
Without judicial intervention, the mandate of corporate social responsibilities may never be realized.

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Abstract

This academic research aims to develop a relation between Corporate Social Responsibility (CSR) and Sustainable Development (SD) in India. This work also argues for a broader role for companies in discharging social responsibilities in India, a role which would be compatible with actual and prospective developments in India. Without judicial intervention, the mandate of corporate social responsibilities may never be realized. A new legal regime is required in this area. This paper will also highlight the intricate relation between corporations and the environment which is of paramount importance. The corporations are utilizing the natural resources to make the end products but in turn giving back the environment the waste and emissions. Use of these products also leads to environmental

degradation. This ecological imbalance should be taken care of by each and every corporation as one of their good business practice and at the same time to give a healthy environment to our society.

INTRODUCTION:

The case of Bhopal Gas Leak which occurred on 3rd Dec, 1984 is no doubt a worst example of negligence in industrial sector. It is a fact that the Government of India is highly responsible for this disaster but the liability of the US based MNC in this above mentioned case cannot be overlooked. The liability of this parent company and the Indian Government were questioned in terms of their legality and morality. The ethical questions were also raised against them for running such dangerous and hazardous industries without safeguarding the interest of the citizens.¹

Many years after the Bhopal gas leak, the worst industrial catastrophe in history, it remains unclear who must bear legal responsibilities.²

¹ SHYAM DIVAN& ARMIN ROSENCRAZ, ENVIRONMENTAL LAW & POLICY IN INDIA 549 (2001)

² SHYAM DIVAN& ARMIN ROSENCRAZ, ENVIRONMENTAL LAW & POLICY IN INDIA 550 (2001)

When oleum gas leaked from one of the units of Shriram Foods and Fertilizers Industry in Delhi in December 1985, The Supreme Court formulated the following two principles of :

- Absolute liability (where act of God and sabotage constitute the only exceptions) and
- Enterprise liability where the amount of compensation would depend upon the capacity of the industry.³

Right to life implies the right to live in pollution free and ecologically balanced environment. Whether the environment can really be protected these days when almost all the countries in South-East Asia are still developing? It is quite obvious that the development is achieved through industrialization, but at the same time we should not forget that the industrialisation is the main cause of environmental degradation. To resolve this issue, the experts worldwide have come up with a doctrine called 'Sustainable Development', i.e. there must be balance between development and ecology.⁴

³ Dr.UshaRamanathan, Liability and Environmental Damage, The Indian Experience, available at http://ielrc.org/activities_conference_0402/assets/kl/040226_UshaRamanathan.pdf. (Last visited on November 12, 2017).

⁴ Sustainable Development in Indian Constitution, available at <http://www.legalserviceindia.com/articles/jud.html> (Last visited on March 20, 2017).

The concept of 'Sustainable Development' can be traced back as early as in 1972 in the Stockholm Conference. So it is not a new concept though it was given a definite shape in a report by World Commission on Environment and Development (WCED), which was known as 'our common future'. The commission, which was chaired by the then Norway Prime Minister, Ms. G.H. Brundtland 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".⁵

The abovementioned report is also popularly known as 'Brundtland report'. The concept was further discussed under Agenda 21 of UN conference on environment and development held in June 1992 at Rio de Janeiro, Brazil.

Constitution of India is one of the very few constitutions in the world, which provides for specific provision for the protection and improvement of the environment. Articles: 21, 24, 39(a), 39(b), 48, 51A of the Indian Constitution are worth mentioning.

Since 1972, India has been taking some concrete steps towards protection of environment as result of which, a mass of environmental legislations have evolved.

⁵ Brundtland Report available at <http://www.sustainablecities.dk/en/actions/a-paradigm-in-progress/brundtlandreport-our-common-future> (Last visited on November 22, 2017)

Some important legislations which can be mentioned here are as follows: The Environment (Protection) Act 1986 ("EPA"); Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Wildlife (Protection) Act; 1972, Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008 ("Hazardous Waste Rules"); The Public Liability Insurance Act, 1991; The Forest (Conservation) Act, 1927; National Green Tribunal Act 2010.

Chief Justice Bhagwati in *M.C.Mehta v.Union of India* ⁶ declared in unambiguous terms that "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. We no longer need the crutches of a foreign legal order".

Some such principles and doctrines propounded by the Indian Judiciary are ⁷

- Principle of Absolute Liability
- Polluter Pays Principle
- Precautionary Principle
- Public Trust Doctrine

⁶ *M.C.Mehta v.Union of India* AIR 1987 SC 1086 at p1089

⁷ INTRODUCTION TO ENVIRONMENTAL LAW, S.SANTHAKUMAR 101(2005).

- Concept of Sustainable Development

- Inter-generational Equity.

Thus it is essential that the natural\environmental resource base be used wisely and sustainably. In *Vellore Citizen's Welfare Forum v. Union of India and Others*⁸ it was held that "the Precautionary Principle" and "the Polluter's Pays Principle" are essential features of "Sustainable Development". "Polluter Pays Principle" as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

Nowadays a good number of companies have started promoting their CSR strategies as the investors, customers and the public are demanding them to be more responsible and sustainable. It is evident that in some cases CSR is the outcome of various social, economic and environmental pressures. CSR should also take into account the climate change, sustainable management of natural resources and consumer protection along with the compliance of human rights standards, labour and social security arrangements. The concept of Climate Justice should also be taken into account by Corporations while formulating their policies on CSR.

⁸ *Vellore Citizen's Welfare Forum v. Union of India and Others* 1996, 5SCC 647-648.

Research Objectives:

The objective of this paper is to look at the inter-relations between corporate law and environmental law within the framework of constitutionalism. My primary goal will be looking at corporate social responsibility which defines these inter-relations. It will attempt to find out the socio-environmental effects of a company's economic actions to society at large and thereby giving the common man an understanding of the various initiatives undertaken by corporate and the role that is played by the Government in the field. So the main objective of this research paper would be to prevent the future environmental degradation, which will be caused by various corporations.

Research Question:

Is the Corporate Social Responsibility, accountable under the Constitutional Mandate to observe the principle of Sustainable development, at the time of discharging its functions?

Research Hypothesis:

The Constitution of India which commenced from 26th of January 1950 most of the people thought that it is not well equipped with the concept of Sustainable

Development seems to be wrong when we looked to Part III and Part IV of the Constitution. Accordingly the responsibilities to Corporations with regard to environmental accidents also being raised by Courts in India in the light of constitutional mandate, environmental legislations and International environmental law principles. It is evident from the environmental protection cases that courts in India (in particular Supreme Court) raised the issue of Sustainable development while protecting the environment and trade. The researcher would like to ascertain by this research that the role of judiciary is of paramount consideration for protecting the environment while looking at the interest of corporations with the help of the concept of Sustainable Development.

Research Methodology:

The method of research will be mainly Doctrinal. The first will be an extensive review of general and India specific literature on Sustainable Development and Corporate Social Responsibility. Study of archival documents will also be of great help to the researcher to understand the historical background of the research topic. These might include press releases, press interviews of key individuals, and minutes of various meetings of the companies. It is also a matter of equal importance that multiple techniques are adopted in the collection of data to facilitate multiple level analyses. The researcher will mainly depend on primary

and secondary sources of data. The researcher will also visit some companies where ever it is relevant with the research question only.

Recognition of International environmental law obligation under Indian Constitution

It is interesting to note that natural resources had been stored virtually untouched in the Earth for millions of years. But since the start of the industrial revolution vast amounts of these resources had been exploited within a period of just a couple of hundreds of years at unimaginable rates, with all the waste from this exploitation going straight in the environment (air, water, land) and seriously damaging its natural processes.⁹ Although pollution had been known to exist for a very long time (at least since people started using fire thousands of years ago), it had seen the growth of truly global proportions only since the onset of the industrial revolution during the 19th century.

Environmental degradation in India has been caused by a variety of social, economic, institutional and technological factors. Rapidly growing population, urbanization and industrial activities have all resulted in considerable deterioration

⁹ Peter Malanczuk, "International Law and Municipal Law", In: Akehurst's Modern Introduction to International Law, 7th Revised Edition, (New York: Routledge, 1997), chapter 4, p. 65

in the quality and sustainability of the environment. Environmental ethics have also formed an inherent part of Indian religious precepts and philosophy.¹⁰

The importance of Judiciary in a democratic setup for protection of life and personal rights can hardly be overestimated. India has a highly developed judicial system with the Supreme Court having plenary powers to make any order for doing complete justice in any cause or matter and a mandate in the Constitution, to all authorities, Civil and Judicial, in the territory of India to act in aid of the Supreme Court. The scope of Writ Jurisdiction of the High Courts is wider than traditionally understood and the judiciary is separate and independent of the executive to ensure impartiality in administration of justice.

In considering the role of the judiciary in environmental governance, there are two issues that need to be considered. The first is the role of the judiciary in the interpretation of environmental law and in law making and the second is the capability of jurists to effectively interpret the increasingly cross-linked issues brought to their attention.

¹⁰ The Supreme Court of India has interpreted the constitutional provisions on the executive power in *Samsher Singh v. State of Punjab*, AIR 1974 SC 2192, by adopting the „residuary test“ in defining the executive power. According to this, the executive power of the state is what remains after the legislative and judicial powers are separated and removed. The court went on to add that the real executive power is vested in the Prime Minister and his Council of Ministers and that the President has to act only on the advice tendered by the Council of Ministers.

Historical Overview:

The Environment Protection Act 1986 defines environment as “environment includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property.”

Besides the physical and biological aspect, the “environment” embraces the social, economic, cultural, religious, and several other aspects as well. The environment, thus, is an amalgamation of various factors surroundings an organism that interact not only with the organism but also among themselves. It means the aggregation of all the external conditions and influences affecting life and development of organs of human beings, animals and plants.

Policy and Laws in Ancient India:

In the ancient India, protection and cleaning up of environment was the essence of the Vedic culture. The conservation of the environment formed an ardent article of faith, reflected in the daily lives of the people and also enshrined in myth folklore, art, culture and religion. In Hindu theology forests, trees and wildlife protection held a place of special reference.

Policy and Laws in British India

¹¹BY AROUND 1860, Britain had emerged as the world leader in deforestation, devastation its own woods and the forest of Ireland, South Africa and north eastern United States to draw timber for shipbuilding, iron-smelting and farming. In the early nineteenth century, the Raj carried out a fierce onslaught on the sub continent's forests. The revenue orientation of the colonial land policy also worked towards the denunciation of forests.

The imperial forest department was formed in 1864, with the help of experts from Germany, the country which was at the time the leading European nation in forest management. The first inspector-general of forests, Dietrich Brandish, had been a botanist and recognise awesome task of checking the deforestation, forging legal mechanism to assert and safeguard states control over the forests. It was his dual sense that the railway constituted the crucial watershed with respect to the water management in India- the need was felt to start an appropriate department, and for its effective functioning legislation was required to curtail the previously untouched access enjoyed by the rural communities.

¹¹ Subject-matter of the legislative competence of the Parliament has been enumerated in Article 256 read with List I and List III of the Seventh Schedule. See D.D. Basu, Introduction to the Constitution of India, 20th Edn. (Nagpur: Wadhwa Sales Corporation 2008).

Policy and Laws post-independence of India:

The Indian Constitution, as adopted in 1950, did not deal with that the subject of environment or prevention and control of pollution as such (until 1976 Amendment). The original text of the constitution under Article 372(1) has incorporated the earlier existing laws into the present legal system and provides that notwithstanding the repeal by this constitution of enactment referred to in article 397, but subjected to the other provisions of the constitution, all laws in force immediately before the commencement of the constitution shall remain in force until altered, repealed or amended by a competent legislature or other competent authority. As a result, even after five decades of independence. The plethora of such laws is still in operation without any significant changes in them.

The Principles on environment

With a view to protecting and improving the environment, different legislations have been made and different regulations, rules have been issued. The Government of India, through its Ministry of Environment and Forests is administering has enacted nationwide comprehensive laws.

1972 Stockholm Declaration affirms that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that

permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations..." This shows that it has been internationally recognized that man's fundamental rights embraces the need to live in an uncontaminated environment but it also puts forth man's obligation to protect the environment for posterity.

The Supreme Court has laid down that the "Precautionary principle" and the "Polluter Pays Principle" are essential features of "sustainable development". These concepts are part of Environment Law of the country.

The "Precautionary Principle" establishes that a lack of information does not justify the absence of management measures. On the contrary, management measures should be established in order to maintain the conservation of the resources. The assumptions and methods used for the determination of the scientific basis of the management should be presented.

The essential ingredients of the precautionary principle are:

- Environmental measures- by the state government and the statutory authorities- must anticipate, prevent and attack the causes of environment degradation.

- When there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measure to prevent environmental degradation.
- The “Onus of Proof” is on the actor or the developer/industrialist to show that his action is environmentally benign.
- Precautionary duties must not only be triggered by the suspicion of concrete danger but also by concern or risk potential.

In *M.C. Mehta v Union of India (CNG Vehicle Case)* (AIR 2002 SC 1696)

The supreme court observed that any ‘auto-policy’ framed by the Government must, therefore, of necessity conform to the constitutional principles well as overriding statutory duties cast upon the government under the EPA. The auto policy must adopt a ‘precautionary principles’ and make informed recommendations which balance the needs of transportation with the need to protect the environment.

The “polluter pays” principle came about in the 1970's when the importance of the environment and its protection was taken in world over. It was subsequently promoted by the Organization for Economic Cooperation and development

(OECD). The 'polluter pays' principle as interpreted by the Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

In other words, Polluter should bear the cost of pollution as the polluter is responsible for pollution'. The principle demands that financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause pollution.

It may be noted that the polluter pays principle evolved out of the rule of 'absolute liability' as laid down by the apex court in Sriram Gas Leak Case.

The Constitutional and Legislative measures – The Constitution of India and Environment.

To protect and improve the environment is a constitutional mandate. It is the commitment for a country wedded to the ideas of a welfare State. The Indian constitution contains specific provisions for environmental protection under the chapters of Directive Principles of the State Policy and Fundamental Duties. The absence of any specific provision in the Constitution recognising the fundamental

right to (clean and wholesome) environment has been set off by judicial activism in the recent times.

Article 48A and 51 (A)(g): A global adaption consciousness for the protection of the environment in the seventies prompted the Indian Government to enact the 42nd Amendment (1976) to the Constitution. The said amendment added Art. 48A to the Directive Principles of State Policy. It Declares:-

“the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”.

Art. 51(A) (g): “to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures”.

The amendments also introduced certain changes in the Seventh Schedule of the Constitution. ‘Forest’ and ‘Wildlife’ were transferred from the State list to the Concurrent List. This shows the concern of Indian parliamentarian to give priority to environment protection by bringing it out the national agenda. Although unenforceable by a court, the Directive Principles are increasingly being cited by judges was a complementary to the fundamental rights. In several environmental cases, the courts have guided by the language of Art. 48A. and interpret it as

imposing "an obligation" on the government, including courts, to protect the environment.

In *L.K Kollwal V State of Rajasthan*, a simple writ petition by citizens of Jaipur compelled the municipal authorities to provide adequate sanitation. The court observes that when every citizen owes a constitutional duty to protect the environment (Art.51A), the citizen must be also entitled to enlist the court's aid in enforcing that duty against recalcitrant State agencies. The Court gave the administration six month to clean up the entire city, and dismissed the plea of lack of funds and staff.

The Public Trust Doctrine, evolved in *M.C. Mehta v. Kamal Nath*, states that certain common properties such as rivers, forests, seashores and the air were held by Government in Trusteeship for the free and unimpeded use of the general public. Granting lease to a motel located at the bank of the River Beas would interfere with the natural flow of the water and that the State Government had breached the public trust doctrine.

A matter regarding the vehicular pollution in Delhi city, in the context of Art 47 and 48 of the Constitution came up for consideration in *M.C. Mehta vs. Union of India (Vehicular Pollution Case)*. It was held to be the duty of the Government to

see that the air did not become contaminated due to vehicular pollution. The Apex court again confirming the right to healthy environment as a basic human right stated that the right to clean air also stemmed from Art 21 which referred to right to life. This case has served to be a major landmark because of which lead-free petrol supply was introduced in Delhi. There was a complete phasing out old commercial vehicles more than 5 years old as directed by the courts. Delhi owes its present climatic conditions to the attempt made to maintain clean air.

The Ganga Water Pollution case: M C Mehta V. Union of India, AIR 1988, SC 1037. The owners of some tanneries near Kanpur were discharging their effluents from their factories in Ganga without setting up primary treatment plants. The Supreme Court held that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. The Court directed to stop the running of these tanneries and also not to let out trade effluents from the tanneries either directly or indirectly into the river Ganga without subjecting the trade effluents to a permanent process by setting up primary treatment

In the very recent case of T.N. Godavarman Thirumulpad v. Union of India, a case concerning conservation of forests, Justice Y.K. Sabharwal, held: Considering the compulsions of the States and the depletion of forest, legislative measures have shifted the responsibility from States to the Centre. Moreover any threat to the ecology can lead to violation of the right of enjoyment of healthy life guaranteed under Art 21, which is required to be protected. The Constitution enjoins upon this Court a duty to protect the environment.

Article 246: Art.246 of the Constitution divides the subject areas of legislation between the Union and the States. The Union List (List I) includes defence, foreign affairs, atomic energy, interstate transportation, shipping, air trafficking, oilfields, mines and inter-state rivers. The State List (List II) includes public health and sanitation, agriculture, water supplies, irrigation and drainage, fisheries. The Concurrent list (List III) (under which both State and the Union can legislate) includes forests, protection of wildlife, mines and minerals and development not covered in the Union List, population control and factories. From an environmental standpoint, the allocation of legislative authority is an important one – some environmental problem such as sanitation and waste disposal, are best tackled at the local level; others, like water pollution and wildlife protection, are better regulated uniform national laws.

Article 253: Art.253 of the Constitution empowers Parliament to make laws implementing India's international obligations as well as any decision made at an international conference, association or other body. Art.253 states: Notwithstanding anything in the foregoing provision provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. The Tiwari Committee in 1980 recommended that a new entry on "environmental Protection" be introduced in the concurrent list to enable the centre to legislate on environmental subjects, as there was no direct entry in the 7th seventh enables Parliament to enact comprehensive environment laws. The recommendation, however, did to consider parliament's power under Art.253

Article 14 and Article 19 (1) (g): ART. 14 states: "The states shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The right to equality may also be infringed by government decisions that have an impact on the environment. An arbitrary action must necessary involve a negation of equality, thus urban environmental groups often resort to Art.14 to quash arbitrary municipal permission for construction that are contrary to development regulations.

Article 21: "No person shall be deprived of his life or personal liberty except according procedure established by law."

In *Maneka Gandhi v Union of India*, the Supreme Court while elucidating on the importance of the 'right to life' under Art. 21 held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity (Bhagwati J.)

Similarly while interpreting Art.21 in *Ganga Pollution Case* as discussed before, Justice Singh justified the closure of polluting tanneries observed: "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life. Health and ecology have greater importance to the people."

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