Chapter-6

Corporate Social Responsibility

6. 1. Introduction.

Globalization has influenced trade all over the world; companies have looked for new opportunities in doing business outside their home country. In recent years Corporate Social Responsibility herein after referred as CSR, has gained growing recognition as a new and emerging form of governance in business. CSR has emerged as a significant subject of public policy, in many countries as well as internationally. Considered by some that it is to be "the business issue for twenty-first century”.

CSR become so important in the light of the collapse of the important global companies like, Enron, WorldCom, and Satyam Computers and so on. It is already established in a global context, with international reference standards set by the United Nations Organization for Economic Co-operation and Development herein after referred as OECD guidelines and International Labour Organization herein after referred as ILO conventions. With brand value and reputation increasingly being seen as one of a company’s most valuable assets, CSR is now seen as building loyalty and trust amongst shareholders, employees and customers\(^1\). CSR applies to a wide variety of company activities, especially in enterprises that operate multi-nationally in very different social and environmental settings.

6.2. The Sources, Definition, and Meaning of Corporate Social Responsibility

6.2.1. The Source of the Current Concept of CSR.

The current form of CSR emerged in the 1990s and represents a convergence of ideas and developments. The most significant source for the current CSR concept comes from concern over the environment. It is related to the idea of sustainable development herein after referred as SD, developed by the Brundtland Commission\(^2\) in the late 1980s and accepted by the Rio Earth Summit in 1992.\(^3\) Trade unionists played major role in linking the environment with the social during this period. They also succeeded in obtaining recognition that there was a social dimension to sustainability. This becomes an integral part of the sustainable development concept. Behind this idea lies the widely accepted belief that measures that are good for the environment can also be good for the financial performance of a company. Another aspect of the environment influence on the concept of CSR was that the non-financial performance of an enterprises could be objectively measured, reported, audited certified in ways similar to those that are used to measure, report, audit and certify the financial performance of the company. This thinking lay behind rapid and wide spread acceptance of the term “triple bottom line” which links the financial, environmental and social performance of the companies.

Yet another aspect of the environmental influence was the ecological approach to social issues represented in the concept of “stake holders.” Stake holders are considered to be any person or group affected by the activities of an enterprise. Corporations are expected to approach social issues by identifying “the impact” of

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\(^2\) See, Brundtland Report, from the United Nations World Commission on Environment and Development.

\(^3\) See, The Rio Declaration on Environment and Development (1992)
their activities, just as environmentalists demand that corporations identify the impact of their activities on the environment.

A second important source of the current concept of CSR can be traced to the consequences of the liberalization, deregulation, and privatization policies in the last twenty years. Embraced by governments seeking “low cost, low maintenance policy”, CSR fits in well with growth of public-private partnerships and the increasing use of NGO as service providers for new forms of philanthropy. A widely held view was that, as business assumed more of the tasks that society had previously expected governments to perform, the expectation of business with respect to its social responsibilities would increase.

A third source of the current concept of CSR relates to the course of conduct adopted by the companies and meant to be applied to the labor practices of their suppliers and sub-contractors. These “supplier codes” were response to negative publicity related to exploitation and abuse labor practices in the production of famous brand name goods. These codes raised questions as to how the companies that were adopting them could implement them-and how could they could prove to the public that these codes were actually being respected. The search for answers to these questions motivated a lot of private standards setting in the social area and led to the creation of an industry of private labor inspectors, or social auditors, as well as related multi-stake holders initiatives which came to have a profound impact on the CSR phenomenon.

Another source for the present concept of CSR is the incorporation of ideas drawn from the human resource development concerning the retention or training of the work force. Existing thinking practices in this area fit well with the CSR concept.
Companies came to describe their HRD policies as an aspect of their social responsibility towards their employee “stake-holders”, and as evidence that they were taking “high road” to being competitive. Industrial relations and collective bargaining are hardly ever mentioned, even where the subject is the company’s relation with its employees. Of course, the impact of successful employee retention on society is less significant for companies that outsourced most of their work. Moreover these kinds of HRD policies cannot have much of role in low-skill, labor-intensive industries operating in environments where basic human rights are not respected.

6.2.2. Definition of CSR.

CSR means the ethical behavior of business towards its constituencies or stakeholders. Nevertheless, there are a wide variety of definitions associated with the term “corporate social responsibility”, but no general agreement of terms. Let us discuss some of the definitions given by different authorities. United States Council on International Business defines CSR as follows,

"Corporate responsibility involves a commitment by a company to manage its role in society as producer, employer, marketer, customer and citizen-responsible and sustainable manner. That commitment can include a set of voluntary principles over and above applicable legal requirement that seek to ensure that the company has a positive impact on societies in which it operates.”

McWilliams and Siegal define CSR “Corporate Social Responsibility is actions which are above and beyond that required by law.” Third definition of CSR is “it is not about ‘doing good’, it is not even about being seen to be doing good, it is about recognizing a company’s responsibility to all its stakeholders group and acting

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in their best interests.”⁶ Fourth definition of CSR is “Corporate social responsibility is the overall relationship of the corporation with all of its stakeholders. These include customers, employees, community, owners/investors, government, suppliers and competitors. Through effective CSR practices, organizations will: achieve a balance between economic, environmental and social imperatives: address stakeholders expectation, demands, and influences: sustain share holder value”.⁷

Among the most frequently recurring elements in the various definitions of CSR are its voluntary nature and its emphasis on management initiatives and on managing social impact, as well as the idea that companies have stake holder whose interest must be taken into account. Sometimes question about meaning of the CSR lead to discussion of whether it is, in fact the right term to use.

Some prefer “Corporate Responsibility” because they believe that the word “social” does not include environmental. Other prefers “organizational responsibility or social responsibility because they do not believe that business enterprises should be singled out or treated differently from the other organizations or even governments.

Still others prefer the term corporate citizenship, with its implication that company should be regarded as individual having both rights and responsibilities. In any event, the term “corporate social responsibility” is used more often than the other terms.

6.2.3. Meaning of CSR.

Corporate Social Responsibility is a concept where by organizations consider the interests of society by taking responsibility for the impact of their activities on

⁶ Id.
customers, employees, share holders, communities and the environment in all aspects of their operations. This obligation is seen to extend beyond the statutory obligation to comply with legislation and sees organization voluntarily taking further steps to improve the quality of the life for employees and their families as well as for the local community and society at large. The increased awareness of CSR has also come about as result of the United Nation Millennium Development Goals in which a major goal is the increased contribution of assistance from large organizations, especially Multi-National Corporations, to help alleviate poverty and hunger, and for business to be more aware of their impact on society. There is a lot of potential for CSR to help with the development in poor countries especially community based initiatives. In UK, the term “Corporate Responsibility” is increasingly used instead of CSR, as a conscious move to expand the boundaries away from purely social or community issues to include border areas of the governance and environmental sustainability. CSR is often referred to as business responsibility and an organization’s response on environmental, social, and economic issues. Positive actions that reduce negative impact of an organization on these issues can be seen as a way of managing risk.

CSR is closely linked with the principle of sustainable development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends but also based on immediate and long term social and environmental consequences of its activities. CSR has a significant role in controlling the perils of uncontrolled development, satisfying the needs of the present generation and at the same time ensuring that the resources of future generations is not jeopardized.  

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maintenance of a sound environment, a healthier society or more ethical business practices through both internal and external action within the countries in which they operate. The area often lacking is CSR reporting in the area of labour rights and relations. One of the prime concerns of CSR should be the quality of Industrial relations within a company.

It must be a contradiction in terms for a firm that fails to apply collective agreements or respect employment contracts to be regarded as 'socially responsible'. One of the most significant issues within the CSR agenda concerns the dynamic relationship between CSR and good public governance. The limits both to corporate accountability through law and to ‘voluntary’ CSR-related actions by businesses lie with the public good governance agenda. Legislation to deal with worst case instances of irresponsible behavior and to set a minimum floor for business conduct will not work in the absence of effective drivers for business implementation and enforcement, whether they are market-based, or a result of enforcement through the state.

6.2.4. Fundamental Principles of CSR

Each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with participation of various level executives and should be approved by the Board. The CSR policy should normally cover following core elements.

6.2.4.1 Care for all Stakeholders

The companies should respect the interest of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should
develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.

6.2.4.2 Ethical functioning

Their governance systems should be underpinned by ethics, transparency and accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.

6.2.4.3 Respect for worker’s rights and welfare.

Company should provide a workplace environment that is safe, hygienic and humane and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skill for courier advancement, on equal and non-discriminatory bases. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressel system, should not employ child or forced labour and provide and maintained equality of opportunities without any discrimination on any grounds in recruitment and during employment.

6.2.4.4 Respect for human rights

Companies should respect human right for all and avoid complicity with human rights abuses buy them or by third party.

6.2.4.5 Respect for environment

Companies should take measures to check and prevent pollution, recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should pro-actively respond
to the challenge of climate change by adopting the cleaner production methods, promoting efficient use of energy and environment friendly technologies.

6.2.4.6 Activities for Social and Inclusive development.

Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include education, skill building for livelihood of people, health, cultural and social welfare etc, particularly targeting at disadvantaged section of the society.

6.2.5 The Nature of CSR

The most controversial issue in the definition of CSR centers on the idea that it is about the voluntary activities of companies “above and beyond legal requirements.” The question is not whether companies should respect the law-some defend voluntary nature of CSR by saying that it assumes compliance with law. Although it is increasingly accepted that CSR is about voluntary activities this has not ended the controversy over the voluntary nature of CSR. Two unresolved questions keep the controversy alive. The first concerns adequacy and role of the business regulation and the second is whether business should terminate its social responsibilities where society has not incorporated its expectations of business into legally binding requirements. Some see CSR as alternative to regulation, and some promoters CSR want acceptance of its voluntary nature to translate into acceptance that voluntary initiative are sufficient and preferred means of addressing the social consequences of business activity.

If CSR is to be a voluntary concept, then it is important that it be distinguished from other concepts concerning the relationship between business and society. The
term “corporate accountability” is now being used by some refers to the obligation imposed on corporations by governments, and to the corporate governance framework established to hold management accountable. Thus corporations are said to be “accountable” in binding sense both to their shareholders and to the governments under whose laws they are created and must operate. There is little difference in English between the meanings of the words “accountability” and “responsibility”. There is, however, a need for terms that can be used to distinguish between the regulatory and corporate governance idea in this use of the term “corporate accountability” on the one hand, and the voluntary activity idea most often meant by the term “corporate social responsibility” on the other. It is widely accepted that regulatory and corporate governance frameworks can shape corporate behaviors more than CSR principles or initiatives. There is also growing recognition that these regulatory frameworks are in adequate.

Distinguishing the voluntary from the binding is not the only important distinction. The voluntary nature of CSR is often interpreted by business to mean that, since CSR activities are not binding, they are always optional and therefore can be determined solely by the business. Through the use of voluntary course and other forms private standard-setting, companies decide what they consider to be their responsibility to society. CSR is international in nature although it can take different forms in different countries; it is more often than not about the internationally applicable behaviors of multi-national companies. CSR has relationship to globalization, is the subject of an international debate and has attracted the attention of intergovernmental organizations.
6.2.6 Some of the drivers pushing business towards CSR

6.2.6.1 The shirking role of governments

In the past, governments have relied on legislations and regulation to deliver social and environmental objectives in the business sector. Shirking government resources coupled with a distrust of regulations, has led to the exploration of voluntary and non-regulatory initiatives instead.

6.2.6.2 Demands for greater disclosure.

There is a growing demand for corporate disclosure from stakeholders, including customers, suppliers, employees, communities, investors and activist organizations.

6.2.6.3 Increased Customer Interest.

There is evidence that the ethical conduct of the companies exerts a growing influence on the purchasing decisions of the customers.

6.2.6.4 Growing Investors Pressure.

Investors are changing the way they assess the company’s performance, and are making decisions based on criteria that include ethical concerns. The social investments forum reports that in the US in 1999, there was more than 2 trillion dollars worth of assets invested in portfolios that used screens linked to the environment and social responsibility.

6.2.6.5 Competitive Labor Markets

Employees are increasingly looking beyond pay-checks and benefits, and seeking out employers whose philosophies and operating practices match their own
principles. In order to higher and to retain skill employees, companies are being forced to improve working conditions.

6.2.6.6 Supplier Relations.

Many suppliers to the company are increasingly interested in business affairs of the company. On the other hand the company also taking steps to ensure that suppliers interest also satisfied.

6.2.7 Advantages of CSR


i. Improved financial performance.

ii. Lower operating costs.

iii. Enhanced brand image and reputation.

iv. Increased sales and customers loyalty.

v. Greater productivity and quality.

vi. More ability to attract and retain employees.

vii. Reduced regulatory oversight.

viii. Access to capital.

ix. Work force diversity.

x. Product safety and increased liability.

6.2.7.2. Community Benefits.

I. Charitable contributions.

II. Employee volunteer programs.

III. Corporate involvement in community education, Employment and homelessness.

IV. Product safety and quality.
6.2.7.3 Environmental Benefits.

i. Greater material recyclability.

ii. Better product durability and functionality.

iii. Greater use of renewable resources.

iv. Integration of environmental management tools into business plans, including life cycle assessment and costing, environmental management standards, and eco-labeling.

6.3 International conventions and Guidelines on CSR.

1. ILO Conventions

2. OECD Guidelines for Multinational Enterprises

3. UN Global Compact


6.3.1 ILO

The International Labor organization herein after referred as ILO is a United Nation agency dealing with labour issues, particularly international labour standards and decent work for all. ILO is tripartite governing structure representing government; employers and workers. 185 of the 193 member of UN is the member of ILO. ILO registers complaints against entities that are violating international rules; however, it does not impose sanction on governments. The preamble of ILO says that universal and lasting peace can be established only if it is based upon social justice. Further it specifically says that regulation of labour supply, working conditions including maximum working day and week, the prevention of unemployment, the provision of an adequate living wages, protection of workers against sickness.

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9 See, Preamble of the ILO Constitution. Its preamble says that universal and lasting peace can be established only if it is based upon social justice.
diseases, and injury arising out of his employment, the protection of children, young persons and women, and provision for old age and injury. ILO has passed number of convention which are primarily deals with CSR. The Convention of ILO can be taken as standard measurement for evaluating the CSR. Some of the important conventions are dealt below.

6.3.1.1 Convention on Freedom of Association and Protection of the Right to Organize.\(^\text{10}\)

This convention provides privilege of forming the freedom of association and protection of the right to organize. The recognition of the principles of freedom of association to be means of improving conditions of labour and of establishing peace. Convention recognizes that worker can form their trade union by which they can effectively settle their dispute by means of collective bargaining. Unity of worker through their association in Industry is now indispensible in every country and that would ensure better working conditions and better bargaining power of workers.

6.3.1.2. Tripartite Consultation (International Labour Standards) Convention.\(^\text{11}\)

The Convention obligates each member of ILO to form tripartite committees for effective consultation in respect of matters concerning the activities of International Labour Organization. The tripartite committee consists of representative of government, worker and employer. The main object of the Convention is that the government should take the worker and employers into confidence while drafting the policy of industry or labour. This ensures effective participation of worker as well as employer in policy making decision.

\(^{10}\) ILO Convention No 87: Convention on Freedom of Association and Protection of the Right to Organize. 1948.

6.3.1.3. Convention on Worst forms of Child Labour.\textsuperscript{12}

Child labour problem is very serious problems of developing and under developing nation. It needs to be eradicated from the grass root level with cooperation of international community. This convention obligates each state to see that no children less than 18 years should be employed in any kind of industry. Child labour takes away the important right of child to get to education and enjoy his childhood. Moreover children are going to be future citizen and assets of the nation. Hence they required to spend their childhood age in playground and school.

6.3.1.4. Convention on Occupational Safety and Health.\textsuperscript{13}

Safety and Health of worker is paramount interest of the Nation for which there must be obligation on the part of the employer to provide certain safety measures to the workers. It is the responsibility of employer to see that working place must be free from injuries which are likely to be caused to worker while discharging their duty. The worker must also co-operate with employer and government in ensuring better safety measures for worker. Along with the safety the works should get better working conditions at the premises of work because unhygienic conditions likely to make effect on the workers health. The Convention further says that in case worker suffers injury or health problems, he must have effective relief against guilty party.

6.3.1.5. Declaration on Social Justice for fair Globalizations.\textsuperscript{14}

ILO has noticed that the invention in technology and science has boosted the international trade beyond imagination. Entire universe has become village and most

\textsuperscript{12} ILO Convention No 182: Convention on Worst forms of Child Labour.1999.
\textsuperscript{13} ILO Convention No 155: Convention on Occupational Safety and Health. 1981.
of the countries are also getting rich reap for the trade and industry. However all these benefits are not reaching every corner of the nation? Therefore there is need to ensure that every class of society must be benefited by these development. It advises that such developed technology must be made utilized in every sector of the nation.


The main object of the convention is to abolish bonded or forced labour system in every corner of the universe. It says that no person can be forced or compelled against his consent to work in any employment including public employment. However there are certain exception are created like, compulsory military service, compulsory service under the order of court or work under emergencies situations. There are number of other convention deals with other social and economical interest of workers, society and industry.

6.3.2. OECD Guidelines for Multinational Enterprises

The current wave of globalization, and in particular role of foreign investment as one of its main motors, has reopened the policy debate about international rights and obligations of Multi-National Enterprises. There is strange paradox in the evidence and in the international debate about the impact of foreign investment on labour rights, decent works and local community rights. Surveys on foreign investor’s intentions suggests that in most sector market excess, good governs, skills and education levels are more important in attracting investments than low wages or submissive workers and concern of local community. Yet, rather than improving

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living and working conditions, the race to attract the foreign investment often appears to pressure governments into reducing worker’s rights in order to minimize the labour costs. The most brutal examples are often in Special Economic Zone with intention to boost the production and export of goods. Generally the industry acquire large area of land for industrial purpose with low cost and exploiting the poor farmers, ignoring the claim of local community rights, and giving less concern about the environmental hazards of environmental problems. Multi-National Companies may also simply decide to switch countries, or at least threaten to do so, when faced with the labour dissatisfaction (or the prospect of cheaper labour market elsewhere), and this in good as well as in hard times. Foreign investment must ensure “race to top” and stop the “race to bottom” form the point of labour perspective.

The OECD guidelines for Multi-National Enterprises were first agreed upon in 1976, following public concern that MNE were becoming to powerful and unaccountable. This was in the light of the role of some US based companies in the Pinochet coup that overthrew the Allende government in Chile. They were rapidly followed by the ILO Tripartite Declaration of Principles concerning MNE and social policy, and negotiations opened at the UN in New York to establish a UN Code on Transnational Corporations. The UN Code did not survive the political swift to de-regulation in the 1980s, and the OECD guidelines themselves fell into partial disuse as most OECD governments showed little political will to enforce them.

The collapse of negotiations on the Multi-lateral Agreement on Investment at the OECD in 1999, and the appearance of Company Codes and other initiatives of CSR in the late 1990s, led to swing back in the political climate on company responsibility. This opened the way for a substantial revision of the guidelines and notably their implementation procedures in 2000. The revision was concluded in June
2000 and resulted in major changes such as the strengthening of the implementation of producers, clarification of their global applicability, the coverage of all core labour standards, and their extension to suppliers and sub-contractors. The guidelines are recommendations for good corporate practice, primarily addressed to enterprises based in the countries that adhere to them. The OECD guidelines are applicable to not only the thirty OECD countries but also applicable to OECD based company’s operations worldwide.

6.3.2.1. Implementation of OECD Guidelines

The guidelines may not be binding in legal sense at international level, but they are not optional for corporations. If companies could simply pick and choose among the provisions of the guidelines or subject them to their own interpretations, then they would have no value. Nor does their application depend on endorsement by companies. The OECD’s guidelines are the only multi-laterally endorsed and comprehensive rules that government have negotiated in which they commit themselves to help solve problems arising with corporations. Most importantly the ultimate responsibility for enforcement lies with governments. The key therefore is implementation. Every adhering government has to set up a National Contract Point (NCP) for promoting and implementing the guidelines. These NCP’s may be organized in different ways. Some involve single government agency, while others are multi-agency. Some are tripartite (government, labour, and business).

When the company is believed to be in violation of the guidelines a trade union, an NGO or another interested party can raise the case with the NCP. The NCP should then try to resolve the issue. A range of options is available, including offering a forum for discussion for the affected parties, conciliation or mediation. In deciding
what course of action to take, the NCP is required to make an initial assessment as to whether a case “merits further examination.” It must then respond to the party that raised the case. If the NCP decides that the issue does not further considerations, it must give reasons for its decision. The following factors may be considered for implementation of CSR.

i. The CSR policies of the business entity should provide for an implementation strategy which should include identification of projects/activities, setting measurable physical targets with time frame, organizational mechanism and responsibilities, time schedule and monitoring. Companies may partner with local authority, business associations and civil society/non-governmental organizations’. They influence the supply chain for CSR initiatives and motivate employees for voluntary effort for social development. They may evolve system of need assessment and impact assessment while undertaking CSR activities in particular area. Independent evaluation may also be undertaken for selected project/activities from time to time.

ii. Companies should allocate specific amount in their budgets for CSR activities. This amount may be related to profits after tax, cost of planned CSR activities or any other suitable parameter.

iii. To share experiences and network with other organisation the companies should engage with well established and recognized programs/platforms which encourage responsible business practices and CSR activities. This would help companies to improve on their CSR strategies and affectively project the image of being socially responsible.
iv. The companies should disseminate information on CSR policy activities and progress in a structured manner to all their stakeholders and the public at large through their website, annual reports, and other communication media.

6.3.2.2. The Guidelines have not been respected. Since 2000

While the Guidelines are primarily addressed to MNEs, they are not aimed at introducing differences of treatment between multinational and domestic enterprises. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both. Likewise, while SMEs may not have the same capacities as larger enterprises, they are invited to observe the Guidelines “to the fullest extent possible”. The Guidelines are freely available to all user organizations.\textsuperscript{17} Since the Guidelines do not require users to publicize their use, the actual number of users is not known. Nonetheless, surveys among large enterprises indicate that a significant proportion refer to the Guidelines in their CSR policies.

The OECD Investment Committee, in consultation with BIAC and TUAC, is responsible for oversight of the Guidelines. Adhering governments are individually responsible for promoting use of the Guidelines, and for processing any “specific instances”, through their NCPs. They meet annually at the OECD and report to the investment Committee, which conducts a “peer review” of implementation. The Guidelines were expressly designed to strengthen the existing international normative framework. Among other norms, they reference the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21, and the Copenhagen

\textsuperscript{17} OECD, Chapter 7: Policies for Promoting Responsible Business Conduct, in Policy Framework for Investment, 2006.
Declaration for Social Development. The Guidelines can readily be used in conjunction with other instruments.\textsuperscript{18} Explanatory materials have been developed to outline their relationship with the UN Global Compact, The principles for Responsible Investment, and with the GRI Guidelines.

6.3.2.3 Purpose of the declaration

The purpose of the Declaration is to encourage the positive contribution which MNEs can make to economic and social progress, and to minimize and resolve difficulties arising from their operations. The Declaration was one of earliest international instruments covering the social dimension of business. It was negotiated between the employees, employers and workers in the year 1977. The Declaration sets out principles in the field of general policies, employment, and training, conditions of work and life and industrial relations. All government, employer and worker organizations are recommended to observe the principles on a voluntary basis.

6.3.2.4. Broad classification of OECD guidelines.

6.3.2.4.1. General Policies.

Enterprises should,

i. Contribute to economic, social and environmental progress with view to achieve sustainable development.

ii. Respect the human rights of those affected by their activities.

iii. Encourage local capacity buildings.

iv. Encourage human capital formation by employment opportunities.

v. Refrain from seeking or exemptions not contemplated in laws.

vi. Support and uphold good corporate governance principles.

\textsuperscript{18} \url{www.oecd.org/daf/investment/guidelines}. Accessed on October 12 2009.
vii. Develop and apply effective self regulatory practices.

viii. Promote employee awareness of, compliance with company policies.

ix. Refrain from the discriminatory or disciplinary actions.

x. Encourage the co-operation among the stake holder of the company.

xi. Abstain from any improper involvement in local political activities.

6.3.2.4.2. Disclosures

i. Enterprises should ensure the relevant information about its activity at appropriate time, regularly and reliable information.

ii. Enterprises should apply high quality standards for disclosure, accounting and auditing.

iii. Enterprises should disclose basic information showing their detail identity, address and operations.

iv. Enterprises should also disclose material information on, the financial and operating results of the company, objectives, major share ownership, membership of Board, risks factor, governs structures etc.

v. Enterprises are encouraged to communicate additional information in respect of statement of business conduct including information on the social, ethical and environmental of the enterprises.

6.3.2.4.3. Employment and Industrial Relations

i. Enterprises should respect the rights of workers and trade unions, prohibit child labour, eliminate forced labour, and not discriminate their workers.

ii. Provide necessary facilities to worker and their representative for promotion of co-operation.

iii. Provide necessary information to workers.
iv. Observe standards of employment and Industrial relations on par with local industries. Further take adequate steps to ensure safety of workers.

6.3.2.4.4. Environment

i. Enterprises should maintain environmental management.

ii. Enterprises should give due respect to the confidentiality and intellectual property rights.

iii. Assess and address in respect of forecasting the environmental and safety impacts.

iv. Provide adequate education to workers about industry disaster matters.

v. Contribute towards the development of environmental issues.

vi. Have contingence plan in advance in case of industry disasters.

6.3.2.4.5. Combating bribery

i. Enterprises should not directly or indirectly offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.

ii. Ensure that remuneration of agents is appropriate and for legitimate services only.

iii. Enhance the transparency of their activities in the fight against bribery and extortion.

iv. Promote employee awareness and compliance with company policy against bribery and extortion.

v. Adopt management control system that discourages bribery.

6.3.2.4.6. Consumer Interest

i. Enterprises should ensure that goods and services they provide met all agreed or legal standard.
ii. Enterprises should provide accurate and clear information of goods and services in respect of safety, maintenance and storage and disposal.

iii. Provide and transparent and effective procedures in respect of consumer complaints.

iv. Enterprises should not adopt unfair trade practice.

v. Enterprises should respect the privacy and personal data of consumer.

6.3.2.4.7. Competition

i. Enterprises should within the legal framework and regulations applicable, conduct their activities in fair competitive manner.

ii. Enterprises should refrain from entering into anti-competitive agreements in relation to price fixation and rigged bids.

iii. Enterprises should co-operate with competition authority.

6.3.3. UN Global compacts

The UN took an initiation in framing principles and making the corporate socially responsible. UN Secretary-General, one of the principal organs of the United Nation, with support from UN agencies, governments, and representatives of business, labour and other civil society bodies. It accepts new adherents on an ongoing basis from all major categories of societal actors. The UN Global Compact has been recognized on a number of occasions by the UN General Assembly, as well as by all Heads of States and Governments in the UN world Summit Outcome document (2005) and the G8.

The UN Global Compact has two broad goals. These are to mainstream ten core principles relating to human rights, labour standards, the environment, and anti-corruption in business activities around the world; and to catalyse actions in support
of broader UN goals, such as the Millennium Development Goals herein after referred as MDG. A voluntary initiative, it is not a code of conduct. It offers “a policy framework for organizing and developing corporate sustainability strategies while offering a platform – based on universal principles – to encourage innovative initiatives and partnerships with civil society, governments and other stakeholders”. The UN Global Compact invites companies to embrace, support and enact, within their sphere of influence, the following ten principles.\textsuperscript{19}

\textbf{6.3.3.1. Human Rights}

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;

Principle 2: make sure that they are not complicit in human rights abuses.

\textbf{6.3.3.2. Labour Standards}

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to Collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and


\textbf{6.3.3.3. Environment}

Principle 7: Businesses should support a precautionary approach to environmental challenges:

Principle 8: undertake initiatives to promote greater environmental responsibility; and

\textsuperscript{19} See : \url{www.unglobalcompact.org}. Accessed on October 22 2009.
Principle 9: encourage the development and diffusion of environmentally friendly technologies.

6.3.3.4. Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

The UN Global Compact is directed primarily to the business sector, but is a multi-stakeholder initiative and engages all kinds of societal actors, including public agencies, labour and civil society organizations. Companies participating in the Compact initiate their involvement by expressing their support in writing at CEO level. Among other things, each participant commits to integrate the principles into organizational strategy, culture and operations; to publicly advocate the UN Global Compact and its principles; and to publish annually a “communication on progress”, a description of the ways in which it is supporting the Global Compact and its ten principles. Since its launch in July 2000, the initiative has grown to over 5,000 participants, including over 3,600 businesses in 120 countries around the world. It is widely regarded as the world’s largest global corporate citizenship initiative.

The Compact has a “multi-centric” governance framework. This includes a triennial Leaders Summit, annual local networks forum, the Global Compact Office and a UN Inter-Agency Team, as well as a 20 person global Board comprising representation from business, civil society, labour and the UN family. The Compact’s principles are derived from the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development, and the UN Convention against Corruption.
The Global Compact has developed guidance materials that help users understand its relationship with the OECD MNE Guidelines, and with the GRI Guidelines. The Compact endorses but does not require the use of the GRI Guidelines in making “communications on progress”.

6.3.4. The Universal Declaration of Human Rights\textsuperscript{20} and CSR

The Universal Declaration of Human Rights states that “every individual and organ of society” has the responsibility to strive “to promote respect for these rights and freedoms” and “by progressive measures, national and international, to secure their universal and effective recognition and observance”.\textsuperscript{21} As important “organs” of society, businesses have a responsibility to promote worldwide respect for human rights.

The ILO Conventions establish norms covering all aspects of working conditions and industrial relations. Some of the most important cover\textsuperscript{22} core labour standards (i.e. basic human rights in the workplace). These include the right to freedom of association, the right to organize and to collective bargaining, and freedom from forced labor. And these rights can be traced in different policies and principles under different documents of UN.

It is based on the core labour standards outline in the ILO Conventions. The Declaration is not binding but applies to all ILO member states. As part of a strategy to help countries to have well-functioning labour markets, it provides for a

\textsuperscript{20} General Assembly Resolution 217[iii] of Dec 10 1948.
mechanism for annual review of the efforts made by member states that have not yet ratified the core labour standards. The Declaration also reinforces the application of core labour standards in private voluntary instruments.

6.3.4.1. International Covenants on Economic Social and Cultural Rights 196623

This another important international document on human rights. Even though it is state which comes under the jurisdiction yet it plays very significant role in shaping the CSR because state has certain obligation under this convention to provide certain economic rights to its subjects which has to be observed by the public as well as private corporations. The convention broadly says that every nation has to utilize its resources to the maximum level with use of latest technology with co-operation of other nation. State should ensure the equal rights to men and women. The state should recognize the right to work of human being. Every person has right to enjoy the favorable working conditions. The state should ensure that every working person has right to form trade union. The state should provide social security and including social insurance. The state should recognize the right of every one’s adequate standard of living for himself and his family. The state should try to provide education to every one without discrimination.

6.3.4.2. Human Rights Issues

Many believe that it is necessary to bring multinational corporations under the authority of international human rights framework. Traditionally, international law conforms to a state-centric view of world politics. States are viewed as the primary actors in the international system, with international law acting to regulate relations between States. Challenges to the role and primacy the States in world politics have,

however, fundamentally altered the role and function of international law. International law has expanded, but is increasing focused, though concerns about human rights, with the individual. This strengthening of international legal commitments to human rights can be seen as another aspect of the multi-faceted nature of globalization.  

States have lost authority to supranational bodies at the same time as they have privatized many of their domestic functions. But it is economic globalization that is generally presented as the major challenge to State sovereignty. The challenge comes in particular, from power of multinational corporations. States are more likely to attempt to attract international capital rather than to try to regulate it. In a globalised economy, firms (especially, those in manufacturing) can move easily across borders and evade boycotts and sanctions. The diminishing centrality of the State in world politics is accompanied by the rise of multinationals as rival sources of power and influence in the world.

6.3.4.3. Common Law Principles

The Rome Statute (setting up the International Criminal Court) is a useful starting point since international community has accepted its principles. Article 25 more or less adopts the common law. The three routes to liability under the general principles of Article 25 roughly cover instigation, assistance and joint enterprise. It relies on knowledge, purpose and aim – all of which are difficult to apply to a Corporation. Much would depend on the attribution principle to be adopted. While

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civil law and common law jurisdictions have similar principles in relation to complicity, this, as we have already said, is not so in relation to corporate attribution. In coming closer, we doubt whether that they will ever come to a consensus that adopts the broadest model possible. If the *Corpus juris* draft is anything to go by – this is likely to be some version between agency and identification.\(^\text{18}\)

Corporations themselves have taken some first steps towards accepting some responsibility for their human rights abuses. This has been brought about by UN interest in monitoring corporate behavior and public pressure against corporate practicing process. The existing initiatives today are voluntary and usually cosmetic or ineffectual in stemming the worst abuse. However, finding a solution will be an ongoing process that will require the creative and commitment of international bodies, Governments, Corporations, and civil society.\(^\text{26}\)

Private regulations on labour and environmental standards could become the main obstacle to international trade, replacing barriers created by Government policies. Developing countries complain that standards which aim to change the prevailing production practices in their territory are an infringement of their sovereignty, and that such standards look suspiciously like attempts to hamper their exports in areas where they have a comparative advantage over developed-country producers.

**6.4. Role of CSR in Sustainable Developments**

Sustainable development means utilization of natural resources for business or for any means of survival by human being in such way which should meet the

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requirement of the present generation as well as requirements of all the coming generation in future. The role of corporate sectors does not end up with contributing in economic growth of a country or to providing employment to the society but it goes beyond that, where corporate sectors must provide benefits to the society at large without harming the natural resources. Hence the role of corporate social responsibility for sustainable development has become vital today. The corporate must design its CSR strategies and they must put those strategies into practice in well manner. CSR is closely related with sustainable development. Human beings have lots of wants and those wants should not be fulfilled at the cost of the needs of the future generations. The organizations should not only talk about the profits or dividends but it should talk about the long term social and environmental requirements. Every person is responsible for saving this planet for survival of the society and its successors.

6.4.1. The Johannesburg Declaration on Sustainable Development (2002)

It says that the private sector has “a duty to contribute to the evolution of equitable and sustainable communities and societies”, and that “there is a need for private sector corporations to enforce corporate accountability”. Its Plan of Implementation notes the need to “enhance corporate environmental and social responsibility and accountability”. The UN Framework Convention on Climate Change and Convention on Biodiversity were also signed by a majority of governments.

The 1992 Rio Declaration sets out 27 principles defining the rights and responsibilities of states in relation to human development and well-being. The Agenda 21 agreement provides guidance for governments, business and individuals
on how to contribute to efforts to make development socially, economically and environmentally sustainable. Its Chapter 30 recognizes the value of promoting “responsible entrepreneurship”.

6.5. GATT: WTO Effects

The General Agreement on Tariffs and Trade and the agreement establishing the World Trade Organization are compacts between national governments, and nothing in either accord requires, signatories to give them direct effect in domestic law. The agreements impose disciplines on the actions of Governments and public bodies, not private companies. Private sector initiatives to promote socially responsible business practices in developing countries, therefore, seem to fall outside the scope of WTO rules.

They are merely voluntary undertakings by private firms, and depend on consumer practices and the market for enforcement, rather than Government intervention and the threat of official trade sanctions. However, many countries, particularly, developing ones, have expressed concern about the potentially negative impact that these initiatives can on market access, competition and international trade flows. In many cases, private initiatives can have a similar effect to binding regulation imposed by national Governments. Moreover, the distinction between private and Government regulation can be blurred in practice. Many developing countries question whether these measures are always wholly private, and therefore they are compatible with global trade disciplines.

Developing countries fear that codes, sourcing provisions and labeling programmers created by the advanced industrial economies will reduce their access to developed – country markets and divert their trade. Developing-country firms may be
forced to redirect their export, sourcing and sales operations away from developed-
country markets and towards other developing countries, where consumers are less
likely to insist that goods are produced in accordance with particular social and
environmental standard. The problem is accentuated, because private initiatives to
improve environmental business practices are concentrated in sectors such as textiles
and clothing, footwear and sports goods where developing countries have a
comparative advantage, and where trade is only now being liberalized under WTO
rules. As a result many developing countries suspect that private initiatives to promote
socially responsible business practices are simply a new form of protectionism
designed to raise new barriers to their exports.

6.6. Liability of MNC’s for environmental damage

The MNCs are not doing any favor in investing in developing countries. Instead, they are proving to be environmental hazards for the people working in and
living around their industries. In view of size, huge capital and the distance from
which it operates, an MNC is not amenable to be controlled by a country which awaits
investment for generating some sort of employment due to mishandling and negligent
operations of MNCs playing with lives of human beings. Instead of riches and
resources MNCs brought miseries and tragedies to the people and the governments in
third world countries. They show less or no regard for civil and political rights of
individuals by engaging in activity that is harmful to the health and welfare of the
individuals. Bhopal gas tragedy is an example. Kirshna Iyer has rightly named it as
*Bhoposhima*. “what with MNCs with unlimited exploitative appetites, infra-national
industrialists with initiative tactics and money power at various levels wooing
political power and white collar, we have the unconscionable ecocides who seduce
political, among the vision of governments, lubricate the wheels of bureaucracy and
proclaim pollution as a necessary evil for the salvation of a nation. “These are the words in which Krishna Iyer explained the apprehensions of the third world countries.27


The Bhopal incident created a new expression called ‘hazardous multinational’, which has to be separated from other ordinary and multinational Enterprise Liability, certain characteristics are to be there for classifying an enterprise as from other ‘Hazardous Multinational’. They are rightly explained by Upendra Baxi and Amitha and Dhanda as follows:

a. The global structure, organization, technology, finances and resources of multinationals enable them to take catastrophic decisions – that is – decisions and actions which lead to mass disasters;

b. The power of multinationals, especially over their ‘key management personnel’, is neither ‘restricted by national boundaries’, nor effectively controlled by international law;

c. This is because of the complex corporate structure of multinationals with networks of subsidiaries and decisions which make it ‘exceedingly difficult or even impossible to pinpoint responsibility for the damage caused by the enterprise’.

d. The ‘monolithic multinational’ operates through:

   I. A neatly designed network of interlocking directors,
   II. A common operating system,

III. Global distribution and marketing systems,

IV. Design development and technology worldwide,

V. Financial and other controls,

VI. Highly sophisticated and technologically capable machines and working staff,

VII. Victims of such daily actions are unable to identify which unit of the enterprise caused the harm.

Even a manifest fault by a local subsidiary would be put at the doorstep of a multinational. This principle is based on the premise that power and knowledge create a legal duty. And this duty, which is an absolute and non-delegable character, emanates from the unity of power and knowledge. This duty is twofold. It is the duty of the multinational to itself ‘to keep informed and know’. Such a duty, by definition, cannot be delegable. Second, it is a duty of the same nature to employ ‘normal care and prudence’ to know the possibility or the emergency of likely “hazards and dangers”. The duty too is non-delegable. The consequential duties arise from these two fundamental duties-(1) ‘a duty to provide that all ultra-hazards and dangerous activities be conducted with the required standards of safety, and, (2) to provide all necessary safeguards, information and warnings concerning the activity involved.

6.7. Corporate Social Responsibility: The Indian scenario.

In an economically globalized world, corporations are subject to global expectations, and a globally accepted and broad concept like sustainable development fits well with the economic, social and environmental responsibilities of global corporations. Accordingly, the triple bottom line approach to CSR suggests that a business organization must strive to balance these three areas of responsibility. Because of its alignment with the concept of sustainable development, this approach
is widely applied around the world. Associating CSR with sustainable development has become so common that CSR reporting is often called sustainability reporting. In India, till very recently, the focus was on charity, which is not really CSR. Sustainable CSR programmes mean a cohesive mix of economic, legal, ethical and philanthropic tenets. In today's changed business scenario, there is an increased focus on giving back to society and creating a model which works long term and is sustainable and it is imperative that the best practices for inclusive growth are shared with the stakeholders. Various subject matter of CSR has been reflected in the Articles of the Indian Constitution and in other statutes.

6.7.1. Constitutional Articles related to CSR

6.7.1.1. Preamble of Constitution and Definition of State

Preamble of the Constitution talks about promotion of social, economical and political justice of its citizens.\(^{28}\) Government companies which are established under the special statute or registered under the Companies are held to be state.\(^{29}\) Therefore those companies should follow the principles of directive principles of state while formulating policy for company.

6.7.1.2. Fundamental Rights and Reasonable restrictions

Part III of Constitution contains long list of fundamental rights. These rights can be claimed by the owner of the industry. The most important right from the perspective of business man is right to freedom of profession, occupation, trade and business.\(^{30}\) In same fashion even the worker can claim the right to form trade union in

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28 See the Preamble of the Indian Constitution.
29 See, the definition of State under Article 12 of the Constitution. Further Supreme Court in Ramana Dayaram Shetty v. The International Airport Authority of India, AIR 1979 SC 1628 held that all corporations created under special Statute or registered under Companies Act which are the instrument of state agent are considered as state.
30 See Article 19(1) (g) of the Constitution.
industry under freedom to from Association under Constitution. However the no fundamental right under Article 19 is absolute but subjected to reasonable restrictions on the ground mentioned in Article 19(2) to (6). Important grounds for restrictions are public order, morality, and decency, general public, for the protection interest of scheduled Tribe, in the interest of trade, business, and industry and in the interest of State. The Supreme Court on various occasions has held that right to profession, occupation, trade and industry can be regulated by imposing reasonable restriction in the light of directive principles stated in the fourth chapter of Constitution. The state can regulate industry in the interest of workers, consumers, society and Nation. For example state can prescribe necessary conditions for working hours of workers, mode of payment to workers, safety and health of workers, quality of goods, remedies for defective goods and service, protection of environment, and transparency in the working culture of company.

6.7.1.3 Directive Principles of State Policy

The Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken up by the State in the governance of the country. The Directive Principles are the ideals which the Union and State Governments must keep in mind while they formulate policy or pass a law. The Directive Principles of State policy can be broadly classified in the following ways.

31 See Article 19(1) (d) of the Constitution.
32 The fourth chapter of Indian Constitution talks about Directive Principles of State Policy.
6.7.1.4. Social and Economic Charter

Few important directive are, equal pay for equal work for both men and women, distribution of ownership and control of the material resources’ for the community to the common good, to protect the health and strength of workers, prohibition of child labour, and better opportunity for children.

6.7.1.5. Social Security Charter

Few important directives are participation of workers in management of Industries, just and humane conditions of work, duty to raise the standard of living and improvement of health, and promotion of education and economic interest of weaker sections.

6.7.1.6. Community Welfare Charter

These are the policy from the point of community. The industry must take steps to improve the forests and wild life and respect the human rights. Even though these directive are not enforceable and justifiable in the court of law like fundamental rights. Yet it cannot be ignored by the state. The state’s companies and industry comes under the definition of state. Therefore its policy cannot go against the spirit of the Directive Principles of State Policy. Further in respect of private companies the government can impose reasonable restriction on such companies for the promotion of Directive Principles of State Policy.

6.7.2. Labour Statutes

6.7.2.1. Principles of Labour Legislations

Labour legislation in any country should be based on the principles of social justice, social equity, and national economy.
6.7.2.2. Social Justice

Social Justice implies two things. First is, equitable distribution of profits and other benefits of industry between industry owner and workers. Second is providing protection to the workers against harmful effects to their health, safety and morality.\(^{34}\) The word social justice is neither defined in any of the labour legislations nor does it occur in any of them except the Industrial Disputes Act 1947.\(^{35}\) The concept of social justice, according to Bhagawati, J., does not emanate from the fanciful notions of any particular adjudication but must be founded on a more solid foundation.\(^{36}\) In the opinion of Justice Gajendragadakar: “The concept of social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law and meaning and significance to the idea of welfare State.”\(^{37}\) Social justice is designed to undo the injustice of unequal birth and opportunity, to make possible that wealth should be distributed as equally as possible. The concept of social justice has become an integral part of industrial law.

6.7.2.3. Social Security

The quest for social security and freedom from want and distress has been the consistent urge of man through the ages. Social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose private resources’ can seldom be adequate meet them. It covers through appropriate organizations, certain risks to which a person is exposed.\(^{38}\) The concept of social justice is based on ideas of human dignity and social justice. Social security measures are significant from two view points.

\(^{35}\) The *Industrial Disputes Act* 1947 was amended in 1956, section 17-A(1) uses the word “social justice”.
\(^{36}\) *Muir Mills Ltd v. Sui Mill Mazdoor Union*, (1955) 1 LLJ 1 (SC).
points: first, they constitute an important step towards the goal of a welfare State. Secondly, they enable workers to become more efficient and thus reduce wastage arising from industrial disputes.\(^{39}\) Some of the important labour legislation in India is as follows.

**6.7.2.4. Industrial Disputes Act 1947\(^{40}\)**

The object of the *Industrial Dispute Act 1947* is to promote peace in industry and economic justice. It provides means of collective bargaining as well as adjudication for settlement of disputes in Industry. It ensures that works should get compensation in case of layoff, retrenchment, transfer of industry, and closure of industry. Further it provides protection against discriminatory treatment of worker in the industry. Act regulates the misuse and abuse of right of strike and lockout in the Industry. Overall the Act takes into the interest of national economy.

**6.7.2.5. Trade Union Act 1926\(^{41}\)**

*Trade Union Act 1926* recognizes the right of workers to form association in the Industry in the form of trade union. Trade union is very much imperative in the contemporary society to protect the rights of workers in effective manner. Further it gives certain immunities to registered trade union from the civil and criminal prosecution for certain action done during the legitimate strike which done in the furtherance of the industry dispute.

**6.7.2.6. Workman Compensation Act 1926**

The *Workman Compensation Act 1926*\(^{42}\) is in the form of social security. It ensures the worker who suffers injury during the course of employment and arising out of employment, certain relief in the form of cash.

\(^{39}\) *Supra* note 34.

\(^{40}\) Act No 14 of 1947.

\(^{41}\) Act No 16 of 1926.
6.7.2.7. Employees’ State Insurance Act, 1948\textsuperscript{43}

This Act also is in the form of social security. It is applicable to the factory. Act obligates both the worker and employer to contribute towards common funds as cooperation fund. The benefits like sickness, maternity, disablement, dependent and medical benefits are met from the common fund contributed by both workers and owner.

6.7.2.8. Minimum Wages Act 1948\textsuperscript{44}

This Act is also one of the social security. The main object of the Act is that employer should not advantage of surplus of worker because the worker are ready to work even below the par of minimum wages. The Act obligates the owner of industry to give at least statutory wages which is enough to sustain the basic requirement of life of worker. The Supreme Court of India has held that the person who is not in position to pay statutory wages to workers does not have the right to carry business and trade under Article 19 (1)(g) of the Constitution.\textsuperscript{45}

6.7.2.9. Factories Act 1948\textsuperscript{46}

The Factories Act 1948 is passed with object to provide better working conditions in the premise of factory. Hygienic conditions for work, safety of workers life, protection against hazardous process, welfare measures of the workers in the factory, and working hours of the worker are prime importance of the this legislation.

\textsuperscript{42} Act No. 29 of 1926.
\textsuperscript{43} Act No 34 of 1948.
\textsuperscript{44} Act No XI of 1948.
\textsuperscript{45} Bijoy Cotton Mills Ltd. v. State of Ajmer, AIR 1955 SC 33.
\textsuperscript{46} Act No 63 of 1948.
6.7.2.10. Other labour legislations

There are number of other legislations deals with interest of worker, owner and industry. For example, The Industrial Employment (Standing orders) Act, 1946, the Employee’s Provident Funds and Miscellaneous Provisions Act 1952, the Payment of Wages Act 1936, the Industrial (Development and Regulation) Act 1951, the Payment of Bonus Act 1965 and the Child Labour (Prohibition and Regulation) Act, 1986.

6.7.3. Consumer Protection Act, 1986

The Consumer Protection 1986 herein after referred as CPA is created revolutionary in respect of enforcement of consumer rights. CPA has provided effective, simple and time bound remedies to consumers. It has guaranteed six important rights to consumer. CPA provides additional rights to the consumer along with existing rights under various other statutes. The Act broadly defines consumer in relation with goods and services. The Consumer is entitled to approach authorities under the Act whenever the company provides defective goods and services. CPA is complete code therefore it has provided the enforcing machinery for the enforcement of rights of consumers. CPA has established the District forum, State commission and National Commission of Consumers. The authorities are being quasi-judicial bodies having the power to punish the offender who commits the contempt of its order.

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47 Act No 20 of 1946.
48 Act No 19 of 1952.
49 Act No 4 of 1936.
50 Act No 65 of 1951.
51 Act No 21 of 1965.
52 Act No 61 of 1986.
54 See, the Consumer Protection Act 1986, (Act No. 68 of 1986)
55 See section 2 (d) of the Consumer Protection Act 1986
6.7.4. CSR under Companies Act 2013\textsuperscript{56}

Indian Parliament enacted the new Companies Act 2013 which makes provision in respect of CSR. Till today the certain matters of CSR found places in other general laws but new Companies Act 2013 provided explicit provision in respect of CSR. Nevertheless provision is persuasive and not obligatory because it has not prescribed any punishment for its non-compliance. Moreover, the section has limited application because it applies to only those companies which are having net worth of 500 crores Rupees or more, or turnover of Rupees 1000 crores or more or net profit of Rupees five cores or more during any financial year.\textsuperscript{57} The section obligates the company to establish the Corporate Social Responsibility Committee. The formation of Committee is also defective because it consist only three directors of the company but omitted important representative of workers and consumer and community. The companies’ social responsibility is not only towards company itself but towards the interest of consumers, workers, and community also. Further the Corporate Social responsibility Committee suggestions are recommendatory nature and not binding on the company. It should have been made obligatory and non-optional. The Corporate Social responsibility Committee shall indicate the activities to be undertaken in respect of matters specified in the VII schedule of the Companies Act 2013. If the company fails to spend the amount fixed by the Corporate Social responsibility Committee then its obligation is to mere furnish the reasons for its failure but not subjected to any kind of penalty makes that provision non-deterrent and non-effective. Ten matters are listed in the VII schedule of the Companies Act 2013. Those are, activities relating to eradication extreme hunger and poverty.

\textsuperscript{56} Act No 18 of 2013. President of India assented the Act on 29\textsuperscript{th} August 2013, Published in the Gazette, Extraordinary, and Part-II, Section I, dated 29\textsuperscript{th} August 2013.

\textsuperscript{57} See, Section 135 of the Companies Act 2013.
promotion of education, promotion of gender equality, reducing the child mortality, combating human immunodeficiency virus, acquired immune deficiency syndrome, ensuring environmental sustainability, employment enhancing vocational skills, social business projects and contribution to the Prime Minister’s National Fund or any other fund set up by the Central Government.

6.7.5. Environmental Provisions

In the wake of the Bhopal Tragedy, the government of India enacted the Environment (Protection) Act of 1986\textsuperscript{58} herein after referred as EPA under Article 253 of the Constitution. The purpose of the Act is to implement the decisions of the United Nation Conference on the Human Environment of 1972, In so far as they relate to the protection and the improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property. the scope of the EPA is board, with ‘environment’ defined to include water, air, and land and the inter-relationship which exist among water, air and land, and human beings and other living creatures, plants, micro organism and property.\textsuperscript{59}

The EPA explicitly prohibits discharges of environmental pollutants in excess of prescribed regulatory standards. There is also a specific prohibition against handling hazardous substances except incompliance with regulatory procedures and standards. Persons responsible for discharges of pollutants in excess of prescribed standards must prevent or mitigate the pollution and must report the discharge to governmental authorities. The Act provides for fairly severe penalties.\textsuperscript{60} corporate officials directly in charge of a company’s business are liable for offences under the Act, unless the official can establish that the offence was committed without his or her

\textsuperscript{58} Act No 29 of 1986.
\textsuperscript{59} Section 2(a) of Consumer Protection Act 1986.
\textsuperscript{60} Section 15(2) of Consumer Protection Act 1986.
knowledge or that he or she exercise all due diligence to prevent the commission of
the offence.\textsuperscript{61}

6.7.5.1. Liability of Companies for Environmental damage

The National Companies and MNCs are not doing any favor in investing in
countries. Instead, they are proving to be environmental hazards for the people
working in and living around their industries. In view of size, huge capital and the
distance from which it operates, an MNC is not amenable to be controlled by a
country which awaits investment for generating some sort of employment due to
mishandling and negligent operations of MNCs playing with lives of human beings.
Instead of riches and resources MNCs brought miseries and tragedies to the people
and the governments in third world countries. They show less or no regard for civil
and political rights of individuals by engaging in activity that is harmful to the health
and welfare of the individuals. Bhopal gas tragedy is an example. Kirshna Iyer has
rightly named it as Bhoposhima. “what with MNCs with unlimited exploitative
appetites, infra-national industrialists with initiative tactics and money power at
various levels wooing political power and white collar, we have the unconscionable
ecocides who seduce political, among the vision of governments, lubricate the wheels
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nation. “These are the words in which Krishna Iyer explained the apprehensions of the
third world countries.\textsuperscript{62}

\textsuperscript{61} Section 16(1) of \textit{Consumer Protection Act} 1986.
\textsuperscript{62} Kirshna Iyer, V.R. “Environmental Pollution and Legislative Solution: Problems and Prospects in
6.7.5.2. Hazardous Multinational’: New term in Globalization

The Bhopal incident created a new expression called ‘hazardous multinational’, which has to be separated from other ordinary and multinational Enterprise Liability, certain characteristics are to be there for classifying an enterprise as from other ‘Hazardous Multinational’. They are rightly explained by Upendra Baxi and Amitha and Dhanda as follows:

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b) The power of multinationals, especially over their ‘key management personnel’, is neither ‘restricted by national boundaries’, nor effectively controlled by international law;

c) This is because of the complex corporate structure of multinationals with networks of subsidiaries and decisions which make it ‘exceedingly difficult or even impossible to pinpoint responsibility for the damage caused by the enterprise’.

d) The ‘monolithic multinational’ operates through:

1. A neatly designed network of interlocking directors,

2. A common operating system,

3. Global distribution and marketing systems,

4. Design development and technology worldwide,

5. Financial and other controls,

6. Highly sophisticated and technologically capable machines and working staff,
7. Victims of such daily actions are unable to identify which unit of the enterprise caused the harm.

Even a manifest fault by a local subsidiary would be put at the doorstep of a multinational. This principle is based on the premise that power and knowledge create a legal duty. And this duty, which is an absolute and non-delegable character, emanates from the unity of power and knowledge. This duty is twofold. It is the duty of the multinational to itself ‘to keep informed and know’. Such a duty, by definition, cannot be delegable. Second, it is a duty of the same nature to employ ‘normal care and prudence’ to know the possibility or the emergency of likely “hazards and dangers”. The duty too is non-delegable. The consequential duties arise from these two fundamental duties-(1) ‘a duty to provide that all ultra-hazards and dangerous activities be conducted with the required standards of safety, and, (2) to provide all necessary safeguards, information and warnings concerning the activity involved.

6.7.5.3. Absolute Liability

6.7.5.3.1. Bhopal Gas Disaster

In the year 1984 chemical gas leaked from the Union Carbide plant in Bhopal, India. Referred as the worst industrial disaster in human history, on the horrific night of December 2nd and 3rd, more than 40 tons of the deadly gas methyl iso cyanate escaped from the pesticide factory. Approximately half a million people were exposed to the gas and 20,000 have died to date as a result of their exposure. More than 120,000 people continue to suffer from severe health ailments related to the accident and contamination. In 2001, the US-based gigantic Dow Chemical purchased Union Carbide, thereby acquiring its assets and liabilities. However it has been steadfastly refusing to clean up the site, provide safe drinking water or compensate the victims, or even disclose the composition of the gas leak, Dow, like UCIL earlier, claims that it
The Dow Chemical Company, with annual sales of $28 billion, says in its web site: it is “committed to the principles of Sustainable Development and its approximately 50,000 employees seek to balance economic, environmental and social responsibilities”.

6.7.5.3.2. Shriram Food and Fertilizer case

The age of mass torts began, with the Bhopal gas tragedy. Environmental hazards to multiple masses of third world countries were realized. The sleepy Indian government and similar developing countries were shocked to know the direct and serious impact of Companies in this era of globalization. The craving for foreign investments and transfer of technology from west with politically motivated vested interest has resulted in savage death to thousands of unknown people. The Indian jurisprudential principal of absolute liability was naturally not liked by the Companies. The Supreme Court of India in Shriram Food and Fertilizer rejected the strict liability laid-down in the Rayland case but adopted the Absolute liability which is more stringent than strict liability in case of companies dealing hazardous substance trade. Strict liability is subjected to certain exception but Absolute liability has no exception. The Supreme Court held that writ can be issued even against private companies. The Apex Court recognized that sustainable development must be guiding principles for companies. Court has also adopted twin principles of precautionary measures and polluter pays principles which are norm of international. The company should bear the cost of cleaning the pollution caused by its activity. The companies cannot plead the defense of inability to mobilize the resources for environmental matters otherwise it has no right to carry business and trade.
6.8. Liability of the Governments

The Bhopal gas tragedy and consequent litigation has also revealed the need for evolving controls over the activities of MNCs, especially when they are engaged in hazardous operations. Such a need was felt all over the world and the secretary-General has rightly responded to it by evolving some methods in his report. The first step he suggested was risk assessment and involvement of factory employees and the community in the development of methods to identify the hazards; and the second step was about evolving strategies to plan and reduce the consequences of accidents and to settle the claims of liability.\textsuperscript{63} But the question as to the extent of liability of the parent company for the environmental harm caused by its affiliate was left open for further discussion. Had Bhopal tragedy been covered by industrial insurance, the victims would have received the necessary relief without much delay. It took four years to reach settlement and the distribution of relief is still going on in Bhopal. Speedy trial and early disposition of claims is as important as the fundamental right to life.

All the theories of liability – the effect theory and enterprise theory pinpoint the liability on the parent American company UCC which controlled the Indian Company UCIL in its establishment and functioning, besides playing a significant role in decision-making. UCC not only owes a duty of care towards Indians, but also towards people in general. It is the basis of human rights jurisprudence and MNCs are subjected to the international human rights obligation. Similarly, the Government of Madhya Pradesh and Government of India also are liable when the MNCs permitted by them are violating the international human environment rights.

In the light of the new interpretation given to development, including safeguarding of the environment, it should implicitly mean an obligation not to unreasonably alter the ecological balance of the host country through their activities.

Whenever an enterprise starts a hazardous activity in the territory of a state, there is an inherent duty in the nature of the agreement itself, an understanding that it will not cause any serious adverse effects on the health of the people or environment of the country. If an accident like the Bhopal tragedy results from the activity of the MNC, it might among to delinquent conduct a wrongful breach of duty.

The code also imposes an obligation on the MNCs to respect the human rights and fundamental freedoms in the host counties. The right to clean the environment is a significant aspect of the new human rights jurisprudence. It is a duty of the MNC to protect and preserve that environment. However strong the code may be, its binding nature is a questionable aspect. The states have to enforce the code which is addressed to the MNCs. Developed nations may not agree to enforce the code.

6.9. Role of NGOs

Non-governmental organizations (herein after referred as NGO) working on labour and environmental issues face a dilemma which is the exact opposite of the one confronting developing countries. Many NGOs are working to improve labour and confronting standards through Multilateral Environmental Agreements herein after referred as MEA and multilateral labour accords. They want to insure that MEAs and labour agreements remain independent and that the WTO does not become the forum in which international labour and environmental disputes are settled. They are suspicious of the WTO’s institutional ethos and want to minimize its involvement in
this area. At the same time, however, they want WTO members to negotiate an understanding, making it explicitly clear that WTO rules cannot interfere with, or limit the development and use of, eco or fair labour labels and other market instruments that distinguish between products based on process and production methods related to the environment, human rights and internationally recognized labour standards.

The globalised economy is still full of contradictions. Today, the world sugar market provides some of the largest and most blatant forms of trade protection. Having exploited development, poor countries for generations, the North now keeps their products out of their markets. Protectionist policies distort prices and therefore, economic incentives, on world markets, which in turn, put agriculture producers in the developing world at a severe, and deeply unfair, disadvantage.

6.10. Conclusion

In India, till very recently, the focus was on charity, which is not really CSR. Sustainable CSR programmes mean a cohesive mix of economic, legal, ethical and philanthropic tenets. In presently changed business scenario, there is an increased focus on giving back to society and creating a model which works long term and is sustainable and it is imperative that the best practices for inclusive growth are shared with the stakeholders. Getting multinationals to comply with local laws is not an easy task. Many countries, north and south, do not direct sufficient resources to enforcement. Management practices that evade regulations persist. Furthermore, labor laws can indeed be difficult to interpret. But suppliers, companies, and countries can't point to these difficulties to elude legal accountability. Legal compliance will be hard to achieve, whether within the CSR rubric or not, but extracting legal compliance
from CSR has the advantage of bringing to light a range of workplace and wage issues that companies are required by law to attend to. Most of the matters of CSR have been made legal obligation on the part of corporate through various legislations. Yet certain matter of CSR is having nature of voluntary implementation. Moreover, the implementation of CSR requires lot of resources and mind set of promoters of the multi-national Companies and national companies needs to be changed because primary focus of Industry is not simply to make profit only. The concept of industry has undergone sea changes. Now industry is not confined to private property but belongs to community in which share holder, worker, investors, consumers, local community and nation have stake.

Particularly corporate responsibility towards the people living surrounding the company are more important. Corporate has to undertake over all development of those people in respect of education, improvement in their living standards, hospitals, roads, water facility, protection of environment, reducing the unemployment and poverty and building confidence among the people that industry is people oriented and not profit oriented. In the present scenario, these things can be achieved better by mutual co-operation between different stakeholders of the corporate rather than coercive means through law. Therefore, it is the responsibility of state government to create conducive legal environment to achieve this desired result. As gradually the time passes at appropriate time these voluntary obligation may be made legal obligation, particularly this. It is true in respect of developing and under-developing nations because they heavily relay on the investment of multi-national companies.