



ENVIRONMENTAL GOVERNANCE PERSPECTIVE OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

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ABSTRACT

The symbiotic relation between the development of the nation and the protection of environment requires a framework of environmental governance committed to the rule of law regime to ensure effective, accountable and transparent functioning of the stakeholders. The protection of environment is premised not only on the active role of the State and its functionaries but also on robust institutional framework, within which every stakeholder complies with its duty to ensure sustainable development. The aftermath of Bhopal Gas Tragedy necessitated corporate entities dealing with hazardous and inherently dangerous activity to be vested with corporate liability and accountability. Judiciary too has taken care of balancing sustainable development and environmental concerns while handling several cases ensuring equitable environmental governance. Global recognition and adoption of Corporate Social Responsibility eventually paved way for its statutory recognition in India, the first country to adopt CSR. Section 135 and Schedule VII of the Companies Act, 2013 deals with mandatory CSR obligations and activities including environmental sustainability among others. CSR (also called corporate conscience, sustainable responsible business) is a form of corporate self-regulation integrated into a business model. CSR is a transformational initiative or activity practiced by Indian corporations along with their business activity. CSR has inspired national governments to include CSR issues into their national public policy agenda to promote socially and environmentally responsible corporate practices. Thus, environmental governance via CSR, to be equitable, should engage decision making processes and produce socio-economic outcomes and be inclusive, participatory, fair and just.

In the context of ecological balance, companies while creating profit should also be aware that they can contribute to sustainable management of their operations in such a way to enhance economic growth and increase competitiveness whilst ensuring environmental protection and promoting social responsibility and sustainable development. Thus, though harmful effects on the environment were once dismissed as a necessary and unavoidable cost of doing business, pollution and excessive consumption of resources are now also pose a social and political concern on a global level in the context of equitable environmental governance. India also recognizes rural areas are equally prone to stress and pressures from natural resource exploitation, pollution and environmental degradation. In this context the

schemes for rural development and livelihood programmes are very relevant. During Covid-19 as well, based on CSR funding, the companies were adjudged for best practices under Environment, Social and Governance (ESG) framework which showcase the responsible business actions and corporate performance in attaining SDGs. Thus, this paper brings an appraisal and analysis of CSR in the context of equitable environment governance.

Keyword: Corporate Social Responsibility (CSR); equitable environmental governance; ecological balance; environmental ethics; SDGs.

“It is our collective and individual responsibility to protect and nurture the global family, to support its weaker members and to preserve and tend to the environment in which we all live”.- Dalai Lama¹

INTRODUCTION

The company does not function in a vacuum. It is part of the society in which it operates. It takes its employees from the society; it takes the raw materials required from the natural resources which belongs to its society; it consumes the utilities produced by the society. The activities of the company, being essentially economic, create friction with other constituents of the society. For example, natural resources consumed by the company belong to the community. Its operations result in pollution affecting the health of people. It has become more important of late as the society has become more conscious of its rights than earlier. In order to meet this situation, the concept of governance is promoted. Many of the corporate tragedies due to deliberate mismanagement of companies have added fuel to the fire and gave unquestioned importance to governance over management².

The purpose of creating the body corporate is to derive economic benefit. But a body corporate is a different kind of person (artificial juristic person). It is a creature of law. The fictitious personality is created to serve as an instrument for economic activity. Every country has its own corporate law defining how it is to be incorporated, how it is to function and what it can do and should not do. The society at large is interested in it since the corporation uses the assets and utilities belonging to the society. It is necessary that the assets are used efficiently to derive more benefit and also to the best advantage of the society³.

ECOLOGICAL CRISIS AND NEED FOR ENVIRONMENTAL GOVERNANCE

Environment, the subject as a whole corresponds to the law of nature. With the evolution of mankind, healthy living which is the most fundamental of all the rights has been considered to keep the man in the right path. (i.e. The water we drink, the air we breathe, the natural forests we use for our purposes are not polluted because these precious gifts of nature sustain the life support system on the earth). So, the government and the people are under a pious obligation to conserve the natural resources (political, economic and social organizations) which are considered as assets of the entire nation and not to waste these⁴. But with the advancement of mankind and development and progress of the society, the pressure is mounting on these natural resources leading to their depletion.

The ecological crisis which we are facing today (over population, pollution, environmental degradation) is our own creation. Pollution of the environment has many dimensions and we have to approach the problem taking into consideration the existing realities for achieving a pollution free environment. Man is the worst polluter of nature. All other living beings lived as part of nature, subject

¹ (Be a hero for a better world), <https://www.betterworld.net/quotes/pdf/ecology-dalai-lama.pdf> (last visited Nov 18, 2020).

² JAWAHARLAL JASTHI, CORPORATE GOVERNANCE (FIR SUKUNTA K NANDA, ENVIRONMENTAL LAW (2015).st ed. 2012).

³ JASTHI, *supra* note 4.

⁴ NANDA, *supra* note 4.

to its rules. More pollution is caused in the name of providing for comforts and luxuries that have become necessities in the modern way of life. After realizing the dangers of pollution, industries are compelled to direct their attention to the problem in the name of corporate governance and corporate social responsibility. It is just simple logic that polluter shall pay but with the underlying note that first of all nobody is allowed to pollute nature. As no industry runs without causing pollution in some way or other, in the absence of any law, pollution becomes the ethical responsibility of industry. The responsibility is intrinsic to its operations and direct consequences of its working. If the industry fails to rectify the damage done by its operations, it has no right to exist. Whatever is required to avoid pollution or to rectify the damage caused by its pollution must be accepted as cost of the project and its economics must be based on that premise. If not, by allowing such industries we are making the nature pay for our follies and indirectly shifting the costs to the next generation⁵.

ENVIRONMENTAL ETHICS

Environmental thought and the various branches of the environmental movement are often classified into: a) those that are considered anthropocentric or human centred in orientation and b) those considered biocentric or life-centred. The division has been described in our terminology as 'shallow' ecology v. 'deep' ecology and as techno-centrism v. ecocentrism⁶. Almost all the international documents are based on the anthropocentric ethics. Besides, the international convention some of the important principles like, the doctrine of public trust, the precautionary and polluter pays principles, the principles of sustainable development and intergenerational equity developed by the apex court through various important decisions, in some way or other look at the needs and development of human beings thereby propagating the anthropocentric principle⁷. Study of the above major environmental ethics reveals that the anthropocentric approach when properly understood, leads us to the same conclusions as an eco-centric approach because human interests and ecological interest ultimately converge. More than merely converging, in fact, they are inseparable throughout.

BHOPAL GAS DISASTER - AN INDUSTRIAL CATASTROPHE

*M. C. Mehta v. Union Carbide Corporation*⁸ (Bhopal Gas Leak Disaster): On 2nd December, 1984 the leakage of Methyl Isocyanate (MIC) from Union Carbide Co. Ltd at Bhopal caused larger scale devastation including death of more than 3000 people, side effects of MIC and other gases on about 2,00,000. this was an unprecedented accident evidently an outcome of industrialization. Union Carbide Co. Ltd is a subsidiary company to the holding company of Union Carbide Corporation, a multinational corporation of New York (America). Nearly 3500 civil and criminal cases were filed claiming compensation and fixing the liability on the corporation in Bhopal and nearly 100 cases were filed in New York on behalf of the victims of Bhopal Gas Disaster. Later, the central government was conferred with an exclusive right to institute suit or other proceedings in or before any court or other authority or enter into compromise by virtue of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. The central government entered into full and final settlement with the corporation for U.S. 470 million dollars towards all claims, rights and liabilities arising out of the Bhopal Gas Disaster. In fact, the claimants are yet to receive the proper compensation.

⁵ JASTHI, *supra* note 4.

⁶ Anthropocentric means values that are centered on human concerns; Techno-centric means values that are centered on technology; Eco-centric means values that are centre on ecology; Bio-centric means values that are centered on life forms or organisms; Eco-centric ethic was conceived by ALDO LEOPOLD; Deep ecology movement was formulated by ARNE NAESS – who identified anthropocentrism as a root cause of the ecological crisis, human overpopulation and the extinctions of many non-human species.

⁷ NANDA, *supra* note 4.

⁸ MANU/SC/1185/1994, *Union Carbide Corporation Ltd. vs. Union of India (UOI) and Ors.* (1993).

The Bhopal Gas Disaster which has been described as “Industrial Hiroshima”. The court remarked “the failure to establish any deterrent to Industrial Malpractice is detrimental both to the interests of the people of the country and to our judicial system”. As remarked by former Chief Justice of India, Mr. P.N. Bhagwati, “the Bhopal gas has come to a disturbing end in an abrupt and unprecedented manner. The multinational has won and the people of India have lost”. As regards multinational enterprise liability it was argued: “A multinational corporation has a primary, absolute and non-delegable duty to the persons and country in which it has in any manner caused to be undertaken any ultra-hazardous or inherently dangerous activity”⁹.

GLOBAL INITIATIVES: CSR & SUSTAINABLE DEVELOPMENT

The concept of sustainable development received impetus in the Stockholm Declaration on Human Environment in 1972. Environment protection and development were conceptualized as two sides of a same coin inseparable from each other. The term ‘sustainable development’ was coined during World Commission on Environment and Development (Brundtland Commission) in 1984 the Brundtland Report defined Sustainable Development as development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. According to the Brundtland Report, the essence of sustainable development is crystalized to two key concepts: a) ‘Needs’, in particular, priority for the essential needs of the world’s poor; and b) ‘Limitations’, imposed on the state of technology and social organization on the environment’s ability to meet the present and future needs. Therefore, the sustainable development is a process of change in which economic and fiscal policies, trade and foreign policies, energy, agriculture and industrial policies all aim to induce development paths that are economically, socially and ecologically sustainable.

Subsequent conventions such as Rio Declaration, 1992, Johannesburg Declaration, 2002 and other conventions recognized the significance of polluter pays principle, precautionary principle, inter-generational equity principle, prior environmental impact assessment, public trust doctrine and so on. Johannesburg Convention, 2002 reaffirmed their commitment to the Rio declaration towards full implementation of Agenda 21. One of the key commitments of Johannesburg plan of implementation is to actively promote corporate responsibility and accountability through the full development and effective implementation of inter-governmental agreements and measures, international initiatives and public and private partnership and appropriate national regulations¹⁰.

The term ‘Corporate Social Responsibility’ was first coined in 1953 and published in Bowen’s Social Responsibilities of Businessmen, with an idea of shifting the business aim from ‘corporate financial performance’ to ‘corporate social performance’ to make them accountable for their actions. The other different terms used for CSR include Corporate Citizenship, Community Relations and Social Responsibility, Corporate Conscience, Sustainable Responsible Business etc. The concept of CSR is based in Triple Bottom Line with three dimensions of performance: social, environmental and financial aspects with an essence of sustainability in it¹¹. Dominic McGoldrick has suggested that sustainable development by illustrating with ‘Three Pillard Temple Structure’ – the pillars denoting international environmental law, international human rights law and international economic law. The integrated structure of sustainable development is such that requires support from each of the pillars, its central pillar being international environmental law.

⁹ DR. S. K. KAPOOR, LAW OF TORTS (Eighth ed. 2010).

¹⁰ Wayne Visser, *The World Guide to CSR: A Country-by-Country Analysis of Corporate Sustainability and Responsibility* (2014).

¹¹ PROF. RAJINDER KAUR AND PROF. RASHMI AGGARWAL, ETHICS AND CORPORATE GOVERNANCE (First ed. 2020).

Figure 01¹²:

Source - University of Michigan Sustainability Assessment



Figure 02¹³:

Domonic Goldrick – Three Pillard Structure



According to the United Nations Industrial Development Organization (UNIDO), CSR is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. The European Commission also defined CSR as a concept where by company integrates social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis¹⁴.

In the World Summit 2005, the importance of CSR was felt in existing labour, human rights and environmental commitments, whereby, it reiterated and encouraged responsible business practices such as those promoted by Global Compact¹⁵. Global compact deals with ten principles, which a company needs to follow. Principle 7 to 10 deals about environment measures that need to be undertaken by the company.

Various countries in the world have started formulating rules and regulations for the implementation of CSR. Denmark amended Danish Financial Statement Act, 2008 that required mandatory reporting of CSR in their company policy, covering information like implementation of CSR policies, result of CSR policies, management’s expectation for future with regard to CSR. In USA, the Bureau of Economic and Business Affairs (EB) through its CSR team serves as a source of guidance and support for American companies to develop positive CSR policies. In United Kingdom, CSR is a part of Corporate Governance, the Companies Act 2006 imposes an obligation by requiring directors to have regard to community and environmental issues. In Europe, the European Commission adopts CSR agenda for action based upon CSR strategy adhering to the guidelines and principles laid down by the Global Compact etc. France, South Africa and China also have similar mandatory reporting obligation on CSR activities¹⁶.

INDIAN LAW ON CSR

The Companies Act, 2013 has given statutory recognition for Corporate Social Responsibility of companies and imposes a mandatory obligation on the part of the companies. A new provision

¹² Livability Lane: What is and isn’t the Triple Bottom Line?, <https://www.livabilitylane.org/toolkit/balanced-decision-making-is-and-isnt.html> (last visited July 18, 2021).

¹³ Sustainable Development : Its meaning, components and measures, https://thefactfactor.com/facts/law/civil_law/environmental_laws/sustainable-development/866/ (last visited Jun 18, 2021).

¹⁴ AGGARWAL, *supra* note 13.

¹⁵ The Practice of CSR around the World, <https://www.managementstudyguide.com/csr-practice-around-the-world.htm> (last visited July 16, 2021).

¹⁶ CSR Policies Around The World - The CSR Journal, , <https://thecsrjournal.in/csr-policies-around-the-world/> (last visited Nov 16, 2020).

relating to Corporate Social Responsibility (CSR) has been introduced under Section 135 of the Companies Act, 2013, which provides that every company having a specified net worth or turnover or net profit during any financial year shall constitute the Corporate Social Responsibility Committee of its Board of Directors to formulate policies for the activities specified in Schedule VII¹⁷ of the Act for social and economic welfare of the people, particularly, those who have remained deprived or neglected so far¹⁸.

S. 135 of Companies Act, 2013 & Mandatory CSR Reporting: According to Section 135 (1) - Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more Directors, out of which at least one director shall be an independent director¹⁹. The mandate of the CSR committee shall be i) to formulate and recommend to the board, a CSR policy, which shall indicate the activities to be undertaken by the company as specified in Schedule VII, ii) to recommend the amount of expenditure to be incurred in the activities referred to above, iii) to monitor the CSR policy of the company from time to time, approve the CSR policy for the company and disclose content of such policy in its report and also place it on the company's website, and ensure that the activities as are included in CSR policy of the company are undertaken by the company and ensure that the company spends, in every financial year, at least 2% of the average net profits, the company shall disclose its content in their report and also must publish the details on the company's official website, if any. If the company fails to spend the prescribed amount, the board in the report should specify the reason for not spending. S. 134(8) prescribes penal provisions for not reporting: i) against the company - fine amount of minimum Rs. 50,000 up to Rs. 25 lakhs; ii) against every officer in default - punishment includes imprisonment up to 3 years or fine minimum of Rs. 50,000 which can be extended up to Rs. 5 lakhs or both.

Since the corporates and industries cause major harm to the environment, the concept of CSR in India has directed the business entities towards many avenues specified in Schedule VII of the Companies Act, 2013, one of them being environment. To rescue the environment degradation, the three components of Environmental Social Governance (ESG)²⁰ has been made obligatory on the corporates and industries and these three components have become central to any business decision making today.

EQUITABLE ENVIRONMENTAL GOVERNANCE²¹

Good governance highly rests on the normative concerns of equity, such as participation, fairness, transparency and justice. Effective environmental governance is attained by maintaining and improving the ability of environmental systems. The environmental governance to be socially equitable should engage decision-making processes and produce socioeconomic outcomes such as inclusivity, participatory, fair and just. Equitable environmental governance has policies and processes that recognize, respect, values, cultures and rights of diverse stakeholders accommodating inclusiveness in it. Equitable environmental governance has concerns over marginalized (e.g. women, indigenous people, minority groups) or vulnerable (e.g. impoverished communities). Thus, the environmental

¹⁷ CSR activities to include eradication of hunger, poverty; promoting education; women empowerment; environmental sustainability; protection of national heritage; measures to benefit armed forces veterans; contribution to Prime Minister's National Relief Fund; rural development projects etc.

¹⁸ CA. KAMAL GARG, CORPORATE SOCIAL RESPONSIBILITY (First ed. 2014).

¹⁹ AGGARWAL, *supra* note 13.

²⁰ DR. S. N. GHOSH; PROF. AMITAVA BANERJEE, LAW OF CORPORATE GOVERNANCE (First ed.).

²¹ Nathan J Bennett, Terre Satterfield & Nathan Bennett, *Environmental governance: A practical framework to guide design, evaluation, and analysis* (2018), <https://doi.org/10.1111/conl.12600>.

governance to handle power depends on governance structures, institution and processed fulfill the objective of equity, to facilitate recognition of diverse groups, inclusive of all stakeholders in the decision-making, fairness in the allocation of costs and benefits and access to justice in case of violation²². To summarize, the environmental governance needs to be grounded with four general objectives such as a) to be effective, b) to be equitable, c) to be responsive and 4) to be robust, across the institutional, structural and procedural elements of governance.

JUDICIAL CONTRIBUTIONS TO DEVELOPMENT & ENVIRONMENT

Ever since Bhopal gas tragedy, judiciary is infusing environmental justice by judicially declaring environment as a basic/fundamental (human) right. Courts have expounded innovative principles (such as polluter pays principle, precautionary principle, public trust doctrine, inter-generational equity principle, absolute liability principle), fundamental postulates and values concerning restoration of balance and harmony in environment by regulating, ordering, preventing and controlling such human conduct that tend to disrupt, disturb, damage and destroy the ecology of the Earth²³. For instance, the Supreme Court in *Vellore Citizens' Welfare Forum v. Union of India* held sustainable development is the balancing concept between ecology and development. Likewise, in *Indian Council for Enviro Legal Action v. Union of India*²⁴, held that development and environment must go hand in hand in sustainable development. Also, in *N.D. Jayal v. Union of India*²⁵, it was held that sustainable development is an integral part of life under Article 21 of the Constitution of India.

COMPANIES ADJUDGED FOR CSR FUNDING (2019)²⁶

According to a study conducted by Futurescape examining the environment, social and governance (ESG) framework to assess corporate performance and in terms of incorporating Sustainable Development Goals (SDGs) for responsible business action. Based on this, some of the companies contributing CSR funding in 2019 were adjudged for Best Practices in fulfilling socio-economic and sustainability concerns. Tata Chemical Society for Rural Development (TCSRSD) involving participatory development was actively supporting government during lockdown period in distribution of disinfectants, masks, food security, medical help to the community. Infosys Ltd through the Infosys Foundation has spent nearly 360 crores towards various schemes of CSR in social development projects, also actively involved in COVID-19 relief projects with education and health-related programmes.

Bharat Petroleum Corporation Limited (BPCL) with support of its employees and an NGO Bisnouli Sarvodaya Gramudyog Sewa Sansthan (BSGSS) rendered medical help during lockdown, also under involved in imparting holistic education, health and hygiene for the communities. Mahindra & Mahindra Ltd, as a CSR initiative in the year 2018-19 provided educational support to under-privileged girls in India by Project Nanhi Kali. Through Mahindra Hariyali 0.95 million trees were planted to improve green cover and preserving bio-diversity in the country, besides providing livelihood support to tribal farmers in Araku valley region. During pandemic situation, Mahindara group arranged for COVID-19 patient care in Mahindra Holiday Resorts, the team also assisted the government and defence forces to build quarantine facilities. Further, Mahindra foundation assisted financially some small business and professionals by setting up special fund.

²² *Id.*

²³ PROF. S. N. DHYANI, THE FUNDAMENTALS JURISPRUDENCE, THE INDIAN APPROACH (Fourth ed. 2019).

²⁴ AIR 1996 SC 1446.

²⁵ [2002] 2 SCC 333.

²⁶ Top 20 Indian Companies for CSR in 2019 - The CSR Journal, , <https://thecsrjournal.in/top-indian-companies-for-csr-2019/> (last visited Nov 16, 2020).

In 2018-19, ITC Limited spent Rs. 306.95 crores for CSR activities. During pandemic, CSR of ITC set up a COVID Contingency Fund of Rs. 215 crores for distribution of food and hygiene products across 25 States and Union Territories. As CSR initiative of ITC during lockdown, contributed for livelihood generation for farmers and daily wage earners under MGNREG Scheme of the Government and in establishing environmental capital. Other companies who were adjudged for the CSR Best Practices include, Ambuja Cement Ltd, TATA Motors Ltd, Vedanta Ltd, Hindalco Industries Ltd, Toyota Kirloskar Motor India, Indian Oil Corporation Ltd, Wipro Ltd, Tata Power Company Ltd, Reliance Industries Ltd, Ultra Tech Cement Ltd, Hindustan Zinc Ltd, Tata Steel Ltd, Hindustan Unilever Ltd, GAIL (India) Ltd, Larsen & Toubro Ltd etc.

CONCLUSION:

CSR is the responsibility imposed upon the corporate to return back to society a share of the profit which they have earned by the utilization or resources of the society. In a way, CSR is called a forced philanthropy in India where companies are forced to invest some part of the profits in projects for society²⁷. The importance of environmental governance through corporate social responsibility reiterates the need for greater attention to understanding the myriad systems of environmental governance in different socio-economic contexts, for diverse ecological issues. It is further emphasized that the environmental governance is a continual process and inevitably requires concerted efforts – be that by governments, NGOs, private sectors, corporates, local communities, researchers, or collaborative networks to analyze, evaluate and create more effective environmental governance. It is pertinent to note that CSR has faced multifarious challenges over the years from its inception. The policy objective of CSR may vary from organization to organization, country to country to enhance profitability, socio-economic and sustainable development through CSR activities. On the other side, some corporates embrace CSR policies only for name sake to show their legal compliance. There is lack of CSR accountability measures and lack of stakeholders' or beneficiary participation in CSR programmes in developing countries resulting in incompatibility with socio-economic and sustainable development aspect.

²⁷ AGGARWAL, *supra* note 13.