

## **CORPORATE SOCIAL RESPONSIBILITY AND ENVIRONMENT PROTECTION**

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### **Abstract**

*There is a close relationship between man and nature. Existence of one without another is impossible. Therefore, it is necessary that a harmonious balance is maintained between them. Over the years, due to excessive industrialization this balance has been disturbed. Today world is facing the issue of environmental degradation and India is no exception to this. In this era of Globalization and Privatization, a number of private players have entered the field which has further deteriorated the environment as they work on the principle of profit making without having any regard to the environmental concerns of the country. As we are a developing nation, therefore, the challenges are more serious as there is need to strike a balance between economic development and environment protection. The right to safe and hygienic environment has been interpreted by the Supreme Court in the provisions of Article 21 of Constitution of India. In various cases it directed the pollution causing industries to either stop production or ensure safe disposal of waste material so that the surroundings are not polluted. Today, the concept of Corporate Social Responsibility in the environmental protection is gaining importance because of the fact that corporate industries affect the environment*

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*adversely and, therefore, they must take some steps to restore back what they have taken from it. The idea of Corporate Social Responsibility is not new. Earlier, it was practiced as a charity but, now, after passing of The Companies Act, 2013, it has become mandatory for big corporate entities to spend 2% of their average net profit for the immediately preceding three financial years on Corporate Social Responsibility activities. Among others, ensuring environmental sustainability and ecological balance is one of such activity which requires immediate attention.*

*The paper analyses the environmental concerns of the country, judicial response to the rising environmental degradation and fixing responsibility of the pollution causing corporate industries, the concept of Corporate Social Responsibility, how it can be utilized for the protection of environment and how much success it has achieved.*

**Keywords:** *Corporate Social Responsibility, Corporate Environmental Responsibility, Environment, Sustainable Development, Corporate Sector.*

## **Introduction**

It the pre-industrial era, the relationship of man and environment was quite harmonious. Later on, with the advancement of science and technology new vistas of development emerged. In the desire of becoming more affluent, man started exploiting the natural resources without having any regard to the environmental concerns. This attitude, probably, emerged from the conception of man that natural raw material is abundant and the replenishing quality of nature has no limitation. The economic concerns overshadowed the environmental ones. But soon it was realized that environment has ‘critical limits’ and it cannot be exploited beyond these limits. Unfortunately, the realization emerged when a lot of damage was already done. The industries and other corporate bodies had a strong support from the government because these bodies, directly or indirectly, improved the Gross Domestic Product of the country and, consequently, their economic status in the world forums.

Nevertheless, the concept of Corporate Social Responsibility emerged in the corporate sector whereby companies tried to improve their social reputation by spending a marginal share of their incomes on philanthropic or welfare activities.

An important aspect of Corporate Social Responsibility is responsibility owed towards environment. The Corporate Responsibility is based on the principle of sustainability whereby the subjective interests of corporates are fulfilled along with the objective urges of finite ecosystem. (Nayak, H.S, Shankar. U & Dube, D.)

### **Concept of Corporate Social Responsibility (CSR)**

The concept of Corporate Social Responsibility is based on the idea that not only public policy but companies, too, should take responsibility for social issues. Today we look towards CSR as a concept in which the companies deliberately encompass social and environmental concerns while conducting their business operations and while dealing with their stakeholders (Chahoud, T., 2007). The stakeholders include workers, investors, shareholders as well as community in which the corporation carries on their business activities, the civil society groups and the beneficiaries. Since the business enterprises earn a lot of benefits from the society it becomes their responsibility to give back to the society as well (Gautam, R. & Singh, A., 2010). The importance of CSR increases when it comes to the developing countries like India, where there is crunch of resources to meet the ever growing needs of expanding population thereby making the goals of sustainable development difficult to achieve (Puri, N. & Ashok, S., 2013). The CSR, in India, began as a charity or as a matter of traditional philanthropy, which had the elements Gandhian ethical economic model and was later followed by Nehru's Statist model in which state ownership and legal requirements decided the responsibilities of the corporate instrumentalities. (Dodh, P. & Singh, S., 2013).

In 1990s, the Indian economy was deregulated and adopted the concept of Liberalization, Privatization and Globalization (LPG). It resulted in boom in the economic sector and at the same time serious questions were posed regarding the responsibility of the corporate towards the society. The concept of Corporate Social Responsibility had already emerged by that time. Now, the focus was shifted to environmental issues as well and a new term 'Corporate Environment Responsibility (CER)' was coined. CER signifies the environmental commitments of the companies through material and energy management and a transparent working within ecological limits (Tomar, V., 2008). The companies have responsibility to adopt such practices which ensure minimum exploitation of natural resources, recycling of used products and effective waste management.

### **Corporate Social Responsibility vis-a-vis Environment**

Planet Earth is facing environmental emergency. The problems are varied and manifold, viz., global warming and climate change, natural resource depletion, loss of biodiversity, ozone layer depletion, ocean acidification and acid rain and all forms of pollution including air, water and soil. The disturbing fact is that all these

environmental problems can be attributed to the rise of industries and corporate sector. The developmental activity of corporate has earned a dubious name over the years because it risks life and livelihood of people at the destruction of natural resources and on the intimidation of ecology (Intellectual Forum, Tirupathi v. State of Andhra Pradesh, 2006). It is necessary to regulate corporate activity so that sustainable development can be ensured.

Many citizen's, environmental organizations and leadership companies define Corporate Environmental Responsibility as the duty to cover the environmental implications of the company's operations, products and facilities; eliminate wastes and emissions, maximize the efficiency and productivity of its resources and minimize practices that might adversely affect the enjoyment of the country's resources by future generations (Mazurkiewics, P., 2004).

There are five important factors when it comes to environmental dimension in Indian context, namely, Biodiversity Conservation, Air Quality and Noise Pollution Management, Energy and Water Management, Waste and Raw Materials and Environmental Development (Rane, S. & Arora, B.) There is an emergent need for adoption of an Environmental Policy by the corporate houses and all these factors must be kept in mind while formulating such policy.

To boost up Foreign Direct Investment (FDI), Special Economic Zones (SEZ), Exclusive Economic Zones (EEZ) and Coastal Economic Zones (CEZ) were established by the government of India. It was also asserted that setting up such zones would provide employment to people as well as lead to the overall development of the area. But, on the contrary, it has resulted in loss of biodiversity of that area. In a recent case western zone Bench of National Green Tribunal cancelled the environmental clearance given to a port project (Adani Hazira Port Pvt. Ltd.) by Ministry of Environment and Forests and observed that the area which once had abundance of mangrove stretches, presently don't have mangrove vegetation, clearly indicating the environmental degradation and damage (The Hindu, 2016). These zones have, over the years, earned a bad name for disrupting the environment and infringing the rights of locals over the environment. For example, fishermen in coastal areas and tribal people in forest areas are losing the traditional rights over seas and forests, respectively, because of interference by the SEZs and CEZs. In a bid to meet their economic goals, they overlook environment sustainability and protection of natural resources. Today there is emergent need to sensitize corporate entities about evolving a culture of sustainable development showing empathy towards nature and environmentally vulnerable section of society (Dodh, P. & Singh, S., 2013).

Another area of concern is depletion of natural resources. Those corporate industries which use natural resources must know how to utilize them effectively. Wherever possible, alternate sources of energy must be used. Conventional resources (like coal, petroleum, etc.) must be replaced with non-conventional ones (like water, wind, solar etc.) to increase efficiency and reduce costs of production. Such an initiative can be beneficial for both manufacturers as well as consumers because in the new emerging ethics of industrial society, energy efficiency has become a matter of reputation. Those corporate sectors that use environmental friendly practices are preferred by the consumers too.

Industrial emissions are the major source of pollution. It is the duty of industries to maintain better air and water quality. They need to know the fact that their existence depends on the acceptance by the larger society in which it operates. If the activities of industry are disturbing or damaging the environment, then it loses the acceptability. Today most of our rivers are polluted. Among other things the incidents of leakage of poisonous or harmful gases and release of waste from industrial establishments has become a regular phenomenon (Malviya, R. A., 2006). There is dire need to understand the fact that, in the long run, the socio-economic health of a nation is dependent on and is directly proportional to its environmental health (Sandhu, H. S., 2008). In the process of development we must not forget that there is need to maintain a clean environment which is essential for wellbeing of humankind.

Air, water, land are the representative samples of natural environment and geophysical, atmospheric and hydrological system determine the character of biosphere including biodiversity and mankind of a region. If we try to disturb the nature or natural environment in excess, it disturbs and damages us irreparably (Sharma, S. K., 2005). According to a report an estimated 5.9 lakh Indians die each year from indoor air pollution, which is the highest figure for a single country. Ambient air pollution kills an estimated 84000 people each year. India is spending about Rs. 4600 crores a year to make up the health damage caused solely by air pollution (CSE, India Green File, 2005). The two major sources of air pollution are transport and industrial emissions. It is, therefore, the responsibility of these sectors to ensure that the technology applied by them is upgraded and made eco-friendly so that the environmental loss is mitigated.

The concept of sustainable development has acquired an important place in environmental jurisprudence. The Brundtland Report defines the term as a development that meets the needs of the present without compromising the ability of future generations to meet their own needs (WCED Report, 1987). In a developing country like India, the imperative need is undoubtedly rapid socio-economic transformation to eradicate the problems of poverty, inequitable access

and distribution of natural resources and to promote basic indices of human development, minimum standard of welfare and human rights. But the goals of social and economic development must be infused with sustainability; in fact, sustainability embraces socio-economic development (Tiwari, G. S., 2010).

Corporate Social Responsibility is closely linked with the principle of sustainable development, which states that enterprise while making decisions should not only focus on financial factors but also on long term social and environmental consequences of their activities. (Sri Sudha, P.). It essentially involves a shift in the focus of corporate responsibility from profit maximization for shareholders within the obligation of law to responsibility to a broader range of stakeholders, including community concerns such as protection of the environment and accountability on ethical as well as legal obligation (Tiwari, N., 2010).

The concept of Sustainable development includes within its ambit the ***precautionary principle*** and ***polluter pays principle***. The precautionary principle suggest that where there is an identifiable risk of serious and irreversible harm, including, for example, extinction of species, widespread toxic pollution, major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment (A. P. Pollution Control Board v. Prof. M. V. Nayadu). This principle was applied in the case of ***M. C. Mehta v. Union of India*** (2008) popularly known as ***Taj Trapezium case*** in which expert studies proved that emissions from coke/coal based industries in the Taj Trapezium Zone (TTZ) had damaging effect on Taj Mahal and also were affecting human life. The court directed them to switch to use of natural gas as an industrial fuel and those are not able to do so should stop functioning in TTZ.

Polluter pays principle means that the polluter should internalize the cost of pollution, control it at its source and pay for its effects, including the remedial and cleanup costs rather than enforcing other states or future generations to bear such costs (Jasrotia, A., 2007). In ***Vellore Citizen's Welfare Forum v. Union of India*** (1999), Supreme Court held that remediation of the damaged environment is part of the process of 'sustainable development' and, therefore, the polluter is liable to pay the cost to the individuals who are sufferers as well as pay cost for reversing the damaged ecology.

### **CSR Practices in India**

In India, now, the CSR is a statutory provision but the CSR practices have been carried out by many corporate sectors on voluntary basis even before that. Corporate sector are spending on education, women empowerment, health,

infrastructure development, sanitation, environment protection etc. A few examples have been cited to highlight the role played by them in the environment sector.

- i) Mahindra and Mahindra under 'Project Haryali' have the credit of planting 7.9 million trees which include 4 million trees in the tribal belt of Araku Valley (The Economic Times, 2015).
- ii) Tata Power runs a flagship programme 'Act for Mahsheer' which is a conservation initiative started in 1975 for saving endangered species. To achieve the purpose Tata Power set up a breeding centre in Lonavala as part of its eco-restoration measure and eco-development project for the lakes (The Economic Times, 2015).
- iii) According to a report ITC has spent considerable money on developing renewable energy infrastructure. Out of its total energy requirements 38% is fulfilled by the renewable energy. Also, the ITC has the greenest luxury hotel chain in the world (The Economic Times, 2014).
- iv) Mitsubishi Electricals has launched 'Environment Vision 2021' and aims to achieve it by creating a low carbon society; a recycling based society by applying its wide ranging and advanced technologies and respecting biodiversity (Environmental Vision 2021).
- v) Tata Chemicals is also determined in its efforts when it comes to sustainable community development and preserving the ecosystem. It's climate change policy maps its carbon footprint so as to create an abatement strategy for sustainable manufacturing (The Economic Times, 2015)

Though the steps taken under CSR are welcoming, but, over the years corporate sector have not been prevented from taking any action which is injurious to the environment. Environmental abuses are writ large because of the following reasons:

- i) They do not provide strong incentives for compliance to counter balance the financial incentives for noncompliance as the sanctions are absent or weak;
- ii) They rely on the 'appearance of compliance' through 'self-regulation' without even independent verification, let alone enforcement; and
- iii) They fail to empower citizens and stakeholders (Myneni, S. R., 2008).

Almost all the major corporate houses and MNCs have adopted an 'Environment Policy' but need of the hour is to embed it with the core 'Corporate Policy' so that its real purpose can be achieved. This will not only generate revenue but also increase the reputation of the corporate.

### **Legislative Measures**

- i) **The Companies Act, 2013:** India became the first country to give CSR a statutory status. The Companies Act, 2013, provides that every company, private limited or public limited which either has a net worth of Rs. 500 crores or a turnover of Rs. 1000 crores or net profit of Rs. 5 crore, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities (Section 135). The activities to be covered under the corporate social responsibility are mentioned in Schedule VII of the Act. The activities include eradicating hunger, poverty, promoting education, empowering women, protecting children, setting up old-age homes, protection of national heritage, promoting sports, contribution to Prime Minister's Relief Fund, rural development projects. One of the important activities is ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air water.

Also every such company shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more Directors. The Board shall approve the Corporate Social Responsibility Policy of the Company and disclose the contents of such policy in its report and place it on company's website, if any and also ensure that the activities included in the company are undertaken by the company (Section 135(4)). However, the Act does not impose any penalty for non-compliance of the provisions. It merely provides that in case of failure to spend the money, the Board shall specify the reasons for not spending the amount.

- ii) **The Environment (Protection) Act, 1986:** It is an umbrella legislation which provides for protection of environment in a holistic manner. It imposes vicarious liability on the person in-charge who may be Director, Manager, Secretary or any other officer of the company for the offence committed during his tenure (Section 16). In exceptional cases,



where he proves that the offence was committed without his knowledge, or, that he exercised due diligence to prevent the commission of such offence, such Director, Manager or other such officer is not liable. Similar provisions are contained in **The Water (Prevention and Control of Pollution) Act, 1974** (Section 47), **The Air (Prevention and Control of Pollution) Act, 1981** (Section 40) which hold the person in-charge liable for the offences committed by the company.

- iii) **Public Liability Insurance Act, 1991:** It was enacted to provide immediate relief to victims of accident caused by hazardous substances. It was based on the principle of no-fault liability as it imposed a duty on the owner to provide financial relief to victims in case of death, damage or injury to their person (Section 3). It also obligated the owner, before he starts handling hazardous substance, to take out insurance policies whereby he is insured against liability to provide relief to the victims (Section 4).
- iv) **Environment Impact Assessment:** In 1986, the Environment (Protection) Act was enacted and in pursuance of section 3(1) and 3(2)(v) of the Act read with Rule 5 of Environment( Protection) Rules, 1986 environment impact assessment became a statutory provision (Tiwari, S. & Ghosh, G., 2014). The objective of EIA is to detect the potential environmental problems likely to arise out of a proposed development project and to settle those problems in the planning and design stage itself thereby preventing future liabilities as well as expensive alterations in the project design (Tiwari, S. & Ghosh, G., 2014).

### **Judicial Exposition**

In India, the Judiciary has played a pivotal role in developing the environmental jurisprudence. There is no fundamental right which ensures right to healthy and safe environment. The only provisions which refer to environment are Article 48-A , which is a Directive Principle that provides for protection and improvement of environment and safeguarding of forests and wildlife and Article 51A(g) which imposes a duty on citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The Judiciary in their quest for innovative solutions to environmental matters within the framework of Public

Interest Litigation looked to constitutional provisions to provide the court with necessary jurisdiction to address the specific issues (Sabharwal, Y. K., 2005).

The public spirited persons, NGOs and affected persons have, from time to time, knocked the doors of the apex court for redressal of their grievances against those industries and business houses which polluted the environment or acted against the spirit of it. In *M. C. Mehta v. Union of India* (1987) Supreme Court treated the right to live in pollution free environment as a part of fundamental right under Article 21 of the Constitution of India.

On many occasions, the Supreme Court has fixed the liability of industries for causing pollution which has extended from imposing heavy penalties to even closure of industries. In *Indian Council for Enviro- Legal Action v. Union of India* (1996) the court held that if the activities of industrial units are health hazardous and inherently dangerous, the person carrying such activities should be liable to make good the loss caused to any other person by his activities irrespective of the fact whether he took reasonable care while carrying on the activity. The polluting industries were, therefore, held liable to compensate for the harm caused by them to the villagers in the affected area.

In *Rural Litigation and Entitlement Kendra, Dehra Dun v. State of U. P.* (1988), public interest litigation was filed against the indiscriminate mining of limestone in the Doon Valley. The Supreme Court while ordering to close down these quarries said that though it would cause hardship to the owners and workers but it is necessary to do so for protecting the right of people to live in healthy environment with minimal disturbance of ecological balance.

In *S. Jagannath v. Union of India* (1997) the Supreme Court issued the directions of demolition and removal of shrimp culture industries set up in the coastal regulation zone. The court observed that the sea coast and beaches are gift of nature and any activity polluting the same cannot be permitted. Sustainable Development should be the guiding principle for shrimp aquaculture and by following the natural method, though the harvest is small but sustainable over long periods and it has no adverse effect on the environment and ecology.

In famous *Ganga Water Pollution case* (1988) leather tanneries which were discharging their waste in Ganga. Though they were directed to set up primary treatment plants but they had not set up such plants. As a consequence, Supreme Court directed them to stop working. In its scathing remarks it said that loss to the general public because of discharge of such effluents outweighs the inconvenience caused to the management and the workers on the closure of such tanneries.

The rule in ***Rylands v. Fletcher*** (1868) holds a person strictly liable when he brings or accumulates on his land something likely to harm if it escapes and damage arises as a natural consequence of its escape. But in ***Oleum Leakage case*** (1987) the Supreme Court rejected the ‘strict liability’ rule in situation involving hazardous industries. Chief Justice Bhagwati declared:

“We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy.”

The Supreme Court evolved the rule of absolute liability and held that any enterprise which carries on hazardous and inherently dangerous activity owes absolute duty to ensure that no harm results to community by such enterprise while carrying out hazardous and inherently dangerous activity and if any harm is caused it shall be the liability of such enterprise to recompense the affected community.

The principle of absolute liability was adopted to give relief to the victims of Bhopal Gas Leak Tragedy. This disaster was the deadliest ever known to the world. As per final reports a total of 2660 people suffered agonizing and excruciating deaths and between 30,000 to 40,000 persons sustained serious injuries. The court in ***Union Carbide Corporation v. Union of India*** (1990) clearly asserted that there is need for more eco – friendly approach on the part of industrial establishments so that there is no danger to life and property of the mankind.

As the Supreme Court is final adjudicating authority, it has attained a prime position in environmental legal system. Through its celebrated judgements in the field of environment it has tried to find out appropriate remedies for environmental maladies and, on numerous occasions, has fixed the responsibility of industries and other bodies whose activities had a deleterious effect on the environment.

### **Conclusion**

Thus, environment protection is a burning issue crying for due attention from various stakeholders including, Government, Judiciary, Corporate sector, NGOs and society. Government is playing its role through legislations, policies and enforcement. NGOs and society are also contributing in their own way. Judiciary is playing a proactive role towards protection of environment by interpretation of different laws and issuing guidelines and directions to the concerned and also by imposing heavy penalties on the defaulters. Corporate

sector, which on the one hand is engaged in the development of the country but on the other hand is also primarily responsible for environment degradation. From time to time, the corporate sector has been prevented and also made liable in this regard. But now, the time has come when it should consider environment protection as its social responsibility.

Thus, it is recommended that various activities should be taken up under corporate social responsibility that will go a long way towards sustainable development with focus on environment protection. Corporate sector should adopt various measures to mitigate the damage being caused to the environment due to rapid industrialization and commercial activities so that this planet remains habitable not only for the present but also future generations to come. In the light of statutory provisions incorporated in the companies Act to spend at least 2% of average net profit during preceding three financial years, the CSR policy of a company must make adequate provisions for environment protection, besides other areas of activities under CSR. Registrar of Companies, under Ministry of Corporate Affairs should ensure that it is complied with in letter and spirit.

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