 (1909).

¹⁰*Ibid*.

¹¹*Supra note*. 5, at 13.

¹²*supra note*.5, at 20.

3. **Preventive Governance:** The threat of prosecution encourages firms to implement compliance programs, internal audits, and risk management, reducing the likelihood of environmental violations.¹³

From a jurisprudential perspective, these justifications grapple with the challenge of applying individual-centric concepts of fault and responsibility to corporate organisms.¹⁴ Environmental harms often result from collective decisions, systemic negligence, or trade-offs made within diffuse governance structures, complicating the attribution of intent.¹⁵

The legal systems have evolved multiple doctrinal mechanisms to address these challenges. The identification doctrine attributes the corporation's mens rea to the "directing mind" – typically senior management or board members. However, this approach faces limitations in prosecuting large multinational entities with decentralized decision-making.¹⁶ As an alternative, the vicarious liability model, especially prominent in the United States, extends liability to acts by employees at all levels, conditioned on acting within the scope of their employment and for the corporation's benefit.¹⁷

In the Indian legal context, corporate criminal liability has evolved through a series of legislative enactments and judicial pronouncements. Key statutes include the Water¹⁸, Air¹⁹, and the Environment²⁰. These Acts impose stringent criminal penalties on enterprises contributing to environmental pollution, holding both the corporation and responsible officers liable.

Notably, the Supreme Court of India in *M.C. Mehta v. Union of India* (Oleum Gas Leak case) carved out the doctrine of absolute liability, imposing unqualified liability on enterprises engaged in hazardous activities, and forbidding exceptions such as acts of God or third parties.²¹ This landmark principle has since informed Indian environmental jurisprudence and shaped

¹³*Ibid*, 17.

¹⁴*Supra note.3* at 14

¹⁵Code penal(French), A. 121-2Available at:https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006417208 (Last visited, July 12, 2025)

¹⁶*Supra note.2*, at 22.

¹⁷*Supra note. 5* at 20.

¹⁸Water (Prevention and Control of Pollution) Act, 1974, S. 24& 25.

¹⁹Air (Prevention and Control of Pollution) Act, 1981

²⁰Environment Protection Act, 1986, S. 15.

regulatory enforcement. Additionally, prosecutorial efforts leverage provisions under the Indian Penal Code—especially sections addressing public nuisance (Sections 268–269)—now under Bharatiya Nyaya Sanhita (BNS)²², to prosecute environmental offenses, demonstrating the increasingly robust legal architecture addressing corporate environmental crimes in India. Some jurisdictions, notably India, have adopted strict or absolute liability standards for corporate actors in environmental law, as seen in the seminal *M.C. Mehta* case, where liability is imposed regardless of fault or exceptions, to ensure timely compensation and deterrence.²³ While effective in some respects, absolute liability has been criticized for potentially contravening principles of justice by removing fault consideration entirely.²⁴ Civil law countries, including France, utilize statutory schemes that explicitly define corporate criminal offenses and provide frameworks for liability attribution consistent with their legal traditions.²⁵ More recently, there is a shift toward hybrid prosecutorial approaches, integrating criminal law with regulatory and administrative sanctions. These models emphasize compliance-oriented liability, incentivizing corporations to proactively manage risks and prevent breaches rather than merely punishing post hoc violations.²⁶ This evolving landscape reflects a broader recognition within legal and policy spheres that corporate criminal liability must adapt to the complexities of modern enterprise and environmental governance. The ongoing incorporation of corporate responsibility into global environmental law regimes highlights the necessity for systems that are both rigorous and equitable in addressing ecological harm perpetrated by powerful economic actors.²⁷

III

Doctrinal Approaches to Corporate Criminal Liability in Environmental Law

²¹*M.C. Mehta v. Union of India*, (1987) 1 SCC 395 or *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

²²Bharatiya Nyaya Sanhita (BNS), 2023, S. 272, 292 & 293.

²³*Ibid.*

²⁴*Supra note*.3 at 18

²⁵*Supra note*. 15.

²⁶*Supra note*.2 at 22.

²⁷*Supra note*. 1 at 5.

Legal systems worldwide have developed various doctrinal models to attribute criminal liability to corporations for environmental offenses, reflecting differing jurisprudential traditions and policy priorities. The selection of these models significantly shapes prosecutorial strategies, evidentiary burdens, and the scope of corporate accountability.

(i). Identification Doctrine

The identification doctrine emanates from English common law and remains influential in jurisdictions following this legal tradition. Under this doctrine, the corporation is deemed liable if criminal acts and mental states can be attributed to the “directing mind and will” of the company, typically senior directors or top-level management.²⁸ This approach preserves the classical criminal law requirement of personal fault by linking the company’s liability to the culpable mind of key human actors.²⁹

However, this narrow focus on high-ranking decision-makers creates significant enforcement challenges, especially for large and decentralized corporations where responsibility is diffused among multiple actors.³⁰ Many severe environmental offenses arise from systemic negligence or policy-level failures distributed across organizational layers, evading liability under the identification doctrine when no single executive can be pinpointed.³¹ This limitation has attracted criticism for potentially allowing corporations to escape responsibility for widespread regulatory breaches.³²

(ii). Vicarious Liability

In contrast, the vicarious liability model, which is predominant in the United States, imposes corporate liability for wrongful acts committed by employees within the scope of their employment and for the benefit of the corporation.³³ This expansive approach enables prosecutors to hold companies accountable for misconduct at all organizational levels without needing to trace fault to senior officers alone.³⁴

²⁸*Tesco Supermarkets Ltd v. Nattrass* AC 153 (HL).

²⁹Celia Wells & Juanita Elias, *Corporate Criminal Liability: A Ten-Year Review* 13 *Crim. L. Rev.* 847.

³⁰Pamela H. Bucy, *Corporate Criminal Liability and the Modern Corporation*, 75 *Minn. L. Rev.* 1095 (1991).

³¹*Supra* note. 24.

³²Elliot & Quinn, *English Criminal Law*, (2019).

³³*New York Central & Hudson River Railroad Co v. United States*, 212 US 481 (1909).

Vicarious liability has been extensively employed in environmental enforcement under statutes such as the Clean Water Act and the Resource Conservation and Recovery Act.³⁵ However, critics argue that this broad attribution risks over-penalizing corporations for offenses committed without senior knowledge or approval, thereby raising concerns about fairness and proportionality.³⁶ The doctrine likewise demands robust internal compliance frameworks to prevent liability from cascading due to acts of lower-level employees.³⁷

(iii). Strict and Absolute Liability

Certain jurisdictions have adopted strict or even absolute liability doctrines for environmental harm, dispensing with the need to prove fault or intention.³⁸ India's Supreme Court pioneered the absolute liability principle in *M.C. Mehta v. Union of India*, holding corporations engaged in hazardous activities strictly liable for resultant harms without exceptions.³⁹ This doctrine reflects a legal and moral imperative to ensure prompt compensation and maximal deterrence, especially where public safety is jeopardized.⁴⁰

While absolute liability enhances victim protection, it has been critiqued for departing from foundational criminal law principles by eliminating the consideration of mens rea and potential defenses, potentially generating inequities in penalizing corporations.⁴¹ Despite this, some scholars argue its necessity in the context of modern industrial risks.⁴²

(iv). Indian Legal Framework and Jurisprudence

Indian courts have been at the forefront of articulating stringent liability standards for corporations in the environmental arena. The Supreme Court's formulation of absolute liability in *M.C. Mehta v. Union of India*⁴³, imposes

³⁴*Supra note.25.*

³⁵Clean Water Act, 33 U.S.C. §§ 1251 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.

³⁶John C. Coffee, Jr., Does "Unlawful" Mean "Criminal"? Reflections on the Disappearing Tort/Crime Distinction in American Law, 71 B.U. L.Rev. 193, 216 (1991)

³⁷*Supra note.25.*

³⁸*M.C. Mehta v Union of India*, AIR 1987 SC 1086.

³⁹*Ibid.*

⁴⁰*Supra note. 2* at 858.

⁴¹*Ibid.*

⁴²Ogus, *Law and Principles of Liability Insurance* (2005).

⁴³(1987) 1 SCC 395.

liability without fault on corporations undertaking hazardous or inherently dangerous activities, representing a departure from conventional fault-based criminal liability. Alongside, legislative provisions under the Water (Prevention and Control of Pollution) Act and Air (Prevention and Control of Pollution) Act impose mandatory compliance obligations and criminal sanctions on companies and their functionaries. Furthermore, the Companies Act, 2013 establishes duties and liabilities for directors and key managerial personnel to ensure corporate governance compliance, including environmental obligations, thereby expanding accountability beyond the entity to individual corporate officers. While enforcement faces procedural and capacity constraints, these frameworks collectively bolster India's stance on corporate environmental responsibility.

(v). Statutory Corporate Offenses

Civil law countries, such as France, have advanced statutory corporate offenses by codifying specific environmental crimes attributable to corporations.⁴⁴ For instance, Article 121-2 of the French *Code penal* expressly subjects corporations to criminal liability for acts committed by their organs or representatives, thereby affirming corporate personhood in criminal law.⁴⁵ This approach offers greater clarity and accessibility in prosecuting corporate environmental violations but still entails complex adjudication on the “acting on behalf of” criterion.⁴⁶

(vi). Hybrid and Emerging Trends

Modern legal systems increasingly explore hybrid models that blend doctrinal elements to enhance enforceability and fairness.⁴⁷ The United Kingdom has proposed a novel “failure to prevent” offense, which would hold corporations liable for failing to adopt adequate procedures to prevent environmental breaches, irrespective of identifying a directing mind.⁴⁸ Additionally, many jurisdictions employ layered enforcement that combines criminal sanctions with administrative penalties and corporate monitor ship programs.⁴⁹ This evolution reflects a broader trend towards compliance-

⁴⁴*Supra note*. 15.

⁴⁵Jacquot, "Corporate Criminal Liability in France", *Envtl. L. Rev* (2013).

⁴⁶OECD, *Corporate Liability for Environmental Crime: A Comparative Overview*, (2021).

⁴⁷Ministry of Justice, UK, “Corporate Criminal Liability” (2020).

⁴⁸UK Law Commission, “Proposals for Corporate Offense” (2021).

⁴⁹OECD, *supra note* 33 *ibid*.

oriented criminal law, incentivizing corporate governance mechanisms and risk management frameworks that proactively address environmental risks.⁵⁰ Such models aim to foster a culture of ethical corporate conduct rather than relying exclusively on punitive reaction.

IV

Enforcement Case Studies

Exploring landmark enforcement cases reveals both the promise and limitations of corporate criminal liability as a mechanism for environmental protection. Diverse approaches and outcomes across jurisdictions underscore the complex interplay of legal doctrine, institutional capacity, political will, and public advocacy.

(i). United States: BP Deepwater Horizon Oil Spill

The Deepwater Horizon disaster in 2010 stands as a defining moment in environmental criminal prosecution in the United States. The explosion on BP's offshore drilling rig in the Gulf of Mexico resulted in 11 deaths and the largest marine oil spill in U.S. history, causing catastrophic environmental and economic damage.⁵¹ BP pleaded guilty to 14 criminal counts, including felony manslaughter and violations of the Clean Water Act, and agreed to pay a record \$4 billion in criminal fines and penalties.⁵² The U.S. Department of Justice demonstrated a willingness to pursue aggressive vicarious liability theories, holding the corporation accountable for acts of employees and contractors.⁵³ However, commentators have questioned whether the penalties truly met the standard of deterrence given BP's vast revenues and the continuation of safety concerns within the oil and gas industry.⁵⁴

(ii). United Kingdom: Thames Water Prosecutions

In the United Kingdom, Thames Water Utilities Ltd. faced multiple prosecutions for unlawful pollution under the Environmental Protection Act 1990 and the Water Resources Act 1991.⁵⁵ In 2017, the company was fined

⁵⁰OECD, *supra* note 33 *ibid*.

⁵¹National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*, 3–4 (2011).

⁵²U.S. Department of Justice, *BP Exploration and Production Inc. Pleads Guilty, Is Sentenced to Pay Record \$4 Billion for Crimes Surrounding Deepwater Horizon Disaster* (2013).

⁵³*Ibid*.

⁵⁴John C. Coffee Jr., "Paradigms Lost: The Blurring of the Criminal and Civil Law Models," 101 Yale L. J. 1875, 1902–03 (1992).

£20.3 million for repeated discharges of untreated sewage into the River Thames.⁵⁶ Courts underscored the need for deterrence in cases involving well-resourced corporations and invoked strict liability provisions, thus circumventing the identification doctrine's evidentiary hurdles.⁵⁷ Sentencing remarks emphasized penalties proportionate to the company's financial strength and environmental harm caused.⁵⁸

(iii). India: Bhopal Gas Tragedy

The 1984 Bhopal disaster remains a watershed event in environmental law and corporate liability in India. A toxic methyl isocyanate leak from Union Carbide's pesticide plant led to thousands of deaths and long-term health crises for hundreds of thousands.⁵⁹ Criminal charges pursued under the Indian Penal Code faced numerous procedural and substantive obstacles.⁶⁰ The eventual settlement of \$470 million was widely criticized as inadequate compensation, reflecting systemic enforcement weaknesses.⁶¹ Although the case predated the Supreme Court's articulation of absolute liability in *M.C. Mehta v. Union of India*, it significantly influenced India's environmental jurisprudence and legislative reforms.⁶² The perceived insufficiency of criminal sanctions highlighted the need for dedicated statutory frameworks and stronger prosecutorial institutions.⁶³

The Bhopal tragedy also highlighted the challenges of applying Indian statutes effectively. Subsequent reliance on the Environmental Protection Act and related pollution control laws has led to incremental progress in corporate prosecutions. However, fragmented regulatory enforcement and judicial delays have limited the effectiveness of criminal sanctions against corporate entities. Increased focus is now on enhancing prosecutorial capacities, streamlining procedures, and invoking provisions of the

⁵⁵Environmental Protection Act 1990, c. 43 (U.K.); Water Resources Act 1991, c. 57 (U.K.).

⁵⁶*R v. Thames Water Utilities Ltd.* EWCA Crim 224.

⁵⁷*Ibid.*

⁵⁸*Ibid.*

⁵⁹Dominique Lapierre & Javier Moro, *Five Past Midnight in Bhopal*, 45–46 (2001).

⁶⁰See generally S. Shanthakumar, *Introduction to Environmental Law*, 234–36 (2d ed. 2019).

⁶¹*Ibid.* at 410–12.

⁶²*M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

⁶³*Supra note*.69 at 236.

Companies Act holding directors liable for corporate environmental compliance failures.

(iv). France: Erika Oil Spill

The Erika oil spill in 1999 caused severe pollution along France's Brittany coast. In a landmark 2012 decision, France's Court of Cassation upheld criminal convictions of oil company Total S.A. and others, applying Article 121-2 of the *Code penal* to hold corporations criminally liable for environmental harm.⁶⁴ The court found Total responsible as charterer of the vessel for negligence contributing to the disaster.⁶⁵ This ruling marked a significant assertion of corporate criminal liability in a civil law jurisdiction, demonstrating that companies can be held accountable despite complex contractual frameworks and multinational operations.⁶⁶

V

Comparative Analysis

The landscape of corporate criminal liability for environmental harm exhibits marked diversity across jurisdictions, shaped by differing legal traditions, institutional capacities, and policy priorities. A comparative analysis reveals both convergences and enduring divergences in doctrinal frameworks, enforcement practices, and sanctioning regimes.

(i). Scope of Liability

The United States' approach epitomizes the broadest scope of corporate criminal liability. Adopting a predominantly vicarious liability model, U.S. law facilitates prosecution for a wide array of acts committed by employees or agents within the scope of their employment and benefiting the corporation.⁶⁷ This expansive reach enables prosecutors to hold corporations accountable for misconduct at all organizational levels, thereby addressing the diffuse and complex nature of environmental harms.⁶⁸ However, this approach has attracted criticism for potentially overextending liability, risking punishment for acts unapproved or even unknown by corporate leadership.⁶⁹

⁶⁴Stéphane M. Jacquot, "The Erika Case: A Landmark for Corporate Liability in France," 5 *Env't Liab. L. Rev.* 215, 216 (2013).

⁶⁵Cour de cassation [Cass.] crim., Sept. 25, 2012, Bull. crim., No. 521.

⁶⁶*Supra* note.73, at 218–19.

⁶⁷*Supra* note25, at 19.

⁶⁸*New York Central v. United States*, *supra* note 4.

⁶⁹*Supra* note. 63.

Conversely, the United Kingdom historically adhered to the identification doctrine, which restricts criminal liability to acts and mental states of senior management—the company's "directing mind."⁷⁰ While preserving classical principles of personal fault, this narrow focus frequently results in enforcement gaps in large, decentralized corporations, where responsible decision-making is diffused.⁷¹ To mitigate these limitations, the UK has increasingly resorted to strict liability offenses and is considering new legislative proposals like the failure to prevent offense that shifts some burden onto corporations regardless of senior-level fault.⁷²

In India, the Supreme Court's adoption of the absolute liability doctrine for hazardous industries represents a distinctive evolution, imposing liability without exceptions or need for fault.⁷³ This approach advances victim protection and deterrence but remains relatively infrequently applied in criminal proceedings. Its practical utility is often tempered by procedural and institutional challenges in enforcement.⁷⁴

Civil law jurisdictions such as France employ statutory corporate offenses, codified within penal codes, which clarify corporate liability and outline enumerated offenses.⁷⁵ This approach enhances legal certainty and facilitates prosecution in complex corporate structures, although proving that the corporation acted "through its organs or representatives" remains a threshold challenge.⁷⁶

(ii). Penalties and Deterrence

Penalty regimes vary considerably among jurisdictions, impacting deterrence efficacy. In the United States, enforcement actions such as against BP have resulted in multi-billion-dollar fines, yet questions linger about whether these amounts sufficiently deter multinational corporations with expansive revenues.⁷⁷

⁷⁰*Tesco Supermarkets v. Natrass*, supra note 11.

⁷¹*Supra note*.24, at 25.

⁷²Ministry of Justice (UK), supra note 30.

⁷³*M.C. Mehta v. Union of India*, supra note 12.

⁷⁴Shanthumar, supra note 15.

⁷⁵Code penal (French), A. 121-2Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006417208 (Last visited, July 12, 2025)

⁷⁶Jacquot, supra note 18.

⁷⁷DOJ, BP Plea Agreement, supra note 2.

The United Kingdom has sought to align fines with corporate turnover, adopting guidelines that consider the size and profitability of offending firms, as well as the harm caused.⁷⁸ Nonetheless, application is inconsistent, and some fines remain inadequate relative to corporate capacity.⁷⁹ Elsewhere, penalties are often modest, undermining deterrent effect and public confidence. Non-monetary sanctions—such as probation orders mandating corporate compliance programs and environmental audits—have been more effective in promoting sustained cultural change within corporations.⁸⁰

(iii). Procedural and Evidentiary Issues

Complex environmental crimes pose significant evidentiary challenges due to technical scientific data, long investigative timelines, and intricate corporate structures.⁸¹ Countries with specialized environmental prosecutorial units, such as the U.S. Environmental Crimes Section, demonstrate higher conviction rates and more effective enforcement.⁸² In contrast, jurisdictions experiencing fragmented regulatory landscapes or under-resourced prosecutors face prolonged litigation and weakened enforcement, as illustrated in the protracted proceedings post-Bhopal disaster in India.⁸³

(iv). Emerging Convergence

Despite differences, a growing trend toward **convergence** emerges. Jurisdictions increasingly integrate components of the identification doctrine, vicarious liability, and strict/absolute liability concepts alongside administrative and restorative sanctions.⁸⁴ This hybridization reflects pragmatic recognition that no single doctrinal approach can fully address the complexities of corporate environmental offenses. It balances fairness and deterrence, encouraging proactive compliance while retaining robust punitive measures.⁸⁵

VI

Policy Recommendations

⁷⁸Sentencing Council (UK), *supra* note 57.

⁷⁹*Supra* note. 24, at 28.

⁸⁰OECD, *supra* note 63.

⁸¹*Supra* note. 24, at 34.

⁸²DOJ, Environmental Crimes Section, *supra* note 71.

⁸³*Supra* note.69.

⁸⁴OECD, *supra* note 62.

⁸⁵*Supra* note. 24, at 37.

Despite significant advances in the legal frameworks governing corporate criminal liability for environmental harm, enforcement effectiveness remains uneven. This section proposes targeted reforms designed to enhance deterrence, compliance, and remedial outcomes.

(i). Enhancing Proportionality of Sanctions

Effective deterrence requires sanctions calibrated to the scale of harm and the corporation's financial strength. Current penalties, particularly in some jurisdictions, remain insufficient relative to the vast revenues of many multinational corporations.⁸⁶ Implementing sliding scale fines tied to turnover, akin to frameworks in European competition law, ensures penalties exert meaningful economic pressure.⁸⁷ The United Kingdom's sentencing guidelines exemplify this approach by factoring in the company's size and the seriousness of the offense when determining fines.⁸⁸

Moreover, non-monetary sanctions such as probation orders, environmental audits, and corporate monitorships offer tools to oversee compliance and foster cultural change within organizations.⁸⁹ These measures incentivize proactive risk management beyond mere financial penalty.

(ii). Introducing Compliance-Based Defences

Recognizing effective compliance programs as mitigating factors or defences encourages corporations to invest in robust internal controls.⁹⁰ Such frameworks not only reduce the risk of violations but also demonstrate a corporation's commitment to lawful environmental stewardship.⁹¹ Emerging models in several jurisdictions incorporate this principle, allowing companies to rebut allegations or reduce penalties by proving diligent efforts to prevent wrongdoing.⁹² This approach aligns legal incentives with corporate governance and supports a prevention-oriented enforcement paradigm.

(iii). Strengthening Investigative and Prosecutorial Capacity

⁸⁶OECD, *Corporate Liability for Environmental Crime: A Review of Penalties* (2021).

⁸⁷Council Regulation (EC) No 1/2003 on the implementation of competition rules.

⁸⁸Sentencing Council (UK), *Environmental Offences: Definitive Guideline* (2014).

⁸⁹OECD, *Promoting Corporate Environmental Compliance* (2020).

⁹⁰Ministry of Justice (UK), *Corporate Compliance and Crime* (2018).

⁹¹OECD, *Boosting Compliance Programs in Corporations* (2019).

⁹²*Ibid.*

Enforcement of complex environmental crimes demands specialized expertise in scientific, technical, and legal disciplines.⁹³ Many jurisdictions lack adequately resourced prosecutor units with environmental law expertise.⁹⁴ Investing in dedicated prosecutorial entities, modelled after the U.S. Environmental Crimes Section, can improve investigation quality, prosecutorial effectiveness, and ultimately conviction rates.⁹⁵ Enhanced training, access to technical resources, and cross-agency coordination are essential components. In the Indian context, strengthening institutional capacity remains critical. This includes developing dedicated environmental courts and specialized prosecutorial wings with expertise in environmental and corporate law. Enhancing inter-agency coordination between pollution control boards, the judiciary, and law enforcement can facilitate swifter investigations and prosecutions. Legislative clarity on personally liable officers under the Companies Act, along with mandatory disclosure and compliance audits, would also support enforcement and accountability in corporate environmental governance.

(iv). Facilitating Transnational Cooperation

Given the globalized nature of corporate operations and environmental harm, multinational cooperation is vital.⁹⁶ Harmonizing substantive offenses, mutual legal assistance, and recognition of foreign judgments reduce jurisdictional barriers to prosecution.⁹⁷ Instruments like the OECD Anti-Bribery Convention offer a workable template for collaborative enforcement efforts targeting transnational corporate misconduct.⁹⁸ Stronger international frameworks can mitigate safe havens and promote consistent enforcement standards.

(v). Integrating Restorative Justice Mechanisms

⁹³Uhlmann, David M. "Prosecutorial Discretion and Environmental Crime." *Harv. Envtl. L. Rev.* 38, no. 1 (2014): 159-216.

⁹⁴OECD, *Environmental Crime Enforcement Capacity* (2017).

⁹⁵U.S. Department of Justice, *Environmental Crimes Section Overview* (2022).

⁹⁶OECD, *Transnational Environmental Crime Enforcement* (2019).

⁹⁷*Ibid.*

⁹⁸OECD, *Anti-Bribery Convention* (2011).

Complementing traditional punitive approaches with restorative justice fosters tangible environmental recovery and community rehabilitation.⁹⁹ Negotiated remediation agreements, environmental reparations, and participatory processes promote healing and sustainable outcomes beyond sanctions.¹⁰⁰ For example, Canada's Environmental Protection Alternative Measures program enables offenses to be resolved through negotiated settlements focused on restoration, providing a compelling model.¹⁰¹ Such mechanisms satisfy stakeholders' interests by addressing harm directly, fostering corporate accountability, and encouraging ongoing environmental stewardship.

VII

Conclusion

Corporate criminal liability has matured into a critical instrument for enforcing environmental protection amidst the growing threats posed by industrialization and global corporate activity.¹⁰² The legal evolution—from restrictive early doctrines to contemporary multifaceted regimes—reflects the urgency of addressing environmental harms caused by powerful corporate actors.¹⁰³

However, the ambitious scope of corporate criminal liability often outpaces current enforcement capacities.¹⁰⁴ While cases such as the Deepwater Horizon spill and the Erika oil disaster demonstrate the potential for impactful prosecutions, questions remain concerning the adequacy of penalties, especially relative to corporate size and revenues.¹⁰⁵ Insufficient

⁹⁹UNEP environmental, social and sustainability framework, Cl. 15, available at: <https://www.unep.org/resources/report/un-environments-environmental-social-and-economic-sustainability-framework#:~:text=The%20Environmental%20and%20Social%20Sustainability,%2C%20Chinese%2C%20Russian%20and%20Spanish>. (Last visited, July 12, 2025)

¹⁰⁰*Supra note*. 107..

¹⁰¹Government of Canada, Environmental Protection Alternative Measures Program.

¹⁰²*Supra note* 25, at 2.

¹⁰³*Supra note*. 24, at 5.

¹⁰⁴*Supra note*. 102 at 1902.

¹⁰⁵DOJ, BP Plea Agreement, *supra note* 2.

financial sanctions, limited prosecutorial resources, and procedural challenges risk diluting deterrence and public confidence.¹⁰⁶ These challenges underscore the need for greater institutional support and international cooperation.

The twenty-first century's pressing environmental crises—climate change, biodiversity loss, and transboundary pollution—demand not only robust legal frameworks but also coordinated political will and policy innovation.¹⁰⁷ Criminal law, while vital, is but one element of a comprehensive governance architecture.¹⁰⁸ Integrating effective compliance incentives, specialized enforcement entities, and restorative justice principles can enhance accountability and environmental outcomes.¹⁰⁹

Ultimately, safeguarding the planet requires aligning economic power with ecological responsibility. The judicious application and continuous refinement of corporate criminal liability, embedded within global and national legal systems, are indispensable in this endeavour.¹¹⁰

¹⁰⁶*Supra note*. 56, at 7.

¹⁰⁷United Nations Environment Programme, *supra* note 80.

¹⁰⁸OECD, *supra* note 84.

¹⁰⁹Shanthumar, *supra* note 45, at 240.

¹¹⁰*Supra note*. 24, at 23.