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Corporate Environmental Liability and ESG Obligations: A Comparative Analysis of Legal Frameworks in Pakistan and South Asia

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Abstract

Today, corporate environmental liability and Environmental, Social and Governance (ESG) obligations have become key features of modern environmental law. This paper compares the legal framework of corporate environmental accountability in Pakistan, India, Bangladesh and Sri Lanka and places the South Asian frameworks in the context of the international legal landscape. This paper critically reviews the regulatory framework, enforcement mechanisms, judicial responses and ESG disclosure regimes in each jurisdiction, based on the Pakistan Environmental Protection Act 1997, the National Environmental Quality Standards, the India Environmental Protection Act 1986, the Bangladesh Environment Conservation Act 1995, the National Environmental Act 1980 of Sri Lanka, and international instruments such as the Paris Agreement 2015 and the UN Guiding Principles on Business and Human Rights. The analysis shows that there is a long-standing disconnect between the intent of legislation and the effectiveness of enforcement, due to institutional fragmentation, weak sanctions and the lack of mandatory ESG disclosure frameworks. The paper ends with a model regulatory framework for South Asia, which suggests harmonised mandatory ESG disclosure, extended corporate liability, independent environmental tribunals and transnational enforcement cooperation as tools to fill this gap.

Keywords: *Corporate Environmental Liability, ESG, Pakistan Environmental Law, South Asia, Comparative Environmental Law, Mandatory Disclosure, Polluter Pays Principle, UN Guiding Principles*

I. Introduction

The issue of corporate responsibility and environmental harm is one of the most pressing issues in modern legal scholarship. With climate change and biodiversity loss at an unprecedented rate, the question before the law everywhere is how to hold corporations accountable for environmental damage and on what basis?

This question is of particular urgency in South Asia, where more than 1.9 billion people live, a number of the world's most polluted cities are located, and a number of the most ecologically sensitive landscapes. Pakistan, India, Bangladesh and Sri Lanka are among the countries with some of the world's most serious environmental problems, ranging from the melting glaciers of the Karakoram threatening the water supply in Pakistan, to the industrial effluents polluting the rivers in Bangladesh, to Sri Lanka's deforestation crisis.

At the same time, the world has seen a surge in the number of Environmental, Social and Governance (ESG) frameworks, which have changed the way corporate responsibility is communicated. Where once ESG was the domain of socially responsible investors, it has now become a hard law reality, with the European Union's Corporate Sustainability Reporting Directive (CSRD) 2022, the US Securities and Exchange Commission's proposed climate disclosure rules and emerging ESG frameworks in developing economies marking a structural change in corporate environmental accountability.

However, the legal systems in South Asia have not been as swift in this change. While the region has strong constitutional environmental protections, ambitious environmental legislation and an increasingly activist judiciary, the corporate environmental liability regimes are fragmented, under-enforced and largely disconnected from the evolving international environmental, social and governance (ESG) standards.

This paper tackles three fundamental research questions:

1. What are the differences between the corporate environmental liability frameworks of Pakistan, India, Bangladesh and Sri Lanka, and with international standards?
2. How have ESG principles been embedded in the legal obligations of South Asian jurisdictions?
3. What reforms are needed to create an effective and harmonised corporate environmental accountability regime in South Asia?

The method used is doctrinal and comparative. The paper examines primary legislative instruments, constitutional provisions, judicial decisions and international treaties in the four jurisdictions, with critical engagement of secondary literature in environmental law, corporate governance and development studies.

II. Conceptual and Theoretical Framework

A. Corporate Environmental Liability: Foundations and Evolution

Corporate environmental liability refers to the legal obligations imposed on corporations for environmental harm caused by their operations. Its theoretical foundations rest on three interconnected principles: the polluter pays principle, the precautionary principle, and the principle of sustainable development.

The polluter pays principle — first articulated in OECD Recommendation C(72)128 of 1972 and subsequently enshrined in Principle 16 of the Rio Declaration on Environment and Development (1992) — holds that the costs of pollution prevention and control should be borne by the polluter. This has formed the cornerstone of environmental liability regimes in most jurisdictions, underpinning both civil liability for environmental damage and administrative penalty frameworks.

The precautionary principle, crystallized in Principle 15 of the Rio Declaration, requires that 'where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'[1]

Sustainable development, as elaborated by the Brundtland Commission in Our Common Future (1987), integrates environmental protection with developmental imperatives, a tension particularly acute in South Asian jurisdictions where economic development and environmental protection frequently collide.

B. ESG: From Voluntary Commitment to Legal Obligation

ESG first became a part of the mainstream conversation in 2004 when the UN Global Compact published Who Cares Wins, a report that suggested that incorporating environmental, social and governance considerations into the capital markets would result in better outcomes for society and better financial performance. ESG standards have been increasingly incorporated into binding legal requirements (juridification) in various jurisdictions, and they are now both voluntary and mandatory.

Muchlinski's notion of the 'accountability gap' in multinational enterprise regulation is analytically relevant here: multinational corporations can take advantage of differences in regulatory standards, what John Knox has called 'regulatory arbitrage', by producing in jurisdictions with less stringent environmental regulation.

Special Representative John Ruggie's UN Guiding Principles on Business and Human Rights (UNGPs) 2011 laid the groundwork for the 'Protect, Respect and Remedy' framework, which included corporate responsibility to respect environmental rights as a part of human rights due diligence. The UNGPs have not been binding in themselves, but have had a strong impact on the legislative process in Pakistan, such as the National Human Rights Action Plan.

III. COMPARATIVE ANALYSIS OF LEGAL FRAMEWORKS

A. Pakistan: Regulatory Ambition and Enforcement Deficit

The environmental legal framework in Pakistan is based on the Pakistan Environmental Protection Act 1997 (PEPA) which created the Pakistan Environmental Protection Council, the Pakistan Environmental Protection Agency (Pak-EPA) and the provincial Environmental Protection Agencies as key regulatory bodies. The Act requires adherence to the National Environmental Quality Standards (NEQS) and bans the release of effluents, wastes or air pollutants exceeding the standards.

Importantly, the corporate criminal liability provisions in PEPA 1997 are contained in Section 17, which imposes penalties of up to PKR 1,000,000 for violations, with a daily fine for continuing violations, but as Lau and Ahmad have noted, these penalties have been rarely enforced and the quantum has not been updated since 1997, making them virtually ineffective against large industrial operators.6

Judicial interpretation has played a significant role in the constitutional dimension of environmental protection in Pakistan. The Supreme Court has interpreted the right to a clean and healthy environment under Article 9 of the Constitution of Pakistan 1973 in a broad manner. This interpretative linkage was first recognized in Shehla Zia v. WAPDA (1994) PLD 1994 SC 693 where the Court held that the right to live encompasses the right to live in a clean environment.

Ashgar Leghari v. Federation of Pakistan (2015) W.P. In the case of No. 25501/2015 (Lahore High Court), Pakistan's highest court was the most important judicial decision regarding climate governance, where Justice Syed Mansoor Ali Shah ordered the federal and provincial governments to implement the National Climate Change Policy 2012 and the Framework for Implementation of Climate Change Policy 2014-2030.6

In the case of ESG, Pakistan does not have any mandatory corporate ESG disclosure framework. The Securities and Exchange Commission of Pakistan (SECP) has issued voluntary guidelines on corporate governance and sustainability reporting, and the Pakistan Stock Exchange's (PSX) listing regulations have limited non-financial disclosure requirements. These are not binding, however, and are not always followed.

B. India: Advanced Framework with Implementation Challenges

The corporate environmental liability framework in India is much more evolved than in Pakistan, partly due to the higher institutional capacity and a more litigious civil society. The Environment Protection Act 1986 (EPA) was passed after the Bhopal gas tragedy and gives wide powers to the Central Government to take steps to protect the environment and imposes severe penalties for breaches of the Act.

The principle of absolute environmental liability, which was laid down by the Supreme Court in M.C. Mehta v. Union of India (1987) AIR 1987 SC 1086.7, is the most important contribution of the Indian environmental liability doctrine to the concept of strict liability. It is a departure from the strict liability rule of Rylands v. Fletcher, and Chief Justice P.N. Bhagwati held that enterprises involved in inherently dangerous or hazardous activities are absolutely liable for harm caused —

with no exceptions — and that compensation must be commensurate with the magnitude and capacity of the enterprise.

India has made significant progress in the field of ESG. The SEBI Business Responsibility and Sustainability Reporting (BRSR) framework, which was launched in 2021 and will be compulsory for the top 1,000 listed companies by market capitalisation from FY 2022-23, is the most advanced mandatory ESG disclosure regime in South Asia. BRSR calls for disclosure in accordance with nine principles that are consistent with the National Guidelines on Responsible Business Conduct (NGRBC), which include environmental, social and governance aspects.

The NGT, created under the National Green Tribunal Act 2010, is the most active environmental tribunal in Asia, hearing 37,000 cases between 2011 and 2023 and can award compensation and penalties.

C. Bangladesh: Vulnerability, Legislation and Governance gaps

Bangladesh is a paradox: the most climate-vulnerable country in the world, but one that has had a difficult time in enforcing meaningful corporate accountability in environmental governance. The key legislation is the Environment Conservation Act 1995 (ECA) and its amendments, the Environment Court Act 2000 and the Environment Conservation Rules 1997.

The Bangladesh garment industry, which accounts for about 84% of the country's export earnings, has been the subject of corporate environmental liability discussions, especially after the Rana Plaza tragedy in 2013 and the current court cases regarding the discharge of effluents from dyeing factories into the rivers of Bangladesh. Research has shown that 90% of rivers near industrial areas are polluted beyond safe limits.

Bangladesh does not have an ESG disclosure regime. The Dhaka Stock Exchange (DSE) listing rules are light on non-financial disclosure and the Bangladesh Securities and Exchange Commission (BSEC) has not yet published any comprehensive sustainability reporting guidelines. Exogenous pressure for ESG improvement has been created due to international pressure through supply chain due diligence legislation, especially the German Supply Chain Due Diligence Act (LkSG) 2021, which directly impacts Bangladeshi exporters.

D. Sri Lanka: Constitutional Entrenchment and Nascent Reform

The environmental governance framework in Sri Lanka, established under the National Environmental Act 1980 (NEA) and managed by the Central Environmental Authority (CEA), has been relatively coherent, but lacks corporate accountability. Sri Lanka is also unique in South Asia in having one of the most explicit constitutional environmental rights provisions, which states that the state shall protect the environment (Article 27(14) of the Constitution of Sri Lanka 1978).

The EIA regime under the NEA, which mandates environmental clearance for certain projects before they can be implemented, has been criticised by civil society for being undemocratic and subject to regulatory capture.10

The Colombo Stock Exchange (CSE) has adopted Sustainability Reporting Guidelines based on the Global Reporting Initiative (GRI) framework on a comply-or-explain basis since 2017, making Sri Lanka the first stock exchange in the region to have formal ESG disclosure guidelines, albeit with limited enforcement.

IV. INTERNATIONAL LEGAL FRAMEWORKS AND SOUTH ASIAN CONVERGENCE

A. The Paris Agreement and Corporate Climate Obligations

The Paris Agreement 2015 obligates States Parties to prepare, communicate and maintain Nationally Determined Contributions (NDCs), although the Agreement does not explicitly require corporations to comply. However, compliance has become a major concern in the implementation of the Paris Agreement at the national level, as governments seek to spread the burden of NDC achievement across productive sectors.

The NDC, which was updated in 2021, pledges to cut 50% of Pakistan's projected 2030 emissions, subject to international support, which is a very ambitious target for a country with less than 1% of global emissions and ranked among the top 10 most climate vulnerable countries. The biggest regulatory hurdle is to translate this national commitment into corporate legal obligations.

B. UN Guiding Principles and Due Diligence Obligations

The UNGPs' notion of environmental human rights due diligence (eHRDD) has been adopted by a growing number of legal practitioners and the UN Environment Programme (UNEP) has recently released a report on Human Rights Due Diligence in Environmental Matters, which offers detailed operational guidance.12

The EU Corporate Sustainability Due Diligence Directive (CS3D) 2024, which mandates human rights and environmental due diligence for large EU companies and their value chain partners, has an extraterritorial impact on South Asian exporters to the EU. This establishes a strong de facto compliance requirement even without domestic requirements.

C. Comparative Synthesis

The comparative synthesis shows a clear hierarchy in terms of the sophistication of the corporate environmental liability regimes in the four jurisdictions. India is the leader in terms of absolute liability doctrine, mandatory BRSR disclosure and an active specialised tribunal. Sri Lanka has constitutional entrenchment and voluntary ESG guidelines. Pakistan has robust judicial activism; however, it lacks enforcement and an ESG framework. Bangladesh has the least developed regime, which is mostly externally driven by international supply chains.

V. CRITICAL ANALYSIS: THE IMPLEMENTATION GAP

A. Structural Causes

The most consistent result from the four jurisdictions is the implementation gap, which refers to the difference between what the legislation says and what the regulations actually say. There are a number of structural factors that underlie this gap.

First, institutional fragmentation. Environmental regulatory authority is shared among several agencies in each jurisdiction with overlapping mandates, poor coordination, and underfunding. In Pakistan, environmental jurisdiction is shared between Pak-EPA, provincial EPAs, SECP and sector specific regulators and there is no hierarchy of authority in case of overlapping jurisdictions.

Second, penalty inadequacy. Environmental laws have relatively low fines for large industrial operators. The PKR 1,000,000 maximum penalty imposed by PEPA 1997, which has not been reformed since its enactment, is a small fraction of the operating costs or profits of the major polluters. The EU's proposed penalty regime under the CS3D, by contrast, establishes a qualitatively different deterrent calculus, one that is up to 5% of global turnover.

Third, restrictions on access to justice. The procedural complexity, cost, lack of legal aid and the lack of class action mechanism for environmental harm are some of the challenges faced by environmental litigation in South Asia. Public interest litigation has revolutionized India and Pakistan but it is not a perfect remedy for systemic enforcement.

B. The ESG Disclosure Deficit

In three of the four jurisdictions, there are no mandatory ESG disclosure requirements, leaving investors, regulators and affected communities without reliable information on corporate environmental performance. If environmental risk is not disclosed, markets will not price it correctly, regulators will not be able to focus enforcement on the right targets, and communities will not be able to hold polluters accountable.

The phased implementation of BRSR, starting with the top 1,000 companies and then to be extended, provides a model for regional reform that is replicable without undue compliance burden for reporting entities.

VI. The proposed reforms are a model framework for South Asia.

A. Mandatory ESG Disclosure Regime

This paper suggests that a mandatory ESG disclosure framework similar to India's BRSR, but tailored to the institutional capacity of each South Asian jurisdiction, should be adopted. The key features should be: (i) phased implementation starting with listed companies with a minimum market capitalisation; (ii) standardised disclosure metrics based on internationally recognised disclosure frameworks (GRI, TCFD, ISSB); and (iii) independent third-party assurance for large disclosers.

B. Extended Corporate Liability

The paper suggests that absolute liability (as in M.C. Mehta) be extended to all four jurisdictions for inherently hazardous activities; that directors' personal liability be introduced for corporate environmental violations as a deterrent to regulatory arbitrage through corporate structures; and that the penalty maxima be significantly raised, based on corporate turnover instead of fixed amounts.

C. Specialised Environmental Tribunals

Pakistan, Bangladesh and Sri Lanka should create or strengthen specialised environmental tribunals that have: (i) expedited procedures for environmental enforcement; (ii) the power to grant mandatory injunctions, impose proportionate penalties and order remediation; and (iii) technical expertise panels to assist in the assessment of environmental harm.

D. South Asian Environmental Cooperation Agreement

This paper proposes negotiation of a South Asian Environmental Cooperation Agreement under the SAARC framework to: (i) establish minimum standards for corporate environmental liability across member states; (ii) create a regional database of corporate environmental violations; and (iii) provide for mutual recognition of environmental enforcement judgments — directly addressing the transboundary dimensions of environmental harm.

VII. Conclusion

This paper has conducted a systematic comparative analysis of the corporate environmental liability and ESG frameworks in Pakistan, India, Bangladesh and Sri Lanka, and placed them in the international legal context. The analysis shows that there is a space of high legislative aspirations, increasing judicial activism, and still serious and deep enforcement gaps.

The implementation gap in South Asian environmental law is not a drafting issue, but rather an institutional design, incentive and political economy issue. The current legal framework does not sufficiently impose costs on corporations to externalise environmental costs — penalties are too low, enforcement is too infrequent, and disclosure requirements are too limited to allow market discipline.

The changes outlined in this paper – mandatory ESG disclosure, enhanced corporate liability, dedicated environmental tribunals and a regional cooperation framework – are all possible and all transformative. They learn from best practice in the region itself, and show that the barriers are not insurmountable.

The legal systems that regulate corporate environmental responsibility will be pivotal as the climate crisis grows and the ecological limits of South Asian development become increasingly evident. The issue is not if reform is needed, but if there is political will to seek it. This paper has sought to offer the legal underpinnings for that quest.

FOOTNOTES

[1] Rio Declaration on Environment and Development, Principle 15, UN Doc A/CONF.151/26 (Vol. I) (1992).

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[3] J.H. Knox, 'Diagonal Environmental Rights' in M. Langford (ed), Social Rights Jurisprudence: Emerging Trends (CUP 2008) 108.

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[5] M. Lau and S. Ahmad, 'Environmental Regulation in Pakistan: Law and Practice' (2020) 32(2) Journal of Environmental Law 287, 301.

[6] Ashgar Leghari v Federation of Pakistan (2015) WP No 25501/2015 (Lahore High Court), order of 4 September 2015.

[7] M.C. Mehta v Union of India (1987) AIR 1987 SC 1086.

[8] National Green Tribunal Act 2010 (India), s 18.

[9] Environment Conservation Act 1995 (Bangladesh), ss 4-7.

[10] National Environmental Act 1980 (Sri Lanka), s 23Z (as amended by Act No 56 of 1988).

[11] Paris Agreement 2015, art 4(2), UNTS vol 3156 No 54113.

[12] UNEP, Human Rights Due Diligence in Environmental Matters (UNEP 2019).

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