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TRACING SCOPE 3 EMISSIONS: LEGAL LIABILITIES AND COMPLIANCE BURDENS FOR MULTINATIONAL SUPPLY CHAINS IN GLOBAL SOUTH JURISDICTIONS

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ABSTRACT

The regulatory centre of gravity in transnational climate governance is shifting from a firm's own operations to the diffuse, layered emissions embedded in its supply chain. Scope 3 emissions, which for most multinational enterprises constitute the overwhelming share of their carbon footprint, are increasingly the subject of mandatory disclosure and due diligence regimes originating in the Global North, including the European Union's Corporate Sustainability Due Diligence Directive, the Carbon Border Adjustment Mechanism, Germany's Supply Chain Due Diligence Act, and California's Climate Corporate Data Accountability Act. Because multinational value chains are physically anchored in the Global South, these home-state instruments extend, contractually and jurisdictionally, into economies whose domestic legal and institutional infrastructure for greenhouse gas measurement, reporting and verification remains nascent. This paper examines the resulting asymmetry between where climate-related legal liability is adjudicated and where the compliance burden is actually absorbed. It traces the doctrinal architecture of parent-company duty of care through Vedanta Resources plc v Lungowe[1] and Okpabi v Royal Dutch Shell plc[2], assesses the limits of Scope 3 justiciability exposed by the Hague Court of Appeal in Milieudefensie v Shell plc[3], and evaluates India's Business Responsibility and Sustainability Reporting framework and constitutional environmental jurisprudence as a case study of a major Global South jurisdiction caught between externally imposed obligations and internal capacity deficits. The paper argues that the present configuration displaces compliance cost downward while retaining liability and remedial authority upstream, and proposes a differentiated framework of tiered materiality thresholds, mutual recognition of domestic measurement regimes, and bounded contractual liability calibrated to actual supplier influence.

KEYWORDS: *Scope 3 emissions; Global South supply chains; corporate due diligence; carbon border adjustment; parent-company liability; climate disclosure.*

I. INTRODUCTION

Greenhouse gas accounting divides corporate emissions into three categories. Scope 1 covers direct emissions from sources a company owns or controls; Scope 2 covers indirect emissions from purchased energy; and Scope 3 covers all other indirect emissions occurring in a company's upstream and downstream value chain, from raw material extraction to the end use and disposal of sold products.[4] For manufacturing, extractive, retail and energy companies, Scope 3 routinely accounts for the largest share of the corporate carbon footprint, and it is precisely this category that international standard-setters have begun to

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1 Vedanta Resources plc v Lungowe [2019] UKSC 20.

2 Okpabi v Royal Dutch Shell plc [2021] UKSC 3.

3 Milieudefensie v Shell plc, Gerechtshof Den Haag, 12 November 2024, ECLI:NL:GHDHA:2024:2100 paras 7.17, 7.24, 7.4.5-7.4.6.

4 WRI and WBCSD, Corporate Value Chain (Scope 3) Accounting and Reporting Standard (World Resources Institute 2011).

convert from a voluntary sustainability metric into a mandatory legal disclosure and, increasingly, a basis of civil liability.[5]

The jurisdictional peculiarity of Scope 3 regulation is that its legal instruments are drafted in the Global North but its factual substratum, the mines, farms, tanneries, textile units, and component assemblers that generate the emissions being counted, sits overwhelmingly in the Global South. The European Union's Corporate Sustainability Due Diligence Directive obliges in-scope companies to identify and address adverse environmental impacts not only in their own operations but across their entire chain of activities, a term that extends far beyond the direct contractual counterparty to encompass sub-suppliers several tiers removed.[6] Germany's supply chain law imposes an analogous but more calibrated duty, requiring active due diligence toward direct suppliers and a duty to investigate indirect suppliers only once a company has substantiated knowledge of a violation.[7] The Carbon Border Adjustment Mechanism goes further still: it does not ask an exporter in Vietnam, Indonesia or India to disclose anything voluntarily, it prices the embedded carbon of its exports at the EU border regardless of whether the exporting jurisdiction has any domestic carbon pricing mechanism at all.[8]

This paper contends that the current architecture of Scope 3 governance produces a structural mismatch: legal liability, whether civil, regulatory or reputational, is adjudicated and enforced predominantly in home-state fora, while the material and administrative burden of compliance, the data collection, the measurement infrastructure, the third-party assurance, the contractual indemnities, is absorbed by suppliers and subsidiaries in jurisdictions least equipped to bear it. Part II sets out the conceptual and regulatory architecture of Scope 3 accounting. Part III traces the extraterritorial reach of home-state due diligence and disclosure regimes. Part IV examines the civil liability pathways developed in English and Dutch courts and the doctrinal limits those courts have placed on Scope 3 attribution. Part V analyses the compliance burden actually imposed on Global South economies through CBAM and cascading contractual due diligence. Part VI takes India as a case study of a major Global South jurisdiction whose own disclosure architecture and constitutional environmental doctrine sit uneasily alongside externally imposed obligations.

5 IFRS Foundation, IFRS S2 Climate-related Disclosures (International Sustainability Standards Board 2023) para 29.

6 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L1760, art 3(1)(g) and art 22.

7 Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten (LkSG) 2021 (Germany) s 2(8) and s 9(3).

8 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism [2023] OJ L130/52, arts 2, 5 and 16.

Part VII proposes a differentiated liability and compliance framework, and Part VIII concludes.

II. Scope 3 Emissions: Conceptual and Regulatory Architecture

The Greenhouse Gas Protocol's Corporate Value Chain Standard divides Scope 3 into fifteen categories, eight upstream (purchased goods and services, capital goods, fuel- and energy-related activities, upstream transportation, waste, business travel, employee commuting and upstream leased assets) and seven downstream (downstream transportation, processing of sold products, use of sold products, end-of-life treatment, downstream leased assets, franchises and investments).[9] Two features of this taxonomy matter for the present analysis. First, Scope 3 data is necessarily derivative: a reporting company cannot measure its Category 1 (purchased goods and services) emissions without obtaining, estimating, or purchasing proxy data for emissions generated inside its suppliers' own facilities. Second, the further down the value chain the inquiry travels, the weaker the reporting company's contractual and operational leverage over the entity actually generating the emissions becomes. These two features together explain why Scope 3 regulation, uniquely among corporate climate obligations, cannot be discharged unilaterally; it necessarily requires the cooperation, and therefore the compliance capacity, of counterparties the regulated company does not control.

This conceptual dependency has been absorbed into hard law with increasing speed. The International Sustainability Standards Board's IFRS S2 requires disclosure of Scope 3 emissions where they are material, using the GHG Protocol methodology as the default measurement basis.[10] The European Union's Corporate Sustainability Reporting Directive, operationalised through the European Sustainability Reporting Standards, requires disclosure of Scope 3 emissions under a double materiality lens, that is, both the company's exposure to climate risk and its contribution to climate impact. The Omnibus I simplification package adopted through 2025 and 2026 reduced the volume of mandatory datapoints substantially, but it did not remove Scope 3 from the disclosure architecture; it recalibrated proportionality rather than abandoning the underlying obligation.[11] In parallel, California's Climate Corporate Data Accountability Act requires any entity, wherever incorporated, that does business in California and has annual global revenue exceeding one billion dollars to report Scope 1 and Scope 2 emissions from 2026 and Scope 3

9 GHG Protocol, Corporate Value Chain (Scope 3) Standard (n 4).

10 IFRS Foundation, IFRS S2 (n 5).

11 European Commission, 'Corporate Sustainability Due Diligence' (European Commission, 2026); Directive (EU) 2025/794 amending Directive (EU) 2024/1760 (Omnibus I Simplification Package).

emissions from 2027, in conformance with the GHG Protocol.[12] The statute's jurisdictional trigger is revenue generated through California sales, not incorporation or headquarters location, meaning that a manufacturer domiciled in Bangladesh, Vietnam, or India with sufficient Californian sales volume falls within its scope regardless of where its own government has legislated on climate disclosure.

III. The Extraterritorial Reach of Home-State Due Diligence and Disclosure Regimes

The Corporate Sustainability Due Diligence Directive entered into force on 25 July 2024 and must be transposed by European Union member states by 26 July 2026, with staggered compliance obligations beginning for the largest in-scope companies thereafter.[13] The Directive requires in-scope companies, including non-European Union companies meeting a turnover threshold generated within the Union, to conduct human rights and environmental due diligence across their chain of activities and to adopt a climate transition plan aligned with the Paris Agreement's 1.5-degree pathway. The Omnibus I reforms adopted in late 2025 narrowed the Directive's personal scope, removed the mandatory transition plan obligation, and deferred the compliance timeline to July 2029, reflecting a political recalibration driven by concerns over administrative burden on both European and non-European counterparties.[14] Even in its softened form, the Directive's chain-of-activities concept means that a European buyer's due diligence obligation does not stop at its immediate contractual counterparty; it extends functionally to the sub-supplier who tans the leather, grows the cotton, or mines the mineral, wherever that sub-supplier is located.

Germany's Act on Corporate Due Diligence Obligations in Supply Chains, in force since January 2023, adopts a more differentiated standard: full risk-management obligations attach to the company's own operations and its direct contractual suppliers, while indirect, further-removed suppliers are subject only to an ad hoc duty to investigate once the company has substantiated knowledge of a human rights or environmental violation.[15] This tiered design is analytically significant because it implicitly recognises the diminishing capacity of a buyer to compel compliance the further removed a supplier sits in the chain, a recognition largely absent from the Carbon Border Adjustment Mechanism, which imposes an undifferentiated obligation to report embedded emissions

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[12] California SB 253, Climate Corporate Data Accountability Act, Cal Health & Safety Code s 38532.

[13] White & Case, 'Time to Get to Know Your Supply Chain: EU Adopts Corporate Sustainability Due Diligence Directive' (White & Case, 9 July 2024).

[14] Omnibus I (n 11).

[15] LkSG (n 7).

regardless of the exporter's position in the chain or its access to measurement infrastructure.[16]

The Carbon Border Adjustment Mechanism entered its definitive phase on 1 January 2026, requiring European importers of specified carbon-intensive goods, including iron, steel, cement, fertiliser, aluminium, hydrogen and electricity, to purchase certificates corresponding to the embedded emissions of the imported product.[17] Although the certificate-purchasing obligation formally falls on the European importer, the practical burden of quantifying embedded emissions falls on the exporting producer, who must establish monitoring, reporting and verification systems that mirror the European Union's own emissions trading methodology in the absence of any domestic carbon price against which to benchmark. The World Bank's CBAM Exposure Index demonstrates that while the aggregate macroeconomic exposure of most developing economies is moderate, specific carbon-intensive export sectors, and the firms within them, face disproportionate cost and administrative exposure.[18] Modelling of the mechanism's prospective extension to additional product categories suggests that Sub-Saharan African exporters could see export volumes to the Union fall by more than five per cent and regional gross domestic product contract correspondingly, while South East Asian plastics exporters face comparable, if smaller, losses.[19] A stakeholder study across India, Indonesia and Vietnam found that roughly ninety per cent of interviewed exporters identified the absence of adequate technical or financial assistance as the principal obstacle to compliance, and that Indian respondents in particular, unlike their South East Asian counterparts, framed their objection in explicitly legal terms, with a majority questioning the mechanism's compatibility with World Trade Organization non-discrimination principles.[20] That legal contestation crystallised when the Russian Federation filed a formal complaint against the mechanism before the World Trade Organization's dispute settlement system in May 2025, and commentators have noted that the mechanism's design, which offers no exemption or phased implementation calibrated to a country's development status, sits uneasily with the common but differentiated responsibilities principle embedded in the climate treaty regime even as its compatibility with trade law remains contested.[21]

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16 CBAM Regulation (n 8).

17 ibid.

18 World Bank, 'How Developing Countries Can Measure Exposure to the EU's Carbon Border Adjustment Mechanism' (World Bank Blogs, 2026).

19 Center for Global Development, 'The EU's Carbon Border Tax: How Can Developing Countries Respond?' (CGD, 2024).

20 'Reforming the European Union's Carbon Border Adjustment Mechanism: Stakeholder Perspectives from India, Indonesia, and Vietnam' (2026) Journal of Cleaner Production (advance online publication).

21 Institute for European Environmental Policy, The EU CBAM's Reform and Remaining Implementation Challenges for Low- and Middle-Income Countries (IEEP, May 2025) 3-4.

IV. Civil Liability Pathways: Parent-Company Duty of Care and the Limits of Scope 3 Justiciability

Alongside disclosure and due diligence statutes, a second and doctrinally distinct liability pathway has developed through ordinary tort litigation against parent companies for harm occurring within their subsidiaries' or suppliers' operations abroad. The United Kingdom Supreme Court's decision in *Vedanta Resources plc v Lungowe*[22] held that a parent company may owe a duty of care to persons affected by a foreign subsidiary's operations, not as a distinct or exceptional category of liability, but through the ordinary application of negligence principles to the specific degree of control, policy-setting, or supervisory involvement the parent has exercised over the subsidiary's relevant activities. The Court expressly declined to treat parent-subsidiary liability as governed by the three-fold Caparo test of foreseeability, proximity and fairness, holding instead that the relevant inquiry is the extent to which the parent availed itself of the opportunity to control, intervene in, or advise upon the subsidiary's operations, whether through group-wide policy, training, or direct supervision.

The Supreme Court reaffirmed and applied this approach two years later in *Okpabi v Royal Dutch Shell plc*[23], reversing lower court findings that had effectively conducted a mini-trial of the evidence at the jurisdictional stage before the claimants, Nigerian communities alleging oil pollution from Shell's Niger Delta operations, had access to disclosure of the parent's internal governance documents. The Court held that the correct threshold at the jurisdictional stage is merely whether the claim is arguable, not whether it is demonstrably certain to succeed, and that the earlier authority of *Chandler v Cape plc*[24] remains a valid, if not exhaustive, illustration of the circumstances, defective group-wide safety policy, in that instance, in which a duty of care can arise.

The Dutch courts have extended this reasoning from localised pollution harm to diffuse global climate harm, with markedly different results at first instance and on appeal. In *Milieudefensie v Royal Dutch Shell plc*[25], the District Court of The Hague held that Shell's continued production and sale of fossil fuels breached an unwritten standard of care under Dutch tort law, informed by the Paris Agreement and by Articles 2 and 8 of the European Convention on Human Rights, and ordered the company to reduce its aggregate Scope 1, 2 and 3 emissions by forty-five per cent relative to 2019 levels by 2030. On appeal, the Hague Court of Appeal in *Milieudefensie v Shell plc*[26] upheld the existence

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22 *Vedanta* (n 1).

23 *Okpabi* (n 2).

24 Chandler v Cape plc [2012] EWCA Civ 525.

25 Milieudefensie v Royal Dutch Shell plc, Rechtbank Den Haag, 26 May 2021, ECLI:NL:RBDHA:2021:5339.

26 *Milieudefensie v Shell (CoA)* (n 3).

of a general duty of care grounded in the same human rights instruments, holding that companies of Shell's scale and historical contribution to climate change bear both a retrospective and a prospective responsibility to mitigate dangerous climate change. Yet the Court of Appeal refused to impose the specific forty-five per cent reduction figure, reasoning that no scientific consensus exists as to the precise emissions reduction any single company, sector or jurisdiction must individually achieve to remain consistent with the Paris temperature goal.

Critically for the present analysis, the Court of Appeal was markedly more reluctant to impose any obligation with respect to Scope 3 emissions specifically than with respect to Scope 1 and 2. It accepted, at least provisionally, a market substitution argument: that any reduction in Shell's own fossil fuel sales would likely be offset by another supplier meeting the same market demand, so that a company-specific Scope 3 reduction order would not necessarily reduce aggregate global emissions and therefore lacked the causal traceability ordinarily required to ground a civil remedy.[27] This reasoning exposes the central doctrinal obstacle to Scope 3 liability: unlike Scope 1 emissions, which are causally and territorially attributable to an identifiable source, Scope 3 emissions are the aggregate product of countless independent actors across a global market, making individualised legal attribution to any single company analytically fraught even where the company's overall contribution to climate change is not in dispute.

This asymmetry has direct consequences for Global South suppliers. Litigation risk in the reviewed jurisprudence attaches to the parent or buyer at the apex of the chain, in London, The Hague, or wherever the multinational is headquartered, and Scope 3 attribution problems make that risk difficult to realise even there. Compliance cost, by contrast, is generated at the base of the chain, in the mine, the tannery, or the garment factory, through contractual due diligence clauses, supplier codes of conduct, and emissions data requests that buyers impose to manage their own disclosure and reputational exposure. The buyer thus transfers the operational burden of Scope 3 compliance downstream through private ordering, while retaining for itself the comparatively remote and, on the Dutch Court of Appeal's reasoning, doctrinally uncertain prospect of climate liability upstream.

V. Compliance Burdens in Global South Jurisdictions

The compliance burden manifests in three distinct forms across Global South economies: the direct cost of building measurement, reporting and verification infrastructure for the Carbon Border Adjustment Mechanism; the indirect cost of cascading contractual due diligence obligations under the Corporate

27 A Laniyan, 'The Market Substitution Argument in Milieudefensie et al v Shell Judgment: A Threat to Justiciability for Scope 3 Emissions' (EJIL:Talk!, December 2024).

Sustainability Due Diligence Directive and Germany's supply chain law; and the institutional cost of building domestic disclosure regimes capable of interfacing with both, illustrated by India's own retreat from mandatory value chain reporting.

On the first, the transitional reporting phase of the Carbon Border Adjustment Mechanism, which ran from October 2023 to December 2025 without any financial charge, has already imposed administrative costs that exporters have been forced to absorb without corresponding technical assistance, and interviewed officials in Vietnam described the transition period as structurally inadequate for a country still building the institutional capacity for monitoring, reporting and verification from scratch.[28] With the definitive phase now in force, that administrative cost converts into a direct financial charge tied to the price differential between the exporting country's domestic carbon price, where one exists at all, and the price prevailing in the European Union's own emissions trading scheme. The World Bank's own assessment cautions that while aggregate exposure remains moderate for most economies at the current product scope, an extension of the mechanism to further carbon-intensive sectors would concentrate severe losses on specific export-dependent regions, particularly in Africa and South East Asia.[29]

On the second, the Corporate Sustainability Due Diligence Directive's chain-of-activities standard and Germany's LkSG both operate through a trickle-down mechanism: companies directly within scope pass due diligence obligations to their immediate contractual suppliers by contract, who in turn pass analogous obligations further down the chain, so that thousands of enterprises never directly regulated by either statute nonetheless become bound by its substantive standards through private contractual replication.[30] This is efficient from the regulator's perspective, since it achieves supply-chain-wide coverage without extraterritorial legislative reach, but it also means that the enterprise bearing the compliance cost, typically a small or medium-sized supplier in a Global South jurisdiction, has no direct legal relationship with, and therefore no standing to contest, the regulatory standard it is nonetheless contractually bound to satisfy.

On the third, India's own experience with the Securities and Exchange Board of India's Business Responsibility and Sustainability Report Core framework is instructive. In July 2023, the regulator introduced a Value Chain Framework requiring the top 250 listed companies by market capitalisation to obtain emissions and other ESG data from upstream and downstream partners cumulatively accounting for seventy-five per cent of purchases or sales by

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[28] 'Reforming the EU's CBAM' (n 20).

[29] World Bank, 'CBAM Exposure' (n 18).

[30] LkSG (n 7).

value, on a comply-or-explain basis.[31] By March 2025, however, the regulator recalibrated this requirement from comply-or-explain to entirely voluntary, citing the practical difficulty listed companies faced in extracting reliable emissions data from suppliers, many of them micro, small and medium enterprises, who lack the accounting systems, technical expertise, or financial resources to generate audit-grade Scope 3 data.[32] The retreat illustrates the underlying structural problem with unusual clarity: even a domestic regulator legislating for its own market, with none of the extraterritorial complications attending the Carbon Border Adjustment Mechanism, found the informational demands of Scope 3 disclosure unsustainable for its own supplier base within two reporting cycles.

VI. India as a Case Study: Statutory Architecture and Constitutional Environmental Doctrine

India presents a particularly instructive case study because it combines exposure to nearly every external Scope 3 instrument discussed above, as a major exporter to the European Union and the United States, with one of the most doctrinally developed bodies of domestic environmental jurisprudence among Global South jurisdictions. The Companies Act, 2013 already obliges qualifying companies to spend a prescribed percentage of net profit on corporate social responsibility activities, several of which, including environmental sustainability, could in principle be reoriented toward value-chain decarbonisation support for suppliers, though the statute imposes no such directive obligation at present.[33] The Environment (Protection) Act, 1986 supplies the general regulatory backbone for pollution control but contains no explicit greenhouse gas reporting mandate, leaving that function to be performed, as matters currently stand, by securities regulation rather than environmental legislation.[34] The National Green Tribunal, established under its own 2010 statute with jurisdiction over any substantial question relating to the environment, offers in theory a specialised forum in which supply-chain-linked pollution claims against Indian subsidiaries or contractors of multinational buyers could be litigated, though its jurisprudence to date has concerned point-source pollution rather than diffuse, cumulative greenhouse gas contribution.[35]

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[31] Securities and Exchange Board of India, Framework for Disclosure and Assurance Requirements for BRSR Core, ESG Disclosures for Value Chain and Assurance (Circular No SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, 12 July 2023).

[32] Securities and Exchange Board of India, Measures to Facilitate Ease of Doing Business with Respect to Framework for Assurance or Assessment, ESG Disclosures for Value Chain, and Introduction of Voluntary Disclosure on Green Credits (Circular, 28 March 2025).

[33] Companies Act 2013, s 135 and Sch VII.

[34] Environment (Protection) Act 1986, s 3.

[35] National Green Tribunal Act 2010, s 14.

India's constitutional environmental jurisprudence is in fact considerably more stringent than the negligence-based duty of care applied by English and Dutch courts. In *M.C. Mehta v Union of India* (the Oleum Gas Leak case), the Supreme Court of India departed deliberately from the English rule in *Rylands v Fletcher*[36] and constructed an indigenous doctrine of absolute liability, holding that an enterprise engaged in a hazardous activity owes an absolute and non-delegable duty to the community and is liable to compensate for resulting harm irrespective of whether reasonable care was taken, and without recourse to any of the exceptions available under the common law rule of strict liability.[37] The Court extended this doctrine to chronic, cumulative environmental degradation, as distinct from a single catastrophic accident, in *Indian Council for Enviro-Legal Action v Union of India* (the Bichhri case), which concerned the sustained discharge of toxic effluent by chemical manufacturers into soil and groundwater over an extended period.[38] The Supreme Court subsequently read the precautionary principle and the polluter pays principle into Indian environmental law in *Vellore Citizens Welfare Forum v Union of India*[39], and confirmed the polluter pays principle and the public trust doctrine, protecting ecologically sensitive natural resources from private encroachment, in *M.C. Mehta v Kamal Nath*[40]. Each of these doctrines is anchored in Article 21 of the Constitution,[41] which the Court has read to include a fundamental right to a clean and healthy environment, most explicitly in *Subhash Kumar v State of Bihar*[42].

The doctrinal capacity, in other words, already exists within Indian law to impose liability for environmental harm considerably more exacting than the parent-company negligence standard applied in *Vedanta* and *Okpabi* or the causally hesitant approach to Scope 3 emissions taken by the Hague Court of Appeal. What is absent is the practical application of that capacity to diffuse, transnational, cumulatively caused greenhouse gas harm, precisely because the causation problem that constrained the Dutch court, the impossibility of tracing a specific emissions increment to a specific defendant among a global multiplicity of contributors, applies with equal or greater force to absolute liability doctrine, which was developed for point-source hazardous industrial accidents of the kind at issue in the Oleum Gas Leak case and, at the international level, in the Bhopal gas disaster litigation against *Union Carbide Corporation v Union of India*[43], where India's own courts confronted, and ultimately were unable fully to overcome, the jurisdictional and evidentiary

36 Rylands v Fletcher (1868) LR 3 HL 330.
37 M.C. Mehta v Union of India (1987) 1 SCC 395.
38 Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.
39 Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647.
40 M.C. Mehta v Kamal Nath (1997) 1 SCC 388.
41 Constitution of India 1950, art 21.
42 Subhash Kumar v State of Bihar (1991) 1 SCC 598.
43 Union Carbide Corporation v Union of India (1991) 4 SCC 584.

difficulty of holding a foreign parent company accountable in the country's own courts for harm occurring within its domestic territory. The Bhopal litigation, brought in the reverse jurisdictional configuration to *Vedanta* and *Okpabi*, an Indian court seeking to reach a foreign parent rather than an English court reaching a foreign subsidiary's harm, illustrates that the difficulty of transnational corporate accountability runs in both directions, and that neither absolute liability's stringency nor the common law's flexible duty of care has yet been tested against the specific evidentiary architecture that diffuse Scope 3 emissions present.

The consequence is a double bind for India as a major Global South exporter: it is a rule-taker with respect to the European Union's Carbon Border Adjustment Mechanism and Corporate Sustainability Due Diligence Directive, and its own domestic regulator has found even a comply-or-explain value chain disclosure standard unsustainable for its own listed company ecosystem within two years of introduction, while its constitutional courts possess an unusually powerful liability doctrine that has not yet been extended, and may not be readily extendable, to the causally diffuse harm that Scope 3 emissions represent.

VII. Towards a Differentiated Liability and Compliance Framework

Four reforms follow from the analysis above. First, mutual recognition of domestic monitoring, reporting and verification systems should replace the Carbon Border Adjustment Mechanism's present insistence on European methodology as the exclusive benchmark. Where an exporting jurisdiction operates a credible domestic carbon pricing or emissions accounting mechanism, even one calibrated differently from the European Union's own emissions trading scheme, the mechanism's certificate obligation should offset against it rather than treating non-European measurement as presumptively inadequate, an approach consistent with the technical-assistance gap identified across Indian, Indonesian and Vietnamese exporters and with the equity concerns underlying the pending World Trade Organization challenge.[44][45]

Second, cascading contractual due diligence obligations should be bounded by the German model's distinction between direct and indirect suppliers, calibrated to actual sphere of influence, rather than the broader chain-of-activities standard, which in practice permits buyers to impose the full weight of their own regulatory exposure on sub-suppliers with whom they have no direct legal relationship and correspondingly no shared bargaining position.[46][47] A duty to investigate upon substantiated knowledge, rather than a standing duty of

[44] IEEP, 'CBAM's Reform' (n 21).
[45] 'Reforming the EU's CBAM' (n 20).
[46] CSDDD (n 6).
[47] LkSG (n 7).

continuous verification across every tier, better reflects the diminishing capacity for oversight the further removed a supplier sits from the buyer, and avoids converting due diligence into an unfunded mandate transmitted downward by contract alone.

Third, India's retreat to voluntary value chain disclosure should be read not as capitulation but as an invitation to sequence obligations to capacity, phasing mandatory Scope 3 assurance to coincide with dedicated capacity-building support, of the kind ninety per cent of surveyed exporters found absent from the Carbon Border Adjustment Mechanism's transitional period, rather than abandoning the underlying disclosure objective altogether.[48][49] A tiered materiality threshold, under which large value chain partners face fuller disclosure obligations than micro and small enterprises, would preserve the informational objective of value chain reporting while distributing the administrative burden more realistically.

Fourth, courts adjudicating Scope 3 climate claims should develop an evidentiary standard short of the individualised scientific consensus the Hague Court of Appeal found wanting, drawing instead on sectoral benchmarking of the kind already embedded in the GHG Protocol's own categorical methodology.[50][51] India's absolute liability doctrine, while not a ready-made solution to the causation problem, offers a normatively significant starting point precisely because it was constructed to overcome the common law's own evidentiary rigidities in *Rylands v Fletcher*[52]; adapting its underlying logic, that an enterprise profiting from a hazardous activity should bear the burden of uncertainty rather than the victim, to cumulative greenhouse gas contribution would shift the analytical burden away from precise individual attribution and toward proportionate responsibility calibrated to a company's demonstrated market share and historical contribution.[53]

VIII. Conclusion

Scope 3 emissions sit at the structural fault line of transnational climate governance. The instruments that regulate them, the Corporate Sustainability Due Diligence Directive, the Carbon Border Adjustment Mechanism, Germany's supply chain statute, California's disclosure law, are drafted and enforced in jurisdictions that consume the products in question, while the emissions themselves, and the compliance burden of measuring and reducing them, are generated in the Global South jurisdictions that produce them. Civil

48 SEBI, 'Ease of Doing Business Measures' (n 32).
49 'Reforming the EU's CBAM' (n 20).
50 *Milieudefensie v Shell (CoA)* (n 3).
51 GHG Protocol, Corporate Value Chain (Scope 3) Standard (n 4).
52 Rylands v Fletcher (n 36).
53 M.C. Mehta (Oleum Gas Leak) (n 37).

liability doctrine, as developed in *Vedanta*, *Okpabi* and, with markedly greater hesitation as to Scope 3 specifically, in the Dutch *Shell* litigation, has proved far more willing to reach a parent company's own operations and its immediate policy choices than to attribute the causally diffuse consequences of its downstream value chain. India's experience, an unusually stringent constitutional environmental doctrine coexisting with a domestic securities regulator's retreat from mandatory value chain disclosure, exemplifies the wider Global South predicament: doctrinal capacity without practical application, and regulatory exposure without commensurate technical or financial support. Addressing this asymmetry requires neither abandoning Scope 3 accountability nor imposing it uniformly regardless of capacity, but building a differentiated architecture, mutual recognition of domestic measurement systems, bounded contractual liability calibrated to actual influence, capacity-sequenced disclosure thresholds, and sectoral evidentiary standards for climate causation, that locates responsibility where control actually lies, rather than merely where the ledger happens to close.