

## LEGAL DYNAMICS OF CORPORATE TORTIOUS CONDUCT: A COMPARATIVE STUDY ACROSS THE UK, NIGERIA AND INDIA

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### INTRODUCTION

This research paper delves into corporate liability for tortious conduct, examining the evolving legal landscape in the United Kingdom (UK), Nigeria, and India. It explores contemporary developments, trends, and challenges, highlighting differences, convergences, and complements among these jurisdictions. In the UK, it analyses the concept of “piercing the corporate veil” through landmark *Vedanta Resources* and *Okpabi* cases, illustrating evolving criteria for establishing a parent company’s duty of care. The paper also investigates Nigeria’s Ogoni land oil crisis via the *Bodo Community* and the *Milieudéfensie* cases against Shell, exploring applicable tort law theories and community challenges. In India, it discusses corporate accountability through cases like the *Bhopal Gas Tragedy* and the *MC Mehta* case, alongside contemporary conflicts like the *Aarey Forest* and the *Narmada Bachao Andolan*, highlighting the complexities of balancing development with environmental and social concerns. Furthermore, it examines how recent UK legal developments might impact India’s framework, such as the direct duty of care. This research offers a comprehensive comparative analysis, contributing to a nuanced understanding of corporate liability’s implications for environmental protection and corporate accountability.

### PIERCING THE CORPORATE VEIL IN THE UK: BEYOND SUBSIDIARIES

The concept of limited liability is a cornerstone of corporate law. It shields parent companies from the debts and liabilities of their subsidiaries. However, in some situations, UK courts can pierce the “corporate veil” and hold a parent company directly liable for the actions of its subsidiary. Two recent cases, *Vedanta Resources v Lungowe*<sup>1</sup> and *Okpabi v Royal Dutch Shell*<sup>2</sup>, shed light on the evolving landscape of corporate veil piercing in the UK. Although there is no definitive test for piercing the corporate veil, UK courts often consider various theories rooted in tort law:

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<sup>1</sup> *Vedanta Resources v Lungowe* [2019] UKSC 20.

<sup>2</sup> *Okpabi v Royal Dutch Shell* [2021] UKSC 3.

## Identification

This theory is applicable when the subsidiary functions merely as an “agent” or “puppet” of the parent company, with the latter exercising such comprehensive control that the two entities are effectively indistinguishable.

## Single Economic Unit

This theory examines the economic reality of the corporate group. If the parent and subsidiary operate as an integrated economic unit, it may be appropriate to disregard their separate legal identities.

## Unjust Enrichment

This theory is invoked when the parent company derives benefit from the subsidiary’s wrongful conduct, and maintaining the corporate veil would result in an unjust retention of those benefits.

## CURRENT STANCE OF UK COURTS

In the case of *Vedanta Resources PLC v Lungowe*<sup>3</sup>, Zambian villagers, represented by Leigh Day solicitors, filed a lawsuit in English courts against UK-based multinational Vedanta Resources for environmental harm caused by its Zambian subsidiary, Konkola Copper Mine’s (KCM’s) copper mining activities. They alleged that toxic effluent discharge had contaminated their land and water sources, impacting their livelihoods and health<sup>4</sup>. Issues identified included the practical difficulty in funding group claims, especially due to the impoverished state of the claimants and the absence of legal aid, compounded by the prohibition of conditional fee agreements (CFAs) in Zambia<sup>5</sup>. Secondly, a shortage of adequately resourced and experienced legal teams in Zambia to effectively handle large and complex cases, particularly against well-funded adversaries like KCM<sup>6</sup>. The court examined Vedanta’s public commitments to environmental responsibility and sustainability practices across subsidiaries, potentially

<sup>3</sup> *Vedanta Resources v Lungowe* [2019] UKSC 20.

<sup>4</sup> ‘*Supreme Court Rules Zambian Villagers’ Case against Vedanta to Be Heard in English Courts* | Leigh Day’ (www.leighday.co.uk 10 April 2019) <<https://www.leighday.co.uk/news/news/2019-news/supreme-court-rules-zambian-villagers-case-against-vedanta-to-be-heard-in-english-courts/>> accessed 19 April 2024.

<sup>5</sup> LIVELAW NEWS NETWORK, ‘*Vedanta Can Be Sued in UK for Pollution by Its Subsidiary in Zambia : UK SC*’ (www.livelaw.in 11 April 2019) <<https://www.livelaw.in/foreign-international/uk-sc-vedanta-can-be-sued-in-uk-pollution-subsidiary-zambia-144209?infinite-scroll=1>> accessed 20 April 2024.

<sup>6</sup> *Ibid.*

establishing a duty of care towards affected communities<sup>7</sup>. Vedanta was found legally responsible for KCM's environmental harm, supported by evidence of parent company control over the subsidiary, including financial oversight and management structures, thereby establishing a breach of statutory duty<sup>8</sup>.

In *Okpabi and others (Appellants) v Royal Dutch Shell Plc and another (Respondents)*<sup>9</sup>, Nigerian villagers (Okpabi and others) sued Royal Dutch Shell (RDS) for environmental damage caused by oil spills from pipelines operated by its Nigerian subsidiary (Shell Petroleum Development Company)<sup>10</sup>. The UK Supreme Court reaffirmed principles from the Vedanta case. The Court outlined four potential avenues for establishing a parent company's duty of care<sup>11</sup>:

Assuming direct control or co-management of the subsidiary's relevant activity.

Issuing defective advice or flawed group-wide policies.

Actively implementing group-wide policies within the subsidiary.

Projecting an image of exercising specific supervisory control over the subsidiary, even if not actually practised.

The Court stressed the need for a broad and flexible approach to the test of parent company liability, indicating that the established categories are not exhaustive<sup>12</sup>. The Vedanta case underscored the potential legal obligations of parent companies concerning harm resulting from their subsidiaries' actions, acknowledging various forms of parent company involvement and

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<sup>7</sup> 'Supreme Court Rules *Zambian Villagers*' Case against Vedanta to Be Heard in English Courts | Leigh Day' ([www.leighday.co.uk](http://www.leighday.co.uk) 10 April 2019) <<https://www.leighday.co.uk/news/news/2019-news/supreme-court-rules-zambian-villagers-case-against-vedanta-to-be-heard-in-english-courts/>> accessed 19 April 2024.

<sup>8</sup> Ibid.

<sup>9</sup> *Okpabi v Royal Dutch Shell* [2021] UKSC 3.

<sup>10</sup> Daniel Leader, Matthew Renshaw and Stephen Bilko, 'Supreme Court: *Okpabi v Royal Dutch Shell*: What Does the Judgment Mean? | Leigh Day' ([www.leighday.co.uk](http://www.leighday.co.uk) 12 February 2021) <<https://www.leighday.co.uk/news/blog/2021-blogs/supreme-court-okpabi-v-royal-dutch-shell-what-does-the-judgment-mean/>> accessed 22 April 2024.

<sup>11</sup> 'Supreme Court Rules That Polluted Nigerian Communities Can Sue Royal Dutch Shell in the English Courts | Leigh Day' ([www.leighday.co.uk](http://www.leighday.co.uk) 12 February 2021) <<https://www.leighday.co.uk/news/news/2021-news/supreme-court-rules-that-polluted-nigerian-communities-can-sue-royal-dutch-shell-in-the-english-courts/>> accessed 21 April 2024.

<sup>12</sup> Sara Lane, 'UK Supreme Court Allows Nigerian Citizens' Appeal in Respect to an Environmental Damage Claim against a UK Parent Company' (Human Rights Law Centre 12 February 2021) <[https://www.hrlc.org.au/human-rights-case-summaries/2021/8/30/uk-supreme-court-allows-nigerian-citizens-appeal-in-respect-to-an-environmental-damage-claim-against-a-uk-parent-company#\\_ftn1](https://www.hrlc.org.au/human-rights-case-summaries/2021/8/30/uk-supreme-court-allows-nigerian-citizens-appeal-in-respect-to-an-environmental-damage-claim-against-a-uk-parent-company#_ftn1)> accessed 16 April 2024.

the concept of “holding out” for liability<sup>13</sup>. Similarly, the Court rejected the notion that intricate corporate structures automatically shield parent companies from liability, as illustrated in Okpabi. In the pipeline leak case, plaintiffs utilised common law torts, such as negligence and nuisance, in their legal strategy. The Court scrutinised Shell’s alleged misconduct across three phases: the spill’s causation, the timeliness of the response, and the adequacy of clean-up efforts<sup>14</sup>.

These cases show a cautious approach by UK courts towards veil piercing. However, the Okpabi case highlights a shift. Courts are more willing to find parent companies directly liable for their own acts or omissions, even if the subsidiary remains a separate legal entity. This approach focuses on establishing a duty of care owed by the parent company itself rather than simply disregarding the veil.

### **EXPLORING UK INFLUENCE IN INDIA’S CORPORATE LANDSCAPE**

Ensuring corporate accountability remains a complex issue in India. While legal frameworks exist, real-world application can be uneven, leaving victims with limited recourse.

The Bhopal Gas Tragedy (Union Carbide Case, 1984)<sup>15</sup>, the industrial disaster at Union Carbide India Limited (UCIL), remains a stark example. A gas leak from the UCIL plant resulted in thousands of deaths and injuries. The case highlighted the difficulties of holding multinational corporations accountable, particularly when parent companies shield themselves behind subsidiaries (like UCIL). The final settlement of \$470 million, while substantial, fell short of fully compensating victims, considering the magnitude of the disaster and its long-term effects<sup>16</sup>.

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<sup>13</sup> Daniel Bertram, ‘*Transnational Experts Wanted: Nigerian Oil Spills before the Dutch Courts*’ (2021) 33 *Journal of Environmental Law*, p.425-426, 428-431.

<sup>14</sup> ‘*Justice at Last – Dutch Court Orders Shell to Compensate Nigerian Farmers for Oil Spill Harm.*’ (Friends of the Earth International 5 February 2021) <<https://www.foei.org/justice-at-last-dutch-court-orders-shell-to-compensate-nigerian-farmers-for-oil-spill-harm/>> accessed 23 April 2024.

<sup>15</sup> *Union Carbide Corporation v Union of India* 1990 AIR 273 1989 SCC (2) 540 1989.

<sup>16</sup> Sohini Chowdhury, ‘*BREAKING| Bhopal Gas Tragedy : Supreme Court Dismisses Centre’s Curative Petition Seeking Additional Compensation from UCC*’ ([www.livelaw.in](http://www.livelaw.in) 14 March 2023) <<https://www.livelaw.in/top-stories/bhopal-gas-tragedy-supreme-court-dismisses-centres-curative-petition-seeking-additional-compensation-from-ucc-223669>> accessed 23 April 2024.

The *MC Mehta v Union of India* (1984 onwards)<sup>17</sup> series of public interest litigation cases, spearheaded by environmental lawyer M.C. Mehta, exposed industrial pollution across India<sup>18</sup>. While these cases led to stricter environmental regulations, enforcement remains a concern. The cases highlight the ongoing struggle to hold corporations accountable for environmental damage.

The recent developments in UK corporate veil piercing cases like *Vedanta Resources and Okpabi*, offer interesting possibilities for the Indian context:

### **Piercing the Corporate Veil**

While Indian courts have been hesitant to pierce the veil entirely, the UK's focus on establishing a direct duty of care by parent companies for their actions (as seen in *Okpabi*) could be a valuable approach. This could help hold Indian parent companies liable for environmental damage or human rights violations even if caused by their subsidiaries.

### **Stricter Environmental Regulations**

The Bhopal disaster led to the enactment of stricter environmental laws in India. However, effective enforcement remains a challenge. Studying how the UK enforces environmental regulations could provide valuable insights for India.

### **MAPPING THE FUTURE TERRAIN**

As the repercussions of environmental damages are contended with, several substantial obstacles hinder their pursuit of remedies within the legal framework:

### **Lengthy Legal Battles**

Indian legal proceedings are often slow and cumbersome, discouraging victims from seeking justice. Streamlining judicial processes is crucial.

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<sup>17</sup> *MC Mehta v Union of India* 1987 SCR (1) 819 AIR 1987 965.

<sup>18</sup> 'Landmark Judgments – M. C. Mehta Environmental Foundation' (MC Mehta Environmental Foundation (MCMEF) 20 July 2019) <<https://mcmef.org/landmark-judgments/>> accessed 9 May 2024.

## Regulatory Capture

Corporations may influence regulatory bodies, hindering effective enforcement. Strengthening independent regulatory bodies is essential.

India can enhance its corporate accountability framework by adopting elements from the UK's evolving approach. Implementing a direct duty of care and enhancing enforcement mechanisms can bolster accountability, holding corporations accountable for their actions and safeguarding the environment and the rights of Indian citizens.

## NIGERIA'S Ogoniland OIL SPILL CRISIS AND MOSOP SUPPRESSION

The discovery of oil reserves in Ogoniland, Nigeria, by Royal Dutch Shell in 1956 initiated a tumultuous relationship with the local community due to recurrent oil spills from a poorly maintained pipeline network<sup>19</sup>. Disputes over attributions of sabotage and inadequate environmental remediation efforts fueled ongoing tensions<sup>20</sup>. Despite promises of economic benefits, persistent environmental damage has resulted in health hazards and strained relations between Ogonis, the Nigerian government, and oil companies, prompting continued demands for justice and compensation through activist movements<sup>21</sup>.

A 2011 UNEP report highlighted extensive pollution, advocating for a comprehensive cleanup effort<sup>22</sup>. Amnesty International documented human rights abuses during protests, including instances of excessive force and arrests<sup>23</sup>. The death of Ken Saro-Wiwa, the leader of the Movement for the Survival of the Ogoni People (MOSOP), along with eight other activists in 1995, sparked global outcry, prompting calls for environmental awareness and pressuring Shell to adopt sustainable practices<sup>24</sup>. Media coverage shed light on the crisis, urging action from the Nigerian government and Shell<sup>25</sup>. Despite strong arguments for its establishment, the Ogoni

<sup>19</sup> Steven Cayford. "The Ogoni Uprising: Oil, Human Rights, and a Democratic Alternative in Nigeria." *Africa Today* 43, no. 2 (1996): 183–185.

<sup>20</sup> Steve Kretzmann, "Nigeria's Drilling Fields': Shell Oil's Role in Repression," *Multinational Monitor* 26, no. 1-2 (January/February 1995).

<sup>21</sup> Human Rights Watch/Africa, "Nigeria: The Ogoni Crisis," *Human Rights Watch Africa Report* 7, no. 5 (July 1995).

<sup>22</sup> UNEP Report, 2011, "Environmental Assessment of Ogoniland," <[https://wedocs.unep.org/bitstream/handle/20.500.11822/25282/ogoniland\\_chapter1\\_UNEP\\_OEA.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/25282/ogoniland_chapter1_UNEP_OEA.pdf)> accessed 20 April 2024.

<sup>23</sup> Amnesty International, 'A CRIMINAL ENTERPRISE?' (2017) <<https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4473932017ENGLISH.pdf>> accessed 24 April 2024.

<sup>24</sup> Eghosa E. Osaghae, "The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State," *African Affairs*, vol. 94, no. 376, July 1995, p. 333.

<sup>25</sup> Hutchful, E. 1985, "Oil Companies and Environmental Pollution in Nigeria", In, Claude Ake. ed., *Political*



Environmental Restoration Authority (OERA) has not been officially created, leaving the Hydrocarbon Pollution Remediation Project (HYPREP) as the primary agency tasked with overseeing cleanup efforts in Ogoniland, albeit with limited progress<sup>26</sup>.

## TORT LAW THEORY AND PRACTICE IN NIGERIA

In *The Bodo Community and Others v. Shell Petroleum Company of Nigeria Ltd*<sup>27</sup>, a £55 million out-of-court settlement was reached, followed by a 2016 court ruling allowing the Bodo community to pursue legal action for clean-up enforcement, albeit with mediation permitted<sup>28</sup>. In a May 2023 hearing, the Bodo community contested the adequacy of Shell's clean-up operations after oil spills, with Shell attempting to dismiss the claim and block independent scientific evaluation<sup>29</sup>. However, the court rejected Shell's motion, granting the Bodo community the opportunity to present evidence at a full trial scheduled for February 17, 2025, to assess Shell's compliance with international clean-up standards<sup>30</sup>. Notably, in 2009, a Dutch court asserted jurisdiction over an environmental contamination lawsuit involving the Bodo community and Shell Nigeria (SPDC)<sup>31</sup>.

Tort, nuisance, negligence, and strict liability, premised on the *Rylands v. Fletcher*<sup>32</sup> precedent, are common legal foundations for disputes in Nigeria. However, accessing legal remedies through domestic courts is often delayed by procedural obstacles such as preliminary

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Economy of Nigeria, London: Longmans. Claude Ake, "Shelling Nigeria Ablaze," *Tell*, 29 January 1996, p. 34.

<sup>26</sup> 'Closure of UNEP's Technical Assistance Project to Support HYPREP on the Remediation and Environmental Restoration of Ogoniland' (UNEP 2023) <<https://www.unep.org/news-and-stories/statements/closure-uneps-technical-assistance-project-support-hyprep-remediation>> accessed 25 April 2024.

<sup>27</sup> *The Bodo Community and Others v. Shell Petroleum Company of Nigeria Ltd* [2014] EWHC 1973 (TCC).

<sup>28</sup> Global Energy Law and Sustainability 1.1 (2020): p39–40, 49-52. Edinburgh University Press Smith, I. Azubuike and Ondotimi Songi, A Rights-based Approach to Oil Spill Investigations: A Case Study of the Bodo Community Oil Spill in Nigeria, DOI: 10.3366/gels.2020.0005.

<sup>29</sup> Shell Lawsuit (Re Oil Spills & Bodo Community in Nigeria), Harvard Law & International Development Society, <[https://media.business-humanrights.org/media/documents/files/documents/Shell\\_Lawsuit\\_0.pdf](https://media.business-humanrights.org/media/documents/files/documents/Shell_Lawsuit_0.pdf)> accessed 23 April 2024.

<sup>30</sup> Patrick McAllister, 'UK Supreme Court Approval of Shell-Bodo Case: Could This Be a Step towards a More Equitable Future?' (Global Risk Insights 4 May 2021) <<https://globalriskinsights.com/2021/05/uk-supreme-court-approval-of-shell-bodo-case-could-this-be-a-step-towards-a-more-equitable-future/>> accessed 21 April 2024.

<sup>31</sup> 'High Court Rejects Shell's Attempts to Block Nigerian Community's Claim over Oil Spill Clean-up | Leigh Day' ([www.leighday.co.uk](http://www.leighday.co.uk) 12 February 2024) <<https://www.leighday.co.uk/news/news/2024-news/high-court-rejects-shells-attempts-to-block-nigerian-community-s-legal-claim-over-major-oil-spill-clean-up/#:~:text=In%202016%20the%20court%20ruled>> accessed 19 April 2024.

<sup>32</sup> *Rylands v Fletcher* UKHL 1, L.R. 3 H.L. 330.

objections and interlocutory appeals<sup>33</sup>. For instance, the *SPDC v. Farah*<sup>34</sup> case endured for approximately twenty-four years, exemplifying the protracted nature of litigation. The Bodo Community case, heard in a UK court, offers valuable insights into potential tort law theories applicable in Nigeria:

### **Negligence**

Significant in environmental damage claims, negligence enables communities to seek legal redress against oil companies for failing to exercise reasonable care in preventing oil spills and the resulting harm to their land, water sources, and livelihoods.

### **Nuisance**

When oil spills cause substantial and unreasonable interference with land use and enjoyment, a nuisance claim becomes viable. This encompasses grievances such as health issues, loss of fishing income, or disruption to traditional practices.

### **Strict Liability**

Unlike negligence, strict liability does not require fault on the part of the oil company. However, its application in Nigerian environmental litigation is less established, with barely any judicial precedents embracing absolute liability principles.

## **CONVERGING DUALITIES IN THE BODO COMMUNITY CASE**

This case primarily examined the remedies available under the Nigerian Oil Pipelines Act (OPA). It did not conclusively determine the relevance of the aforementioned tort law theories within the Nigerian legal framework. Nonetheless, the judgment provided insights into recognising the possibility for common law remedies, such as negligence, to coexist with statutory remedies under the OPA. This coexistence could potentially offer wider avenues for communities pursuing compensation.

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<sup>33</sup> Amnesty International, 'Nigeria: Another Bodo Oil Spill: Another Flawed Oil Spill Investigation in the Niger Delta' (Amnesty International 2012) <<https://www.amnesty.org/en/documents/afr44/037/2012/en/>> accessed 19 April 2024.

<sup>34</sup> *SPDC Nigeria Limited v Farah* [1995] 3 NWLR 148.



## PRESENT STATUS OF NIGERIAN COURTS

Unfortunately, Nigeria lacks comprehensive legal reporting systems, yet recent cases demonstrate a growing willingness to hold oil companies accountable. Communities have pursued negligence and nuisance claims against Shell for oil spills, offering insights into the application of tort law theories within the Nigerian legal context. In *Milieudefensie et al. v. Royal Dutch Shell plc.* (concerning spills in Oruma, Goi, and Ikot Ada Udo)<sup>35</sup>, the court's 2021 decision acknowledged the potential for other companies to fill Shell's production gap due to emission reduction mandates aligned with the Paris Agreement<sup>36</sup>. However, it emphasised Shell's individual partial responsibility for emissions across its entire group<sup>37</sup>. The ruling mandated CO<sub>2</sub> reduction targets for Shell, recognised its accountability for emissions, and highlighted its influence on fossil fuel demand<sup>38</sup>. Additionally, the court emphasised Shell's duty to respect human rights in climate change matters and dismissed arguments shifting responsibility solely onto governments<sup>39</sup>. It stressed that emission reduction obligations extend to all industry companies, prioritising environmental health<sup>40</sup>. Shell was directed to commence emission reduction measures immediately and provide concrete climate action plans. *Milieudefensie* urged Shell's compliance, noting potential personal liability for directors in case of inaction<sup>41</sup>. However, Shell appealed the decision on July 20, 2022.

## NAVIGATING FUTURE CHALLENGES

As communities confront the aftermath of environmental damage, several significant challenges impede their ability to seek legal redress:

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<sup>35</sup> *Milieudefensie et al. v. Royal Dutch Shell plc.* C/09/571932 / HA ZA 19-379.

<sup>36</sup> Milieudefensie Netherlands, 'Our Climate Case against Shell' (Milieudefensie) <<https://en.milieudefensie.nl/climate-case-shell>> accessed 22 April 2024.

<sup>37</sup> Friends of the Earth Europe, 'The 11 Key Points from the Verdict in the Shell Climate Case' (Friends of the Earth Europe 6 July 2021) <<https://friendsoftheearth.eu/news/the-11-key-points-from-the-verdict-in-the-shell-climate-case/>> accessed 23 April 2024.

<sup>38</sup> Milieudefensie Netherlands, 'The 11 Most Important Points from the Verdict in the Climate Case against Shell' (Milieudefensie 3 June 2021) <<https://en.milieudefensie.nl/news/the-11-most-important-points-from-the-verdict-in-the-climate-case-against-shell>> accessed 19 May 2024.

<sup>39</sup> Climate Case Chart, 'Milieudefensie et Al. V. Royal Dutch Shell Plc.' (Climate Change Litigation 2023) <<https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>> accessed 19 April 2024.

<sup>40</sup> Ibid.

<sup>41</sup> 'Our Letter to the Board Members of Shell' (Milieudefensie 25 April 2022) <<https://en.milieudefensie.nl/news/our-letter-to-the-board-members-of-shell>> accessed 21 April 2024.

### **Burden of Proof**

Communities frequently encounter difficulties in establishing negligence or quantifying the extent of damages.

### **Protracted Legal Proceedings**

Litigation can be time-consuming and costly, which may dissuade some communities from filing claims.

### **Access to Justice**

Remote communities often face obstacles in accessing the legal resources necessary to pursue these claims.

While the Bodo Community case wasn't heard in Nigeria, it highlights the potential of tort law theories like negligence and nuisance for environmental damage claims. Following developments in Nigerian courts regarding similar cases and addressing the challenges mentioned above is crucial for effective legal recourse for communities affected by oil spills in the Ogoni land and beyond.

## **CONTEMPORARY DEVELOPMENTS IN INDIA**

In *Narmada Bachao Andolan v. Union Of India And Ors.*<sup>42</sup>, petitioners invoked Article 21<sup>43</sup> (Right to Life) and ILO Convention 107 to contest the closure of construction sluices, advocating for an independent review and pre-reservoir activities. However, the Interstate Water Disputes Act lacked provisions akin to the US National Environmental Policy Act, limiting challenges based solely on Article 21<sup>44</sup>. The absence of an Endangered Species Act in India further restricted legal options for protecting threatened wildlife. The case underscores the need for environmental impact assessments, legal frameworks for endangered species protection, and a balance between development and environmental and social concerns<sup>45</sup>. Arguments for judicial review were supported by the separation of powers principle and

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<sup>42</sup> *Narmada Bachao Andolan v. Union Of India And Ors* Writ Petition (Civil) 328 of 2002.

<sup>43</sup> Article 21, Constitution of India.

<sup>44</sup> *Ibid.*

<sup>45</sup> Aravinda, L. S. 2000. 'Globalisation and Narmada People's Struggle'. *Economic & Political Weekly* 35, no. 46: 4002–4005, <<https://www.epw.in/journal/2000/46/commentary/globalisation-and-narmada-peoples-struggle.html>> accessed 16 April 2024.

influenced by the *Vellore Citizens case*<sup>46</sup>, where the precautionary principle shifted the burden of proof to demonstrate project safety<sup>47</sup>. The court considered several factors: dams' vital functions (water storage, irrigation, power generation) versus ecological concerns<sup>48</sup>, the importance of tribal welfare and integration to prevent marginalisation, and the right to clean water implied under Article 21, even though not explicitly mentioned in Article 39(b)<sup>49</sup>.

In *In Re: Felling of Trees in Aarey Forest (Maharashtra)*<sup>50</sup>, conflicts over urban green spaces in Mumbai arose due to the proposed Metro Line III car shed, necessitating the felling of 2,700 trees<sup>51</sup>. The legal ambiguity regarding Aarey Colony's forest classification in Maharashtra state law was highlighted by Dr Rajendra Shinde's botanical testimony<sup>52</sup>. Despite efforts to designate Aarey Colony as a forest, the Bombay High Court rejected these petitions, allowing tree felling to proceed<sup>53</sup>. However, the court criticised the Mumbai Metro Rail Corporation Ltd (MMRCL) for improper procedures in obtaining tree removal permits, resulting in a ₹10 lakh fine imposed by the Supreme Court on April 17, 2024<sup>54</sup>. To balance environmental concerns with the metro project's progress, the Supreme Court permitted the felling of 124 trees and the

<sup>46</sup> *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

<sup>47</sup> 'Ground Realities in Narmada Valley,' 2001, Economic & Political Weekly 36, no. 46: 3222–3223, <[https://www.epw.in/system/files/pdf/2001\\_36/34/groundrealitiesinnarmadavalley.pdf](https://www.epw.in/system/files/pdf/2001_36/34/groundrealitiesinnarmadavalley.pdf)> accessed 18 April 2024.

<sup>48</sup> Sivaramakrishnan, K. 'Environment, Law and Democracy in India' 2011, The Journal of Asian Studies 7, no. 4: 920.

<sup>49</sup> Ambagudia, Jagannath (2022): *Judiciary and Tribal Rights in India: Shifting Terrains of Judicial Pronouncements*. In: State, Law and Adivasi: Shifting Terrains of Exclusion. New Delhi: Sage. S. 164–165, (Politics and Society in India and the Global South).

<sup>50</sup> *In Re: Felling of Trees in Aarey Forest (Maharashtra)* IA No 68608 of 2023 in Suo Moto Writ (Civil) No 2 of 2019; April 17, 2023.

<sup>51</sup> Mukherjee, Tilottama. "We, the People of India." Journal of the Department of Sociology of North Bengal University, vol. 8, 2021. 122-123, SOCIAL TRENDS, 'Activists Protest against Aarey Metro Car Shed in Mumbai' The Times of India (4 September 2022) <<https://timesofindia.indiatimes.com/city/mumbai/activists-protest-against-aarey-metro-car-shed-in-mumbai/articleshow/93982600.cms>> accessed 22 April 2024.

<sup>52</sup> CJP, 'Aarey! What's Going On?' (CJP 5 October 2019) <<https://cjp.org.in/aarey-whats-going-on/>> accessed 15 April 2024, Aarefa Johari, 'Saving Aarey: Why a City with a Weak Protest Culture Is Demonstrating to Protect Mumbai's Green Lung' (Scroll.in 15 September 2019) <<https://scroll.in/article/937002/saving-aarey-why-a-city-with-a-weak-protest-culture-is-demonstrating-to-protect-mumbais-green-lung>> accessed 21 April 2024.

<sup>53</sup> 'Maharashtra's Controversial Aarey Forest Project, Why Is It Resurfacing Time and Again?' (Outlook India 1 July 2022) <<https://www.outlookindia.com/national/maharashtra-s-controversial-aarey-forest-project-why-is-it-resurfacing-time-and-again--news-205977>> accessed 19 May 2024, 'Protests Underway in Mumbai's Aarey, Goregaon against Building of Metro Car Shed in Forest' The Economic Times (10 July 2022) <<https://economictimes.indiatimes.com/news/india/protests-underway-in-mumbais-aarey-goregaon-against-building-of-metro-car-shed-in-forest/articleshow/92782511.cms?from=mdr>> accessed 19 April 2024.

<sup>54</sup> Padmakshi Sharma, 'Aarey Case | Supreme Court Imposes Rs 10 Lakh Fine on MMRCL for Seeking to Cut More Trees than Allowed; but Allows It to Cut 177 Trees' (www.livelaw.in 17 April 2023) <<https://www.livelaw.in/top-stories/aarey-case-supreme-court-imposes-rs-10-lakh-fine-on-mmrc-for-seeking-to-cut-more-trees-than-allowed-but-allows-it-to-cut-177-trees-226520>> accessed 19 April 2024.

transplanting of 53 trees, emphasising the need for environmental mitigation measures monitored by the Chief Conservator of Forests and overseen by the Director of IIT Bombay<sup>55</sup>.

## INDIA'S SCOPE OF LEARNING

India could draw from precedents set in UK jurisprudence, particularly evident in cases such as Vedanta and Okpabi, to establish a robust duty of care paradigm for large corporations regarding public assertions on environmental stewardship, regulatory mechanisms, and corporate structures. Embracing a broader interpretation of parent company liability, akin to the approach adopted in the cases mentioned above, could empower Indian courts to delve into nuanced assessments of corporate hierarchies and relationships, fostering greater accountability and transparency. Emphasis should be placed on environmental impact assessments, legal frameworks for marginalised groups and endangered species protection, and balancing development with environmental and social concerns. Moreover, India could consider integrating the principle of individual partial responsibility, exemplified in the Milieudefensie case, to delineate the collective responsibilities of major corporations while ensuring subsidiary entities are not shielded from accountability. This approach would deter evading liability through corporate distribution, emphasise immediate emission reduction, and prioritise human rights over corporate interests. This signals a shift towards societal well-being and environmental sustainability in India's corporate governance.

Journal of Legal Research and Juridical Sciences

## CONCLUSION

This study examines the dynamic legal landscape of corporate tort liability in the UK, Nigeria, and India, delineating commonalities and disparities in legal frameworks and methodologies. While shared elements in establishing a duty of care and applying tort law principles are evident, discrepancies persist, particularly in veil piercing and enforcement mechanisms. Future progress may involve India adopting the UK's "direct duty of care" concept, with both India and Nigeria enhancing enforcement mechanisms. This comparative analysis emphasises the ongoing need for legal evolution to ensure effective corporate accountability and environmental preservation. Landmark cases and legal structures reveal nuanced convergences and divergences in corporate accountability approaches. In the UK, the evolving notion of piercing the corporate veil reflects a judicious stance emphasising parent company

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<sup>55</sup> Krishnadas Rajagopal, 'Supreme Court Slams Mumbai Metro Rail Corporation, Slaps a Fine of ₹10 Lakh' The Hindu (17 April 2023) <<https://www.thehindu.com/news/cities/mumbai/sc-penalises-mumbai-metro-for-felling-of-trees-in-aarey-forest-beyond-permission/article66746902.ece>> accessed 20 April 2024.

responsibility. Nigeria's Ogoniland oil spill crisis illustrates the complex challenges of addressing corporate negligence despite legal advancements. In India, issues of corporate accountability intersect with environmental preservation and social justice concerns, necessitating a delicate balance. Overcoming obstacles such as protracted legal processes and ensuring equitable access to justice is crucial for strengthening corporate accountability across these diverse jurisdictions, thereby promoting environmental protection, safeguarding human rights, and upholding corporate integrity.

