

# *BOOK EXCERPT*

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## **The Accountability Principle: Legal Solutions to Break Corruption's Impact on India's Environment**

The biggest problem facing India's environment is not a lack of environmental laws. We have dozens. Nor is it a lack of precedent to protect our environment. This has been developed incrementally in India's Supreme Court over the last twenty-five years. The single biggest issue facing India's beleaguered, yet resilient environment today is the failure of the Indian government to adequately enforce existing environmental laws. There is no excuse good enough, no obstacle obtrusive enough, and no circumstance restrictive enough to exonerate the government from failing to perform its statutory duty to arrest environmental decline. Restoring India's environmental quality, preserving its natural resources, and creating a sustainable way of life for India's burgeoning population are not intangible dreams—they are within reach. But every day the Indian government fails to move

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its hands. Our government fails to perform its duty. Bold action is necessary.

Each chapter in my life's work fighting for India's environment points to government failure. Each problem highlighted in my battles was either a direct result of government actions or a lack of government action where it was blatantly needed. This common thread has tied all of my cases together to establish one glaring truth: that India's executive branch of government bears the greatest responsibility and blame for India's environmental decay. Though other factors contribute, the executive branch of government has either passively allowed or actively contributed to the environmental tragedy unfolding around Indians every day. There is no excuse.

I have spent the bulk of my twenty-five year career in environmental law working to build effective precedent for environmental protection through the Indian Supreme Court. Over the years, the Court has evolved all the operative principles necessary for a strong environmental jurisprudence. Moreover, the Court's action has also spurred the legislature into passing a plethora of environmental laws and rules that, at a minimum, empower the executive branch to take all steps necessary to preserve India's environment. Finally, the Supreme Court has gone to exhaustive lengths to request, instruct, direct, and order the executive branch to execute its constitutional duties. In my cases alone, the Court has issued thousands of orders pertaining to environmental enforcement. To this end, the executive branch, under the Supreme Court's direction, has set up a number of administrative bodies to manage India's environment, from coastal authorities, to groundwater authorities, to river authorities. The list goes on. The Court has exercised its constitutional powers to give the executive branch all the support, all the guidance, all the direction and all the tools it needs to fulfil its duty. Our apex judicial body has put the ball squarely in the executive's court.

Yet the executive continues to fail. It is a sad opus. With each day that passes India's environment suffers ever-greater destruction. Each claim of progress that the environmental offices declare rings more hollow. Each day the goals of the environmental branches of government slip further out of reach as the environment falls into further decline. The truth is that the environment is not the government's priority. The poor are not a priority. Our international commitments are not a priority.

Our public health is not a priority. Our fundamental rights are not a priority. Instead our leadership is narrowly focused on rapid, unsustainable development programmes, on expansion of nuclear energy, on exploitation of resources, and on building unviable large-scale dams. It is difficult to convey the gravity of our leadership's misdirection. The scope of our government's vision is narrow. The long-term is lost to the short-term. The government is supposed to be the glue that holds our society together, yet the public's faith in the government is disintegrating, weakening our civil bonds. The government is facing a crisis of confidence. Though problems exist in each branch of government, none are more serious than the breakdown in the executive branch. The enforcers themselves are abrogating the law. As a result, the rule of law in India crumbles. This can only lead to further destruction, disintegration, and violence.

The great Court-led victories for the environment brought hope to the hearts of millions of Indians. Many millions of Indians saw Public Interest Litigation (PIL) as an avenue for justice. While justice was delivered in the courts, it was flogged in the executive. The Court's directions quickly lost traction as they were handed over to the executive branches for enforcement. Order after order went unimplemented. Order after order still goes unimplemented. As a result, the executive continues to make a mockery of the Court, the Constitution, and our democratic system of government. Environmental enforcement has changed from being a part of the problem of environmental protection to becoming *the* problem. The government has the mandate, the power, the administrative structure, and the resources to effectively reign in environmental destruction, but it fails.

The reasons for the failure of the executive branch are many, but one reason stands out more than any other: corruption. While corruption is not the sole contributor to the failings of the executive branch in India, it is one of the worst and most condemnable—and the most urgent to address. According to Transparency International, "India stands high in the list of the 'most corrupt' nations and virtually at the bottom of international assessments of human development."<sup>1</sup> In Transparency International's 2005 World Corruption Index, India scored only a 2.9 out of 10 (10 being least corrupt). Corruption pervades every level

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<sup>1</sup> R.B. JAIN & P.S. BAWA, NATIONAL INTEGRITY SYSTEMS: COUNTRY STUDY REPORT: INDIA 2003 26 (Transparency Int'l 2004).

of Indian government, from high government officials to the lowest inspectors.

The bureaucracy cannot police itself. The administration has shown its inability to control corruption within its ranks. India has a plethora of bureaucratic rules and regulations aimed at tackling corruption and keeping bureaucrats honest.<sup>2</sup> Unfortunately, these rules' effect is marginal at best. Corruption, nepotism, and apathy are still rampant in India's executive branch. The last thirty years have made it clear that leaving the government to its own devices is grossly insufficient to stimulate the necessary action. The corruption is simply too deep. The only solution is to give the power back to the people by making bureaucrats directly accountable to the public whom they are charged to protect.

Corruption exists in every country, but its scale and pervasiveness vary dramatically. The Centre for Science and Environment observes:

Experiences from abroad . . . have something to teach us. The United States, Japan and South Korea are among the most dynamic countries in the world, but their higher political echelons are riddled with corrupt practices. What differentiates these countries from India is that once a politician is enmeshed in a corruption scandal, regardless of whether that politician is a president or prime minister, he/she pays a price.<sup>3</sup>

In India corruption exists in all levels of government, and the corrupt commonly pay little political price. Many politicians and bureaucrats pursue government jobs primarily because they know that they will be able to exploit their positions to collect kick-backs. Corruption exists in all levels of the Indian government, and in every branch, but the low-level corruption is by far

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<sup>2</sup> See generally ASIA DEVELOPMENT BANK, ANTI-CORRUPTION POLICIES IN ASIA AND THE PACIFIC: LEGAL AND INSTITUTIONAL FRAMEWORKS FOR FIGHTING CORRUPTION IN TWENTY-ONE ASIAN AND PACIFIC COUNTRIES (2004). Some examples of India's requirements: India requires all public officials to regularly disclose information about their assets and liabilities, *id.* at 12, periodic review and adjustment of public officials' salaries, *id.* at 8, clear codes of conduct for public servants, *id.*, conflict of interest regulations to address public officials' engagement in political or economic activities, and restrict their engagement in private sector or investment activities, *id.* at 9-10, requiring officials to report the employment of a near relative in an organization with which the public official is associated, *id.* at 9, reporting any gifts from outside parties exceeding a certain value must be reported to supervisors, *id.* at 10.

<sup>3</sup> 1 CENTRE FOR SCIENCE AND ENVIRONMENT, THE CITIZENS' FIFTH REPORT: NATIONAL OVERVIEW 391 (1999).

the most serious. When even the lowest regulators and inspectors know that the system is corrupt, they too join in the sport and seek to get as much out of the job as possible while they are in power. This makes a mockery of our entire governmental system, and turns it against those with a genuine interest to serve the public. Corruption also shifts needed funds away from areas of public service. Thus the people who need the government the most receive the least, and the people who deserve the least take the most. Our enforcement system has been turned completely inside out.

When regulators egregiously ignore their duty to care for the public, they directly encourage the spread of pollution and liquidation of natural resources. When highly polluting factories and illegal development are condoned, we all suffer. Further, corruption causes a liquidation of natural resources and a looting of the treasury. Our natural heritage and our common assets are plundered. This is a crime against the nation and our common heritage. Corruption has the most direct impact on the poor:

Corruption is a multi-faceted problem whose causes can be equally multifarious. Though corruption is largely borne out of human greed, it can get exacerbated in highly divided societies, leading to a deadly combination of corruption and violence. For those who have the resources to bribe, corruption can be irritating and, as economists call it, a “transaction cost.” But for the poor who cannot afford the ‘transaction cost’ corruption is tantamount to oppression and violence.<sup>4</sup>

The impacts of corruption on India’s people, her economy, and her environment are profound, and amount to a clear violation of Article 21 of the Indian Constitution, which the Supreme Court has interpreted to guarantee every Indian the right to live in a healthy environment.<sup>5</sup>

Public-interest litigation has played a critical role in expanding environmental jurisprudence in India over the last twenty-five years. It was the procedural mechanism that allowed for citizen suits against the government and polluters, and the tool that the Court continues to use to protect our fundamental constitutional rights. Public-interest litigation can also be a way to forge ahead in the next necessary step to save India’s environment: fighting corruption.

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<sup>4</sup> *Id.* at 392.

<sup>5</sup> INDIA CONST. art. 21. The article provides that “[n]o person shall be deprived of his life or personal liberty except according to procedure established by law.”

Each public official has a responsibility to the public. This is uncontroversial. Each government officer knowingly assumes this responsibility when he or she takes office. They are given legal powers, legal rights. Their legal rights inherently include a legal duty of care to perform their tasks honestly and to the best of their ability. Therefore, each public servant has a heightened duty of care to the public at large. Their duty of care is much greater than that of a normal citizen, because we citizens entrust our officials with our wellbeing. This duty is legally enforceable against corrupt officials.

There is a dramatic imbalance in our governing system. The constitutional rights of Indian citizens are being undermined by legal protection of public officials via their statutory authority. These officials are shielded from liability. Our public officials have excessive power, with negligible accountability, while the public is powerless against them. This is reverse logic. Administrative decisions do not extinguish our fundamental rights. Rather, our fundamental rights shape the parameters of regulatory action. Our entire democratic form of government is premised on the assertion that the government derives its power and authority from the consent of the governed. The people are the ultimate repository of governmental authority. When the government fails so blatantly to make good on the public's consent and the public's trust, the public has a legal mechanism to reclaim that power. This mechanism is effectuated by asserting our fundamental rights as citizens under our Constitution. The situation in India is extreme and it calls for bold action.

This does not mean that the country should slip any further into anarchy by people taking the law into their own hands. This takes place often enough already with the connivance of government officials. We should seek to use the democratic system of checks and balances to flush out the problem. We should hold public officials accountable for their failings when they lead to actual injury to individuals and the environment. Right now public officials in India are shielded from liability because of their status as public servants. But what happens when the government official ceases to serve the public, and instead becomes self-serving? Does this person still deserve the status and protection of a public servant? And what if these acts of self-service lead to serious injuries to people and the environment? What if it violates a citizen's constitutionally guaranteed rights? Should

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we still afford them the same legal immunity? Shall we continue to shield this person for robbing India of a sustainable future? The scenario in India's executive branch is dire and requires us to take bold action.

The executive branch cannot rid itself of its cancer; the legislative branch cannot act directly. The Indian judiciary is needed to take urgent action. The Indian judiciary is duty-bound to protect the fundamental rights of its citizens, particularly when those rights are violated by another branch of the government. The Supreme Court has an opportunity to exercise its powers, under Article 32 of the Constitution of India, to protect the people's fundamental right to a healthy environment as enshrined in Article 21. In order to protect the fundamental rights of Indians, the Supreme Court of India should adopt the Accountability Principle as a part of Indian jurisprudence.

The Accountability Principle derives its tenets from the common law doctrines of negligence and state liability. The Accountability Principle fundamentally holds that, by accepting their post and taking their oath to serve, public officials assume a legal duty not to infringe on citizens' fundamental rights by performing their duties negligently. The Principle holds that public officers have a legal duty to perform their official functions reasonably, avoiding unreasonable and foreseeable harm to the environment. The Accountability Principle is the logical next step towards Good Governance in India.

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Good Governance is as much an internationally known phrase as sustainable development. Formally adopted by the United Nations system, the World Bank and almost every other major intergovernmental institution, the concept of Good Governance requires governments to promote accountability, public participation, transparency, and a sound legal framework for equitable development. Government accountability is the most important element of Good Governance.<sup>6</sup> India has been working on sev-

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<sup>6</sup> There is no issue more central to Good Governance than accountability generally and the accountability of those in government to their citizenry in particular. Consequently, there is no issue more central to any discussion of the challenges facing government and civil servants . . . than the matter of commitment to a high degree of accountability. Indeed, issues of accountability to citizenry are quite simply the most important elements of contemporary governance, and as a consequence, need to be at the very

eral pillars of Good Governance, but is woefully behind on holding its officials accountable for their actions. The act of holding officials accountable is implicit to democratic governance, for government rule disconnected from the public's will violates the most basic democratic principles. Democracies function because the public can hold its representatives accountable, generally through elections. However, our unelected bureaucrats are largely immune from liability even for the most negligent acts. Some officials take advantage of this, knowing that they cannot be held liable.

Each public official is empowered with the trust of the people. This trust endows public officials with a heightened responsibility as soon as he or she accepts public office. The level of responsibility depends on the type and nature of the post: the higher the post, the greater the responsibility. This is a characteristic of all legal rights. Under all common law legal systems, the rights that citizens enjoy are encumbered by corresponding responsibilities. For example, the right to own property inherently implies a responsibility not to use your property in such a manner as to injure another. Similarly, public officials are conferred special rights and powers by the public. We give these officials the legal right to direct our actions, thus they also have the legal duty to exercise their powers responsibly. The official owes a duty of care to the public to exercise power in the public's interest—plain and simple. This is particularly important regarding environmental laws, where dereliction of the officer's duty leads to serious environmental harm.

A practical solution is needed. Corruption *per se* is difficult to identify and combat, but the results of corruption are not. Corrupt bureaucratic actions almost always amount to a negligent performance of statutory duties. By attacking the negligent performance of duty, the Accountability Principle ties regulatory action (and inaction) to its ultimate objective: the quality of the environment. The government needs to do more than root out a few corrupt or nepotistic officials: the government needs to transform the bureaucratic culture that breeds corruption. By focus-

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center of any discussion about Good Governance, education for the public service and the future millennium.

Allan Rosenbaum, Director, Institute of Public Management and Community Service, Good Governance, Accountability and the Public Servant, <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan005698.pdf> (last visited Oct. 9, 2006).

ing on negligent regulating, the Accountability Principle targets both the corrupt and incompetent regulators, creating space for more effective, upright public servants. This process of discarding unwanted officials starts by holding all public officials accountable for their actions—by fastening their regulatory performance to the environmental performance of their subjects. It only makes sense to restore the balance between the regulators' duty and the public's rights.

The Accountability Principle has its roots in the doctrines of negligence and state liability. The broad contours of the Accountability Principle are well animated through what is known as the doctrine of state liability. The doctrine of state liability is well established under European Community (EC) law. Under EC law, the doctrine establishes remedies for private citizens for breaches of EC law by Member States.<sup>7</sup> The doctrine is instructive in establishing a duty on state agents to enforce laws. The doctrine of state liability has been developed extensively by the European Court of Justice (ECJ) under EC law to deal with non-enforcement scenarios; these scenarios are analogous to what is happening in India.

Since its inception, the ECJ has issued several environmental directives creating rights of action for the citizens of Member States. Yet the ECJ was completely dependent on the Member States to enforce the decisions. Problems arose when the Member States would fail to enforce these directives. To remedy this situation, the ECJ developed the doctrine of state liability. In the watershed case of *Francovich and Bonifaci v. Italy*,<sup>8</sup> the ECJ found that there was a duty in EC law to make reparation for injury caused by a Member State failing to comply with EC law. The Court found that individual citizens would have a right of action against their governments when illegal actions caused direct injury to them. Under later cases, the scope of liability was refined to emphasize that Member States were liable to private citizens for damage resulting from any infringement of EC law, regardless of whether it was a failure to implement a directive or

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<sup>7</sup> STUART BELL & DONALD MCGILLIVRAY, ENVIRONMENTAL LAW: THE LAW AND POLICY RELATING TO THE PROTECTION OF THE ENVIRONMENT 141 (5th ed. 2004).

<sup>8</sup> Joined Cases C-6/90 & C-9/90, *Francovich and Bonifaci v. Italy*, 1991 E.C.R. I-5357.

any other breach.<sup>9</sup> The ECJ found that state liability applied when three conditions were met (1) the EC measure infringed must have been intended to confer rights on individuals; (2) the breach must have been “sufficiently serious”; and (3) there must have been a direct causal link between the breach and the damage suffered.

The first element of the doctrine, the intention to confer rights on the individual, was more problematic in Europe than it is in India, since the rights affected under Indian jurisprudence are clearly laid out as constitutional rights. Importantly, the second element was designed to weed out less significant cases, and to focus on the most serious offences. Under ECJ law, a breach of the duty to regulate would be found when the state “manifestly and gravely disregarded the limits on its discretion.”<sup>10</sup> The third element is established when there is a sufficient relationship between the regulator and the agent of harm (“agent”). In such situations the government actor is the gatekeeper, controlling the agent’s ability to operate via issuing and suspending operating licenses. Thus, the doctrine of state liability evolved as a way to overcome the enforcement deficit inherent in the EC’s structure, and has been applied as a common remedy across EC Member States.<sup>11</sup> By creating this private right of action for citizens of EC Member States, the ECJ found an effective way to stimulate enforcement—by providing a remedy to injured citizens.

Where there is an infringement of a right, there must be a remedy. That remedy is rightfully imposed on the state. When individual regulators abuse discretionary powers, or wield their status negligently, they cease to operate within the scope of their employment, and thus open themselves to personal liability.<sup>12</sup> They exceed their role as public servants. The derogation of their duty extinguishes their rights to immunity. They are no longer acting as the state, and for the benefit of the state—so they should not be afforded the immunity given to state actors. Under such situations, the negligent official should only be afforded the same protections as normal citizens, i.e., they should

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<sup>9</sup> See *Joined Cases C-46/93 & C-48/93, Brasserie du Pêcheur SA v. Germany, & The Queen v. Sec’y of State for Transport, ex parte Factortame Ltd.*, 1996 E.C.R. I-1029.

<sup>10</sup> DAVID HUGHES ET AL., *ENVIRONMENTAL LAW* 87 (Butterworths Lexis Nexis, 4th ed. 2002).

<sup>11</sup> See BELL & MCGILLIVRAY, *supra* note 7, at 141.

<sup>12</sup> RESTATEMENT (SECOND) OF TORTS § 895D (1979).

be held liable for their negligence. In the United Kingdom's bed-rock case on the matter, *Phillips v. Britannia Hygienic Laundry Co.*,<sup>13</sup> Lord Atkin stated that liability for failure to regulate would be considered a breach of statutory duty, when "[t]he duty may be of such paramount importance that it is owed to all the public." When an officer assumes the role of a public official, their duty is certainly owed to the public at large. Under the Accountability Principle, the official who exercises his or her statutory powers negligently, so as to exceed the ambit of reasonable discretion, becomes liable for their contribution to the damage.<sup>14</sup> In essence, violation of the Accountability Principle is an allegation of negligent exercise of statutory discretion.

Once a duty of care has been established, the usual tests of reasonable foreseeability, scope, fairness and reasonableness established under tort law are used to determine liability. For example, liability can arise for a failure to warn the public of danger, and failure to control foreseeable violations. The issue of proximity is important because the regulator is required to have a control relationship between the regulator and the agent of harm. This could arise from negligent inspection, or complete failure to inspect an agent of harm. It could also arise from granting a license to a factory that does not have pollution-control devices. Liability would be limited to situations where it would be fair, just, and reasonable to impose such a duty.

The Supreme Court is clearly empowered to apply the Accountability Principle. Common-law courts have the power of judicial review when the enforcement authorities do not follow statutory procedures, when they arrive at decisions unfairly, or when they make decisions beyond the scope of their statutory authority. In India, the judiciary also has the duty to protect the fundamental rights of citizens, by issuing orders and directions to the executive branch under the Constitution of India. The Court is bound to protect the fundamental rights of Indian citizens under Article 32. Pollution and nuisance resulting from mis-regulation infringes on the fundamental rights of Indian citizens, including the right to life under Article 21. When the other

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<sup>13</sup> *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 2 K.B. 832.

<sup>14</sup> *X v. Bedfordshire County Council*, [1995] 2 A.C. 633, 736 (H.L.) (appeal taken from Eng.) (opinion of Lord Browne-Wilkinson). This generally only includes operational decisions, not policy decisions, thus attacking the exercise of power in the field instead of that of faulty policy-making.

branches of government fail to protect the fundamental rights of Indian citizens, the burden necessarily falls to the judiciary to redress their injuries. Further, the Court is constitutionally mandated to provide checks and balances on the executive branch when necessary. Article 142 also gives the Court the power to enforce decrees and may issue such orders as necessary for doing complete justice in any case or matter pending before it.<sup>15</sup> The Court has issued several such orders and directions from time to time. Petitions for the protection of fundamental rights can be raised by individual citizens under a PIL, for example, and be used to create the necessary link between the regulators' actions (and omissions) and their ultimate outcome.

Breach of that legal duty should lead to legal liability. Breach of the duty should be found when three conditions are met (1) the official must share a relationship of proximity with the public, sufficient to establish a legal duty; (2) the harm resulting from the dereliction of duty must have been sufficiently serious, and a reasonably foreseeable consequence of the official's action or omission (infringement of a fundamental right is sufficiently serious *per se*); and (3) there must have been a sufficient causal link between the breach and the damage suffered.

Under such circumstances, citizens would be able to hold officials responsible when lapses of duty cause serious injury to the public. The first element assures that the government official is in the same sphere of influence, protecting unrelated government officials from liability. The legal duty can be established by the Constitution, by statute, and by court order under Article 32. The second element assures that the actions would be sufficiently serious to avoid frivolous claims. The third element protects officials who were not involved in the regulatory process. Thus, the Accountability Principle focuses liability effectively on the errant official.

The errant official should be both criminally and civilly liable, depending on the nature of the infraction. Naturally, if the sections of the Penal Codes are violated it should give rise to criminal liability. This is already well-established under Indian law.

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<sup>15</sup> Under this power the Court has imposed fines of Rs. 6 million on a minister of the Central government for abusing discretion (by allotting government accommodation on the basis of favouritism). The Court also imposed a Rs. 6 million fine on a minister for irregular allotment of petrol pumps without following a fair criterion and showing favours to allottees. JAIN & BAWA, *supra* note 1, at 56.

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But civil liability is also critical, both to provide a remedy for the victims of negligent regulation and to create the deterrent effect within the enforcement agencies. Since the failure to act on the part of such an official creates negligence *per se*, the regulator himself or herself should be found contributorily negligent, at best, and criminally culpable at worst.

The negligent regulator is a cause of pollution. Their actions and inactions are inextricably linked to the poor environmental performance of India's agents of harm. When regulators routinely grant industries permits to operate without the necessary pollution controls, they allow pollution to happen. Their decision to permit an industry to set up, or to continue operating, without pollution controls is hardly distinguishable from the act of the polluter. The regulator exercises a controlling relationship over the polluter sufficient to establish causation. The two form a unified nexus of environmental destruction; thus, both should be liable. If the victims of pollution cannot hold the gatekeeper liable, there is no effective deterrent for this type of behaviour. The public has a right to a remedy against the negligent regulator. Therefore, the same liability that is imposed on polluters should also apply to the negligent regulator, and the negligent regulator should be held jointly liable along with the polluter.

Operationally, when a right has been violated as a result of the actions of an agent, the petitioner would have a right of action against both the agent and the regulator. The Accountability Principle holds that when there is a violation, a presumption of liability is created against the regulator. Liability is limited to situations where the regulator should have reasonably foreseen the resulting violation, and it is reasonable to impose a duty of care. These provisions limit liability to only the most serious cases of negligence—when the regulator “manifestly and gravely disregards” the limits on his or her discretion.<sup>16</sup> In these cases, the regulator should have found the problem and should have taken action against the polluter, but did not. In these instances, the official's actions contributed to a direct injury to a person. In such instances, the official should be held jointly and severally liable to remedy the situation, leaving it up to the regulators and polluters to battle out their portions of contribution to the remedy.

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<sup>16</sup> HUGHES ET AL., *supra* note 10, at 87.

The scope of liability and operative principles of the Accountability Principle should be identical to that under the Polluter Pays Principle. In Indian environmental jurisprudence, the polluter is liable to pay for damages to people and their property as well as reversing any environmental degradation.<sup>17</sup> Under the Polluter Pays Principle, the burden of proof shifts to the polluter to prove that their actions were environmentally benign. Similarly, under the Accountability Principle, the burden of proof also shifts to the errant regulator to prove that his actions (or omissions) were not a contributing factor to the damage in question. This means that when an incident occurs under their watch, there will be a presumption of contribution, which the errant official will have to disprove. If the government can show that the polluter's actions were sufficiently clandestine, the official may have a legal defence. Creating the presumption of negligence for harm to the environment is in harmony with both the Polluter Pays Principle and the Precautionary Principle, where, under Indian case law, the statutory authorities must anticipate, prevent, and attack the causes of environmental degradation.<sup>18</sup> Shifting the burden of proof will also overcome the insurmountable difficulty of proving instances of corruption, which are usually concealed in the shadows. Instead, it focuses on the results of corruption when they lead to the infringement of another's rights.

Further, since power is shared within a regulatory agency, liability should be joint and several within the agency, extending from the official who failed to perform, up the chain of command as far as negligence is found. Liability should be extended to those with decision-making authority over regulating. This means that not only would the field regulator be held liable, but that liability would also extend from that person up to the top of their department. This will stimulate a system of accountability within the enforcement agencies. This will put the spotlight on both high- and low-level inefficacy, and create a structural incentive within the agency for higher-ups to weed out corruption in the lower levels of their organization. All in all, these guidelines will allocate responsibility where it is due, distributing it justly across the enforcing agency.

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<sup>17</sup> See *Indian Council for Enviro-Legal Action v. Union of India*, A.I.R. 1996 S.C. 1446, (1996) 3 S.C.C. 246.

<sup>18</sup> See *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647.

Finally, the penalty and damages should vary depending on the offence. As mentioned, criminal liability should be imposed where appropriate. In both criminal and civil liabilities, penalties should be strict enough to create a deterrent effect. If the regulator gets Rs. 100,000 in pay-offs from a factory and is only fined Rs. 10,000 in response, he or she will continue his or her corrupt behaviour because corruption will still be a profit-making venture. As the Court has stated, “the measure of compensation in [industrial accidents in hazardous industries] must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.”<sup>19</sup> The same principle should apply to the negligent regulator. Thus, when the benefits of malpractice outweigh the penalties, the guilty party should be liable for exemplary and punitive damages where appropriate. This will give the Court flexibility to tailor the remedy to do justice in any situation.

But India’s courts cannot do it alone. Parliament should pass corresponding enactments to ensure that once an official is found guilty or liable under the Accountability Principle, that person should be barred from public service—effectively putting an end to the practice of simply shifting corrupt officers to different agencies once trouble starts to brew. Further, the Union of India should take care to provide adequately for its public servants. This means increasing salaries and the staff in the agencies to allow staff to be able to effectively discharge their duties. It means improving benefits so that officials don’t have to turn to corruption. It means reinventing what public service means in India, to make it a job of the highest moral calibre—a job of pride.

Still, the ultimate solution to the problem is a strong grassroots movement, where each citizen understands the importance of environmental sustainability and vigilantly acts to keep a check on their public servants, demanding accountability. Public awareness and civic action is the only long-term solution. In the meantime, we should earnestly put our hands toward making a difference now. All of us should do what we can to fight corruption. India is in dire need of a powerful weapon to discourage negligence within the government. The current anti-corruption laws require the petitioner to prove an alleged act of corruption.

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<sup>19</sup> M.C. Mehta v. Union of India, (1987) 1 S.C.R. 819, 824 (1986).

These acts are all but invisible to the public's eye—but their effects are not. The Accountability Principle is a much more effective avenue to root out corruption.

Though the bulk of Indian citizens do not yet prioritize these issues, adopting the legal tenets of the Accountability Principle will give those citizens that are concerned—and that do care—the power to take action against the most serious threat to India's future. Thus, the Accountability Principle and its legal tenets are a realistic and immediate way to take the obvious next step toward Good Governance. The problems run so deeply in the Indian government that serious and bold action is necessary. Small, timid steps are sorely ineffective. Accountability is more than a possibility: it is a necessity, lest we are satisfied to see our environment, our fundamental rights and our common future squandered. Let us not waste this opportunity to take control of the world we live in, and the world that we will pass on to our children.