MNCs and the Principle of Sustainable Development
MNCS AND THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT

Development should be perceived as a multinational process involving the reorganization and reorientation of entire economic and social systems. Development is a continuous process which has to be extended over a long period to lead a country to a stage of self-sustained growth or to a self generating economy. Environment and Development is interlinked with each other. In the modern globalized world, industries, particularly Multinational Corporations (MNCs) play a vital role for the economic development and also cause environmental pollution. The problem of environmental pollution is not new in its origin. It is as old as the emergence of Homo Sapiens on the planet and it was realized in the times of Plato 2500 years ago. In India, the release of highly toxicous and abnormally dangerous gas from the plant of the Union Carbide Company (UCC) at Bhopal in more than two and half decades back proved this reality. In fact, environment is a multifaceted problem. It is not only a global problem, but also many sided complex phenomenon with interlocking economic, technological, political and legal aspects. Likewise, it is not a single short term action but a continuous and permanent process. The result is that the atmosphere today is not so healthy.

In its real sense, man-made pollution has an ancient history. Neolithic man started polluting the environment when he discovered that he could use fire to drive game animals, though the major resulting pollutants – smoke, soot, silt- also existed without man. But man added a whole new dimension to environmental pollution, when he began burning fossil fuels for energy. A citizen of London was executed for burning coal in the city in 1306, but three centuries later coal combustion was a way of life not only a Great Britain but in most parts

of Europe. Subsequent colonization and exploitation of new lands based on this new source of energy, further aggravated environmental pollution.\(^4\)

Obviously, human needs are never-ending. Development is the process of transformation of, (i) a society's economic, social, political structures; and (ii) the dominant organizations of production, distribution and consumption.\(^5\) Discovery of new products and production of the needy luxuries, to suit the changing lifestyle are accompanied by the process of industrialization. It is also a key to the economic development of a nation. To quote Indra Gandhi (The Former Prime Minister of India) who said “The environmental problems of developing countries are not the side effects of industrialization but reflect the inadequacy of development”.\(^6\) In the modern period, the Multinational Companies (MNCs) are considered as instruments for development. It is usually assumed that TNCs are ‘engines of development’ in that they contribute resources not otherwise available (technology, marketing skills, etc.) or only available in insufficient quantities (capital). Alternatively, it is argued that they are able to utilize existing resources more efficiently than local entrepreneurs, thus maximizing their contribution to the development effort.\(^7\)

There is a widespread acceptance of the fact that environmental pollution is an inescapable by-product of industrial development.\(^8\) Industries (MNCs) during the processing or manufacturing of intermediate chemicals and end-products generate waste materials and useless by-products as well. The production and processing steps in industrial units, often result in the wastage of 1 to 10% of the quantity of parent chemicals. Normally the quantity entering the environment will generally be lower than 1%, with the employment of proper pollution control measures. Chemicals may also enter the environment through spills during their use, transportation or disposal. Each industry is associated with


\(^{7}\) Devendra Thakur, *Political Economy of the Third World Countries*, 1987, p. 121.

an emission of one type of pollutants or potential pollutants directly or indirectly.\textsuperscript{9} Not only may the industries be responsible for the pollution of air but also for the contamination of water.\textsuperscript{10} In the early 1970s, the view was that a pollution-free environment and development were generally incompatible. At present there is a growing acceptance that these two goals need not be in conflict, especially in the long term.\textsuperscript{11} Indeed, environmental problems arising from the development process.\textsuperscript{12} It is the basic right of all to live in a healthy environment. The acute poverty in the country requires development process to be accelerated, but we cannot do so at the cost of environment thereby endangering not only the present generation but also the future generation.

The traditional concept that development and ecology are opposed to each other is no longer acceptable. “Sustainable Development” is the answer. In \textit{Vellore Citizens Welfare Forum v. Union of India}\textsuperscript{13} a petition was filed under Article 32 of the Constitution of India. The petition was directed against pollution, which was being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. Justice Kuldip Singh, balanced ecological concerns with developmental imperatives. Rendering a judgment in favor of the petitioners, the Court observed that:

\textit{“Though the leather industry is of vital importance since it generates foreign exchange and provides employment it has no right to destroy the ecology, degrade the environment and pose a health hazard. The court further held that during the two decades from Stockholm to Rio, “Sustainable Development” has become a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems. The court had no hesitation in holding that sustainable development is part of customary international law though its salient features have to be finalized by the international law jurists. Sustainable development is a guiding principle and it is}

\textsuperscript{9} Krishnan Kannan \textit{Fundamentals of Environmental Pollution}, 1995, at p. 8.  
\textsuperscript{10} \textit{Ibid} at pp. 8-9  
\textsuperscript{13} AIR (1996) SC 2715.
up to politics and those holding responsibility on a national and international level to put flesh on its bones."\textsuperscript{14}

The process of growth and development disturbs the balance in the ecosystem.\textsuperscript{15} The principal cause of environmental pollution is industrialization and indiscriminate application of science and technology to economic development.\textsuperscript{16} While industries (MNCs) are vital for development, it is equally important to be aware of the impacts of industries on environment.\textsuperscript{17} A proper understanding of this can help to ensure that these impacts are minimized.\textsuperscript{18} As such a balance is to be maintained between the necessity to preserve environment and the need of the society for the socio-economic development. In the case of \textit{People of United for Better Living in Calcutta v. State of West Bengal},\textsuperscript{19} the Calcutta High Court observed:

“In a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in present but at some future point of time, but then it would be too late in the day, however, to control and improve the environment; there should be a proper balance between the protection of environment and the development process; the society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment shall have to be protected but not at the cost of the development of the society and as such a balance has to be found out and administrative actions ought to proceed accordingly.”

\begin{itemize}
\item \textsuperscript{14} Rudolf Streinz, \textit{Repercussions of the Right to Sustainable Development – Help or Hindrance?} 59 Law and State 152 (1999).
\item \textsuperscript{16} Supra Note 8 at p. 151.
\item \textsuperscript{17} According to Committee on Environmental Health Association of America, environment comprises “The surroundings in which man lives, works and plays. It encompasses the air he breathes, the water he drinks, the food he consumes and shelter he provides for his protection against the elements. It also includes the pollutants and other detrimental environmental factors which adversely affect his life and health, quoted in H.V. Jadhav, \textit{A Text Book of Environmental Pollution} First Edition, 1997, p. 14.
\item \textsuperscript{19} AIR 1993 Cal 215.
\end{itemize}
The most fundamental question concerning Transnational Corporations (TNCs) is why they exist. They exist because they are efficient.\(^{20}\) The environmental impact of TNC activities in general, and on development in particular, has not been covered extensively in the literature on TNCs, although most environmental problems may be traced to economic activities. TNCs activities relating to extraction, production (environmental pollution, worker safety hazards, manufacturing and technical processes involving toxic products/by-products), distribution, and disposal of goods and services (sale of toxic and hazardous products) affect the environment, the conservation of nonrenewable natural resources, and natural conditions of the physical environment.\(^{21}\) Most developing countries do not have well-developed legal and institutional mechanisms for effectively regulating production of product-related environmental hazards. Environmental hazards may be divided into four types: those affecting air, those affecting water, those affecting quietude, and those affecting landscape.\(^{22}\)

Though MNCs are cause of the Environmental hazards, it is not possible to eliminate them totally from the corporate business world because environment and development are interlinked with each other. MNCs are playing a dominant role in this regard. The Bhopal incident caused by MNC is mentioned as an example of the danger of locating chemical factories near residential areas and of indifference and slackness on the part of the administration to oversee the adherence to safety measures.\(^{23}\) However, the court observed the role of industries for development and said in *Shriram Fertilizer v. Union of India*.\(^{24}\)

“We cannot possibly adopt a policy of not having any chemical or other hazardous industries merely because they pose hazards or risks to the community. If such a policy was adopted, it would mean the end of all progress and development. Such industries even if hazardous have to be set up since they are


\(^{24}\) AIR 1987 SC 965.
essential for economic development and advancement and well being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose the least risk or danger to the community and maximizing safety requirements in such industries.”

3.1 PRINCIPLE OF SUSTAINABLE DEVELOPMENT

To balance the conflicting interests between development and environment the policy makers advanced the doctrine of Sustainable Development. In the Stockholm Conference in 1972, the close link between environment and development was accepted, as reflected in the name of the conference.\(^\text{25}\) The term “sustainable development” occurs in the Rio Declaration, Agenda 21, the Statement of Forest Principles and the Convention on Climate Change, while the Biological Diversity Convention (because of its subject) employs the term “sustainable use”. The latter two conventions are international treaties (in force since 21 March 1994 and 29 December 1993 respectively) which can substantiate international legally binding obligations. In this respect, “sustainable development” (or sustainable use”) is a legal term.\(^\text{26}\)

Development is about improving the well-being of people. Raising living standards and improving education, health, and equality of opportunity are all essential components of economic development.\(^\text{27}\) Environmentalists have used the term sustainability in an attempt to clarify the desired balance between economic growths on the one hand and environmental preservation on the other. Although there are many definitions, basically sustainability refers to “meeting the needs of the present generation without compromising the needs of future generations.” For economists, a development path is sustainable “if and only if the stock of overall capital assets remains constant or rises over time. Implicit in


\(^{26}\) Supra Note 14 at p. 141.

these statements is the fact that future growth and overall quality of life are critically dependent on the quality of the environment.\textsuperscript{28}

Governing India’s environment in a way that strikes the right balance between sustainability, local livelihoods and developmental pressures has become an increasingly challenging task.\textsuperscript{29} However, the problem of environment pollution has been recognized as a worldwide disaster. Development without regard to the ecological equilibrium has led to an environmental crisis during the 19\textsuperscript{th} and 20\textsuperscript{th} centuries. Urbanization, modernization and the race for technological and industrial development has caused the ecological imbalance.\textsuperscript{30}

What kind of environment do we want to live in? If we are asked to describe the kind of environment we would like to have, we would definitely mention such things as clean water, clean air, productive soil and agriculture, freedom from hazardous wastes and forests with abundant wildlife. In short, we want our relationship with the environment to be sustainable. In other words, we would like to be able to look towards the future with a feeling of confidence that these essential qualities are not being depleted or degraded but are being maintained and renewed so that these are also available to our future generations. Very simply, the concept of sustainable development is to meet the needs and aspirations of the present without compromising those of the future.\textsuperscript{31}

The notion of sustainable development was highlighted in the \textit{Brundtland Report}.\textsuperscript{32} A major achievement of these efforts has been the report Our Common Future of the World Commission on Environment and Development (WCED). The WCED – generally referred to as the “Brundtland Commission,” after its chairperson, Prime Minister Gro Harlem Brundtland of Norway – had been asked by the Secretary – General of the United Nations “to Propose long-term environmental strategies for achieving sustainable development”\textsuperscript{33} Since that time

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\textsuperscript{30} Raj Pal Sharma \textit{Environmental Pollution and role of judiciary} AIR 1997 p. 34.
\textsuperscript{31} Madhav Chandra Shah \textit{Man and Environment} 2001 at p. 226.
\textsuperscript{32} World Commission on Employment and Development, Our Common Future 8-9 (1987).
\end{flushleft}
a large literature has emerged on its meaning and application to environmental issues.\textsuperscript{34}

The World Commission on Environment and Development defined “Sustainable Development” as “development that meets the needs of the present without compromising the ability of future generations to meet there own needs.”\textsuperscript{35} This definition clearly shows that the debate on “sustainable development” is, in fact, a discourse on our responsibility to future generations.

The concept of sustainable development has become the ideological basis of environmental law. Sustainable Development meets the needs of the present without compromising the ability of future generations to meet their own needs. The initial concept of sustainable development was a compromise\textsuperscript{36} between developed and developing countries. Developed countries were lobbying for greater environmental protection, but developing countries wanted their right to development recognized.

The explosive economic growth the South-Asian region has experienced in recent years (primarily led by India) and the post Rio world are changing the scenario. The Multinational Corporations (MNCs) have taken a lead in sustainability and Corporate Social Responsibility activities in the region. This has been done in order to develop good will for the companies. Similar to the west, the process is based upon the ‘triple bottom line’ i.e. the organization performance based on economic, social and environmental goals.

Conceptually, sustainable development can be conceived of as integrating three “pillars”: international environmental law, international human rights law and international economic law and “requires support from each of the pills.”\textsuperscript{37}

\textsuperscript{34} Robert W. Hahn \textit{Toward a New Environmental Paradigm} 102 YALE L.J. 1748 (1993).
\textsuperscript{36} Stuart Bell and Donald Mcgilivray, \textit{Environmental Law} at 158 (2007) [Specifically, the double-edged quality of the explicit incorporation of developmental concerns . . . might be seen either as an important accommodation of developing world interests or as allowing generally for ‘business as usual’].
There are several initiatives at different levels to understand what sustainability means in practical terms and to identify the actions needed for progress towards sustainable development. A major initiative at the international level was the United Nations Conference on Environment and Development (UNCED, or the Earth Summit) held in Rio de Janeiro in 1992, which brought together governments from across the world. In the Stockholm conference, countries were debating whether environmental protection and economic development were consistent or antithetical to each other. There were comparatively few international agreements concerning the environment. The principle outcome of the Rio conference was Agenda 21. This Agenda describes the actions necessary for progressing towards a sustainable society.

Agenda 21 also stresses the initiatives required for strengthening the participation of major groups, such as women, children and youth, indigenous people, non-governmental organizations, local authorities, workers and trade unions, business and industry, science and technology, and farmers, in the action for sustainable development. A decade after the Rio conference, the World Summit on Sustainable Development (WSSD) was held in Johannesburg in 2002. The concept of sustainable development and its value have gained recognition and currency in the decade since the Rio conference.

A new body of International Economic Law is emerging however, relating to trade and investment, whose impact on environment and human rights is highly questionable, to say at least. Much recent writings and analysis have focused on the human rights and environmental impacts of the Multilateral Agreement on Investment (MAI) and the World Trade Organization (WTO). This body of international economic law, far from being a pillar of sustainable development, is resulting in the unregulated promotion of unsustainable development.

The pain thrust of sustainable development is that global environmental protection and economic growth. A number of concepts in International Environmental Law are actually concepts of Economic Law:

38 Supra Note 25.
39 Supra Note 18 at pp. 272-3.
40 M.A. Mohamed Salih Globalization, Sustainable Development and Environment: A Balancing Act in Frans J. Schuurman Globalization & Development Studies, Challenges for the 21st Century 2001 at p. 120.
• The concept of internalizing the economic costs of pollution and environmental degradation, referred to in environmental law as “full cost pricing”;
• The “polluter pays principle” which seeks to make the polluter fully responsible for all costs of pollution, be they economic, human, social or cultural;
• The concept of environmental responsibility and liability based upon a product’s cradle-grave life-cycle”; and,
• The mechanism of “economic instruments” which provide incentives and disincentives regarding desired environmental performance or behavior.

3.2 THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT IN INDIA

Ancient Indian thinkers were well aware of the causes of pollution and they evolved certain codes of conduct and norms for human beings to keep the atmosphere free from pollution. They were well aware of hazards of pollution and adequately warned the people about the diseases associated with pollution.41

The ancient Indian sub-continent has a long tradition of protecting and worshipping nature. The land, trees even animals are placed on a high pedestal since the Vedic times (4500 BC to 2500 BC). The ancient people perceived divine existence in trees, medicines, rivers, lakes, mountains and living beings. Due to such extraordinary awareness regarding nature and ecological equilibrium, India is the most advanced country of the world in terms of sustainability. It was considered to be a part of the traditions and cultural values not only to protect the environment but also to maintain ecological equilibrium.42 Religious philosophy plays an important role in everyday life of people even today, with regard to sustainability, especially the environment.

The survival and well-being of a nation depends on sustainable development.43 An important point to be noted is that before 1992 and until very recently, the term “sustainable development” was considered synonymous with

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41 K.C. Goyal  Industrial Management and Pollution Control, 1994, at p. 2.
42 Khan, I.A.  Environmental Law 2000, p. 22.
environmental protection. Most of the official sustainability documents published are prepared by the environment department of the country. In India, the Government of India, the Ministry of Environment and Forests are the controlling agency in Toto.

In India, although the case law failed to produce a clear definition, it did manage to come out with an applicable definition of sustainable development. During the 1980’s, most of the Indian cases were concerned with the cancellation of mining leases and closure of national development projects. In 1994, the Supreme Court of India directly mentioned the principle of sustainable development and tried to balance the social, economic and ecological aspects.44

The 1990’s definition of sustainable development emphasized the relationship between development and environment, and a balance between the two. More sophisticated challenges were made where the Indian courts were asked to deal with polluting industries such as the leather factories,45 to prevent encroachment of wetlands46 and to preserve forests and vegetation.47 It gave priority to sustainable use of natural resources and to a right to a healthy environment for the present, and to a certain extent, to future generations. The

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44 Law Society of India v. Fertilisers & Chemicals Travancore Ltd. AIR 1994 Ker 308 at 360.
45 In Vellore Citizen Welfare Forum Case AIR 1996 SC 2715; (1996) 5 SCC 647 where the Indian Court noted that although the industry generates foreign exchange and provides employment, the Court, citing the principle of sustainable development, concluded that the industry has ‘no right to destroy the ecology, degrade the environment and pose a health hazard’.
46 In People United for Better Living in Calcutta – Public and Another v. State of West Bengal and Others AIR 1993 Cal. 215: the petition was filed to prevent encroachment of wetlands in Calcutta. The Calcutta High Court observed that: ‘there should be a proper balance between the protection of the environment and the development process: the society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment shall have to be protected but not at the cost of the development of the society.’ In the Court’s opinion, even if the Government files a report, only a portion of the wetlands would be available for development purpose.
47 In the Goa Foundation and another v. Konkan Railway Corporation (AIR 1992 Bom 471) the court held that ‘no development is possible without some adverse effect upon the ecology and environment but the project utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests and this exercise must be left to the persons who are familiar and specialized in this field’.

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national environmental policy and legislation reflect the concern for a balance between development, planning and environment.\textsuperscript{48}

The Intergenerational Equity principle has been considered as a part of achieving sustainable development. The part on the sustainable development showed that the court, only in some cases, mentioned the necessity of preserving the environment for the present generation as well as for the future generations. For example, in the cases dealing with reserved forest, the court decided the case based on the need of the present generation and rational use of natural resources. Therefore, the vertical application of equity has been established. Moreover, the notion of equity has been connected with the concept of public trust and depended on people’s right to enjoy a healthy environment.

3.3 ENVIRONMENTAL RIGHTS AND MNCs ACCOUNTABILITY

It is true that the Government across the world have given a free hand to corporations to exploit the natural and community resources, while depriving the common people of their right on these resources. The quality of water has deteriorated significantly due to rapid industrialization during the last four to five decades. Most the wastes of industries are directly discharged in the main water bodies like rivers, lakes, oceans, etc., without any treatment.\textsuperscript{49} In India, some of the Corporations including Multinational Corporations (MNCs) have not only destroyed the water and land resources in these areas, but also impoverished communities by degrading their livelihood resources and health. All these communities suffer from disasters similar to Bhopal. Inaccessible to clean and safe drinking water was found to be a major problem in all these areas. The Companies either pollute the water resource to an extent where it is no more portable or over exploit it till the water table goes down or dry to the wells. Adulteration and contamination of food items also have a prominent place in the list of corporate crimes.

\textsuperscript{48} Bombay Environmental Action Group \& Another v. State of Maharashtra (AIR 1991 Bom 301) the Court stated that ‘the needs of the environment require to be balanced with the needs of the community at large and needs of a developing country’. See also, Executive Engineer v. Environmental and E.P. Samiti 1993 (1) KLT 800.

Much has been talked about the pollution created by corporations including Multinational Corporations (MNCs). Liquid waste streams originate in all of the process industries and many of these are causes of serious stream pollution.\textsuperscript{50} Chemical substances present in the industrial wastes cause physical and chemical pollution of the water course. Acids and alkalis discharged from different industrial units disturb the physical composition of water by raising the acidity or alkalinity balance. Soluble salts of heavy metals such as lead, mercury, cadmium, zinc, copper, nickel, arsenic related in sufficient quantity are highly toxic and hazardous.\textsuperscript{51} It is important to note that most of the damages caused to the environment is irreversible. The corporate sector enjoys far more rights than the common people. With the onset of the new trade regime, national laws are being changed to empower corporations with the right to hire and fire at will, to get the first right over natural and community resources.

Environmental rights subject, known as third generation rights of corporation rights is to protect the environment and to development it. People who have the environmental rights are those actors who will make use of these rights and who will have the responsibilities of these rights. The people who will make use of these rights and who will have the responsibilities are generally the same actors. These are not only the people but also public and special institutions including communities; states and public; and the next generation. In this case, all the right owners who have the rights to live in a healthy and well balanced environment are obliged to protect and to development the environment at the same time, including the Multinational Companies (MNCs).

The genocide in Bhopal has shattered myths or science as non-partisan and of environmental concern as a luxury. It has displayed how the myth of progress is used to deny people’s right to knowledge, and even the right to live. It has shown that the most fundamental of all human rights – the right to survival, is being systematically violated by a “development” pattern that sees people as dispensable. Bhopal also exhibits how while peoples’ very lives are threatened, they are denied knowledge of the threat so that they can neither anticipate nor resist threats, nor can they cope with the destruction of human life.

\textsuperscript{50} C. Fred Gurnham, \textit{Liquid Industrial Wastes-I}, Industrial Wastes, October, 1960, at. 122.
\textsuperscript{51} Kailash Thakur \textit{Environmental Protection, Law & Policy in India}, 1997, pp. 28-29.
According to the idea, protecting and developing the environment has been supplying public use and public service. Thus public service is the duty of the state. It is interesting to note that a series of investment arbitration cases have directly or indirectly upheld the rights of host states to cancel foreign investments by Multinational Corporations (MNCs), on the basis of a legitimate public purpose, if such investments lead to environmental degradation. A restatement of the law on expropriation in the *Methanex case* has suggested a more environmentally sensitive direction for the rules on foreign direct investment. In the *Mathanex case*, a Canadian Company was unsuccessful in its claim against the United States that a California ban on a chemical that was the company’s main product and a potentially toxic contaminant amounted to a regulatory taking. The arbitration tribunal held that as long as a regulatory measure was for a public purpose, was nondiscriminatory, and was enacted in accordance with due process, it is not an expropriation and need not be compensated unless the government had given specific commitments to refrain from such regulation.

The European Court of Justice in *Francovich v. Italy* held that the failure to implement a directive could give rise to a right to compensation by the state for those suffering damage as a result. The language of the *Francovich* opinion is broad and the judgment clearly applies to environmental rights created by directives such as the access to environmental information directive. Access to justice in the environmental area varies among the member states of the European Union. In England, the common law of nuisance is often used for environmental protection by those actually harmed, based on *Rylands v. Fletcher*. In contrast to the English jurisprudence, the other members give broad standing to environmental groups.

Who suffers and whose environmental rights are violating erroneously by the corporations particularly MNCs the most is, the common man including the

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52 One of the earliest of these cases was *International bank of Washington v. Overseas Private Investment Corp.*, 11 I.L.M. 1216 (1972). While some concerns were raised by the Metalclad case, (Metalclad Corp. v. United Mexican States, Case No. ARB (AF/98/2 Int’l Ctr. For Settlement of Inv. Disputes 2000), reprinted in 15 ICSID REV. FOREIGN INV. L.J. 214 (2000).


55 [1868] 1 LR 3 HL 330 [1861-73] All ER Rep 1, H1; aff’g (1866) LR I Exch 265.
shareholders and workers. Holding Corporations responsible for their criminal acts in India and internationally, laws to hold corporations accountable are systematically being dismantled even as corporations and other agents of globalization dictate policies of nations.

3.4 INTER-RELATIONSHIP BETWEEN ENVIRONMENT AND HUMAN RIGHTS

The relationship between environmental issues and human rights is increasingly interdependent. In Municipal Council, Ratlam v. Vardhichand\textsuperscript{56} the Supreme Court of India has recognized the importance of pollution free environment and gave it the status of a human right. Development can serve as a key vehicle for promoting realization of human rights and protecting the environment. However, all too often, unsustainable development practices are themselves proving to be a main source of human rights violations and environmental degradation.

In recent years, great concern has been universally voiced regarding environmental pollution arising as a side effect of industrial activities.\textsuperscript{57} The lessons derived by the MNCs from Bhopal are quite clearly not the lessons that are to be derived by groups working on democratic rights and public interest within India. MNC’s are dispensable, so are their hazardous products and processes. A new solidarity can emerge within India from the Bhopal tragedy that links the human rights movement with the People’s Science movement, the environment movement, the health movement and the movement for self-reliance in development. Quite clearly it is against the interest of MNC’s and the state which hosts and encourages multinationals – that people know the real costs of their product, including the threat to life – because that would destroy the market provided by unsuspecting consumers - Monopoly of knowledge and manipulation of knowledge is not an accident when partisan science serves vested interests. The movement to create alternative sciences which are less destructive to both man and nature is the best challenge to monopolization and manipulation of knowledge.

\textsuperscript{56} AIR 1980 SC 1622.
\textsuperscript{57} Supra Note 49 at p. 25.
In examining the relationship between environmental protection and human rights, the controversial question is whether environmental protection aims at enhancing the quality of human life and is thus a subset of human rights or whether environmental protection and human rights are based on different social values. Another, third approach examines human rights and environmental protection as representing two different strands with “different but overlapping social values.” The two strands overlap and can be mutually supportive where environmental values seek to protect human needs or well-being. However, this approach differentiates between environmental protection and human rights when the conceptual underpinnings of human rights are not suitable to address environmental issues.58

Though both human rights and environmental protection seek to attain the highest quality of sustainable life for humanity, their goals can be in conflict with each other. “The essential concern of human rights law is to protect existing individuals and communities while the aim of environmental law is to sustain life globally by balancing the needs of and capacities of the present with those of the future”.

The case for a right to environment comes in the form of claims to a decent, healthy, or viable environment that is to a substantive environmental right which involves the promotion of a certain level of environmental quality. The origins of a right to environment can be found in the Stockholm Declaration. Moreover, since 1980 several international and regional human rights instruments have included various statements of a right to environment. Both aspects of man’s environment, the natural and man-made are essential to his well being and to the enjoyment of basic human rights—even right to the lift itself.59

If effective recognition is to be given to the human right to the environment it must be capable of being enforced by machinery providing an adequate judicial guarantee. The Declaration, adopted by the European Conference held in 1980, provides that “everyone has the right to a healthy

59 Supra Note 41 at pp. 3-4
environment, conducive to his personal development and ecologically balanced” and that “implementation of the right to conservation of the environment requires individuals, alone or in association with others, to be informed about possible decisions which might affect their environment, to have the opportunity to participate in the decision-making process and, where necessary, to be able to avail themselves of suitable remedies”.

The Charter of Paris for a New Europe adopted in November 1990, provides for promoting, public reporting of the environmental impact of policies, projects and programmes. The preamble of the draft charter and convention states that “[e]very person has the fundamental right to an environment and living conditions conducive to his good health, well-being and full development of the human personality”. If this right is to be effectively implemented the substantive right must be complemented by procedural rights. The procedural aspects of this right would involve the right to information, to participation and to suitable remedies.

During the 1990’s, the Indian courts dealt with mining and quarrying, forest conservation, water pollution, gas leak disaster, development projects and environment, hazardous wastes from industries, litigation concerning big dams, protection of livelihood, construction of bridges and environmental degradation. At the same time, the court dealt with the protection of wetlands, air pollution, air and water pollution, noise pollution, pollution from animal slaughter-houses, access to environmental information, trade and environment, relocation of labours after closure of polluting factories, groundwater management and development, management of city sewerage system. In 2000, there are a few public interest environmental litigations where the Supreme Court dealt with water pollution, noise pollution and coastal zone development. All these decisions, in some way or other, established a human right to healthy environment.

As a member of the present generation, we are both trustees of the environment with obligations to care for it for future generations, and

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beneficiaries entitled to use it for our own economic and social well-being. In brief, each generation has both rights and obligations in relation to the environment. On the basis of these concepts, environmental protection can be achieved through the assertion of existing human rights, the development of new human rights relating to the environment, or a general “right to environment.” The latter would lift environmental protection from being a subset of other human rights, such as property, and thus endow it with a status would have to be balanced against human rights.

3.5 ENVIRONMENTAL REGULATION ON MNCs

- Workers in many countries still face the serious threat to their occupational safety and health. The two notorious disasters—Three Mile Island of Pennsylvania in 1979 or Chernobyl in Ukraine in 1986 still warn of the future nuclear plant accidents. Since the first documented case of Carcinogens and sectoral cancer in the London Child – Chimney – Sweepers, comparable occupations causing environmental cancer exist even in 2008. The giant MNC-Union Carbide Factory disaster at Bhopal whose sufferers continue in the next century also did not provide enough lessons to prevent subsequent chemical disasters. State have the right to regulate the entry and establishment of transnational corporations including determining the role those corporations may play in economic and social development and prohibiting or limiting the extent of their presence in specific factors.

3.5.1 OBJECTIVES FOR REGULATING THE MNCs

A comprehensive global approach towards liability prevention can go a long way in establishing healthy trade practices. By establishing such principles, not only will be possibility of environmental disasters be reduced, but also liability for observing different standards in different locations will be effectively avoided. Such a scheme will have to go beyond primary environmental concerns because factors such as recycling, health standards, and employees’ rights to know


94
about the hazards associated with particular activities are increasingly being incorporated into national and international standards. However, so long as these standards remain fragmented and scattered, their effectiveness will remain questionable. The only answer to the quandary lies in the globalization of the issues, concerns, and objectives that fall within the sphere of transnational business activity.

The following objectives in a new transnational legal regime for multinational corporate activity must be pursued.

- First, the terms and conditions of such activity must promote the cause of global economic and social justice.
- Second, there must be global standards of process safety for transnational hazardous and non-hazardous business activity.
- Third, the activity must satisfy the highest standards of environmental protection.
- Fourth, the activity must observe the highest standards of human rights.
- Fifth, dilution of technology to a lesser level while operating in developing countries should be banned, even if the importing nation so desires.
- Sixth, restrictions against foreign capital investment in developing economies should be set, regulating and reviewed by an impartial committee consisting of the representatives from both developed and developing countries, but excluding the parties in question so that the solutions agreed upon are free from the psychological biases of interested parties.
- Last, an international dispute resolution mechanism should be established where preference is accorded to arbitration before appealing the decision to a court of binding jurisdiction.

To attain these objectives, we need to structure a treaty that essentially establishes an International Company Law. We need a treaty that provides for a new International Organization, similar to the International Civil Aviation Organization, the International Maritime Organization, or the International Postal Union. The new organization must not only protect the interests of developing countries, but also prevent the bureaucratic mentality from lowering the human rights standards or the pollution standards and risk perceptions because the lives
of the citizens of developing countries appear to be less significant than their so-called tactical victories in the exercise of liberty. A human is a human and therefore, must be treated with dignity by both the bureaucratic elite of the developing countries and the TNCs.

All this can be achieved by bringing the functions of several United Nations agencies that relate to the activities of TNCs less than one organization. The U.N. Commission on Transnational Corporations can serve as the starting point. Some functions of the U.N. Conference on Trade and Development, especially those relating to the new International Economic Order, the Code of Conduct for Transnational Corporations, and the ILO standards, need to be brought together and dealt with in a new organization. Such a treaty should create a Board for Multinational Business Activity with both judicial and administrative functions. All corporations that are involved in transnational business activity must be required to register as TNCs with the Board. The Board, in addition to registering such corporations, should make sure that the technology being transferred is state-of-the-art, safe, and environmentally responsive. There should be one uniform standard for risk perceptions, process safety, environmental health, recycling, packaging, and products liability. The Board should maintain records of the levels of scientific advancement.

Further, all corporations that operate outside the country of their incorporation must convince the Board that the product safety, process safety, and efficiency standards at the same at all of the plants of that corporation regardless of their location, allowing some regard for the older facilities and the time needed to bring them up to the safest standards. With this approach, a sense of global justice that can be described as fair international law relating to global commerce can be introduced. Extending these norms to covers that behavior of states vis-à-vis state and corporate entities is not a matter of choice, but a matter of necessity.

### 3.5.2 IMPOSITION OF POLLUTION TAXES ON MNCs

One other factor influencing MNC behavior has been the development of the “Polluter Pays” Principle in Environmental Policies. Pollution and waste taxes have been used to implement environmental protection by transferring the cost of
environmental damage to the party causing the damage. Prevention of pollution may be made as law.63 Ideally, environmental taxes should be variable, as opposed to a fixed baseline tax, in order to encourage sustainable development. If these taxes are fixed baseline taxes, corporations will not find a need to improve on their processes because these taxes will have to be paid at the start. A variable tax can be in the form of an energy tax or an emissions tax. The tax should have some relation to the production levels of the corporation.

The imposition of variable taxes will encourage corporations to adopt a level of sustainable development. The profitability of the corporation will be affected by the total amount of taxes that it must pay. The imposition of a carbon or energy tax will have a direct effect on the corporation’s cost of production, thereby implicating its self-interest. These corporations will be more motivated to adopt methods what will decrease their amount of emissions or decrease the amount of energy they need to consume so that less tax will eventually have to be paid.

Similarly, taxes may indirectly affect the public images of these corporations. Because the cost of production is at stake, investors will increase their focus on the business operations of the corporations. If corporations are consistently paying high taxes due to environmentally unfriendly processes, investors may be discouraged from investing in those companies, as this will have a direct effect on the profitability of the company and hence the return on investment. Similarly, shareholders of these corporations will take greater notice of the production processes, as the linked taxes will have an impact on the shareholders’ investment. When seen in this perspective, corporations will be more proactive in adopting environmentally friendly procedures in order to boost the performance of their businesses.

3.6 RESPONSIBILITY OF STATE IN REGULATING MNCs

Improving the accountability of Transnational Corporations (TNCs) for human rights violations may be done through four avenues, which are complementary in theory, but are often presented as alternative routes in political and legal discourse. It may be envisaged first, to impose on the States responsibility to control corporate actors. The state in which the corporation is domiciled may control in activities even when these are pursued abroad, either directly or through the setting up of a subsidiary corporation (home state responsibility). The ‘receiving’ state where the corporation has its activities also may be said to be under an obligation to protect the human rights of its population.

Governments cannot be held responsible for every situation of risk that arises within their jurisdictions as long as they are in full compliance with their due diligence duties. The absence of co-ordination among States can neutralize most of their individual efforts. The nature of pollution is such, for example, that its effects can often be found in countries other than the originating country; consequently, unless the pollution controls laws of the individual states in, say, a sub region can be harmonized, it is impossible to control certain types of pollution. Moreover, unless there is sufficient co-ordination among States in the structuring of their laws, States with high environmental standards in a region will find themselves commercially disadvantaged as their standards militates against the rising of standards in environmental protection.64

Despite the emergence of the States’ duty to protect as an indirect way to promote compliance with social and economic rights standards by MNCs, some of the most serious challenges that the human rights regime is facing – particularly regarding the implementation of social and economic rights in the current globalize world – may be to find to efficient ways to overcome the difficulties posed by its still state-centric territorial base and the resulting problems of

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jurisdiction. The fault liability is the most prevalent and widely accepted basis for establishing State responsibility for environmental pollution.65

As some scholars have noted, “International Human Rights Law has not yet evolved so as to hold states responsible for the actions of their non-government citizens, including corporate nationals, abroad.” However, developed countries could eventually enter into a multilateral agreement and accept an “oversight responsibility for the failings of parent companies incorporated in their jurisdictions . . . that contribute to human rights abuses overseas” and potentially be held accountable before international monitoring bodies. Given the increasing relevance of the impact of economic globalization on the traditional concept of state responsibility for human rights violations, many respected scholars now favor the expansion of state responsibility “in specific fields, such as with respect to certain acts committed by corporations abroad” imposing the obligation to the home state of “controlling the activities abroad of the corporations which are incorporated under their jurisdiction … without prejudice of the sovereign rights of the territorial host state.”

Law should provide for the fundamental duty to preserve the environment for the benefit of future generations, and duty to preserve the basic principles that states must observe in fulfilling this duty. The fundamental duty and basic principles should be part of both national and international law; without doubt the responsibility to future generations is the common task of all states.66

3.7 CORPORATE ENVIRONMENTAL MANAGEMENT

Industrial countries have achieved improvements in environmental quality along with continued economic growth. Air quality in OECD countries in vastly improved.67 Multinational and domestic corporations around the world are adopting Environmental Management Systems (EMS) and certifying them by International Standards. ISO 14001 is becoming the dominant international standard for assessing environmental management processes and in Europe many

66 Supra Note 33 at p. 212.
firms are also registering their EMS according to the Eco-Management and Audit Scheme (EMAS).

The concept of environmental management subsumes measures taken by the state to, (i) regulate the use and development of natural resources; and (ii) anticipate and control the environmentally adverse consequences of the development process. However, there is no conflict between environmental management and development because ultimately, both are concerned with ensuring that present and future generations enjoy decent living standards.⁶⁸

The costs of pollution from industry, energy and transport are already high and will grow exponentially if these problems are neglected. It is thus absolutely essential to reduce emissions per unit of production. This requires investment in new equipment and the development of new technologies.⁶⁹ Multinationals often seem more interested in consistent enforcement of environmental rules than in lower standards per se. Moreover, companies are often willing to make new investments that actually improve the environment, so long as their main competitors are also required to do so. Part of the reason for this is that multinationals frequently apply a single environmental standard to their worldwide operations, regardless of any (lower) standards which may exist in a particular country. There could be three main reasons for this.

- First, the firm may have calculated that it cannot afford to see the reputation of its products in the (global) market-place tarnished by charges of “environmental exploitation” in one particular location-charge which can sometimes result in boycotts or other forms of consumer pressure.
- Second, the firm may have calculated that it is less expensive to apply a single environmental standard to its (globally-integrated) production processes, rather than to develop “tailor-made” production lines, based on varying levels of environmental standards.
- Finally, the ability of firms to make “dirty” investments may be limited by requirements in their home country. For example, the US Ex-Im bank

⁶⁹ Supra Note 27 at p. 40.
requires any US company taking advantage of its export financing assistance to meet certain minimum environmental criteria.

Environmental management has been seen as constraint on ‘development’ because of its supposedly onerous demands upon the actors in the ‘development’ process. Thus exploitation of natural resources proceeds without rational resources management policies;\textsuperscript{70} industrialization through the handmaiden of Multinational Corporations (MNCs) takes on account of the effect of industrial processes on the eco-systems; little concern is given in anticipating ecological costs, side-effects of development projects and programmes or to incorporating such consideration in the development planning process.\textsuperscript{71}

3.7.1 MANAGEMENT OF DECREASING ENVIRONMENTAL POLLUTION IN HOME STATES

The environment movement of the affluent world has decreased the hazards of pollution and toxic chemicals in their own countries. This has, however, created a new environmental burden for countries like India. The global relocation of hazardous industry, politely called the new international economic order, is increasing the threat to survival of the people of the poorer countries, where laws, are weak, state bureaucracies are corruption, and pollution is invited as progress. The “limit of growth” had very cleverly laid out this vision of the new international division of labour when it recommended that in 1975 the industrially advanced countries must stop industrial growth and the underdeveloped countries should increase their rate of industrialization.

While this global relocation in manufacturing activities is proposed as a solution to inequalities generated by the first industrial revolution, the proposal actually camouflages the new geopolitics supporting the second industrial revolution. The new relocation production and consumption becomes a subtler way of controlling and consuming the resources of the third world by the


industrially advanced countries without bearing the environmental costs of such production and consumption. According to Gorz the prescriptions of “Limits to growth” show the path to eco-fascism:

“What a marvelous scheme. For us clean air and water, production of non-material goods, leisure, and affluence. To Third world countries, if they are well behaved, material production, dirt, pollution, danger, sweat and exhaustion, along with congested and polluted cities. When the Meadows report looks forward to tripling world-wide industrial production, which recommending zero growth in industrialized countries, does not it imply this neo-imperialist vision of the future?”

The Bhopal tragedy had an instant response from the multinationals that are maintaining and even increasing profits by exporting pollution. The Wall Street Journal completed a survey in less than a month after the disaster which concluded; “Most countries – apparently including the Indian Government – urgently want their relationship with multinational corporations to continue and grow. They need the jobs, infusion of cash, know-how-and the products – even dangerous agricultural chemicals – that the multinationals provide.”

3.8 CORPORATE SOCIAL RESPONSIBILITY

The topic of corporate social responsibility came to the force at the end of the 1960s in the United States. Corporations are now expected to be socially responsible, although different people give this dictum different interpretation.\(^\text{72}\) Corporate Social Responsibility (CSR) a concept developed and promoted over the last 20-30 years usually referred to as a voluntary commitment which corporations can adopt. It is often remarked, quite correctly, that industry in general tends to be dirty, throwing out most its waste products into the environment. So it is heavy responsibility on industrial enterprises (MNCs) that they should find out ways and means to secure cleaner environment. They should allocate a reasonable portion of their profits for research and development activities to combat pollution problem. Trade effluents should be treated

completely before their discharge to public water system. Flue gases and dust should be arrested by using dust collectors, filter bag and electrostatic precipitators so that problem of air pollution can be migrated.

At present, the responsibility of business is not only confined to produce quality goods and services at minimum price and made available to public at right time but it is increasing responsibility to ensure such a healthy atmosphere which is free from all types of pollution viz. Air, Water, Noise, Garbage, etc. Since environmental pollution is created by the business, therefore it is the social responsibility of business and every industrial units to provide clean and pollution free environment to the society so that public can live in healthy and hygienic atmosphere.  

Recent years have witnessed increasing importance on corporate social responsibility, especially as concerns about climate change are becoming mainstream. A common criticism is that advanced economies have often moved their more dirty industries to other parts of the world where there are less stringent environmental and social standards. As a result, other countries may be polluting on their behalf.

Given the immense impact businesses can have on people’s lives, and their increasing power, environmental, human rights, and social justice activists have tried different ways to get businesses to be more accountable for their actions. They have tried to go through their government (that is supposed to be representative of their people, in a democracy), and even to businesses and shareholders themselves to urge better responsibility. As a result, many business leaders have therefore tried to purpose corporate social responsibility practices, or attempted to.

Promoters of CSR include ethical investors, leading businesses committed to sustainability, and parts of civil society, who sell it as going beyond elements of legal and regulatory compliance, and encouraging of active participation of all stakeholders in determining a company’s standards and benchmarks to meet their needs and expectations. It can go beyond a one-size-fits-all general framework of regulation and set the bar higher.

Corporate social responsibility in the realm of the environment is a growing phenomenon within the boardrooms and management levels of major

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73 Supra Note 41 at p. 20.
national and international corporations (TNCs). Corporations are responding to pressure with a growing awareness of the necessity to meet environmental issues head on. There has been a proliferation of self regulatory initiatives and organizations that advocate the self-regulatory model for effective environmental compliance. A number of companies have begun producing free-standing environmental reports or featuring environmental information in their annual reports. However before examining the steps corporations have begun to take, it is essential to understand the development and drivers behind corporate social and environmental responsibility and sustainable development.

While there may be no single universally accepted definition of CSR, each definition that currently exists underpins the impact that businesses have on society at large and the societal expectations of them. Although the roots of CSR lie in philanthropic activities (such as donations, charity, relief work, etc.) of corporations, globally, the concept of CSR has evolved and now encompasses all related concepts such as triple bottom line, corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability and business responsibility. This is evident in some of the definitions presented below:

The EC\textsuperscript{74} defines CSR as “the responsibility of enterprises for their impacts on society”. To completely meet their social responsibility, enterprises “should have in place a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders”

The WBCSD defines CSR as\textsuperscript{75} the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.”

According to the UNIDO\textsuperscript{76}, “corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a

\textsuperscript{74} http://ec.europa.eu/enterprise/policies/sustainablebusiness/corporate/social/responsibility/index-en.htm

\textsuperscript{75} http://www.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx.

\textsuperscript{76} http://www.unido.org/what-we-do/trade/CSR/what-is-csr.html#pp 1(g1)/o/
balance of economic, environmental and social imperatives (Triple – Bottom – Line Approach), while at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be a strategic business management concept, and charity, sponsorship or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that.”

From the above definitions, it is clear that:

- The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses.
- CSR needs to address the well-being of all stakeholders and not just the company’s shareholders.
- Philanthropic activities are only a part of CSR, which otherwise constitutes a much larger set of activities entailing strategic business benefits.

Transnational Corporations (TNCs) should assume some sort of transnational social responsibility. Increasingly corporations are being called upon to be more pro-active in taking responsibilities for their actions. “Particularly in developing countries, in the absence of a strong state and empowered stakeholders, it is argued that MNCs should develop their own models of environmental and social responsibility that go beyond acting within their more narrowly-defined legal obligations, both to shareholders and/or host governments”. Therefore corporations more and more are forced to turn to issues of social and environmental responsibilities.

In 2002, the Johannesburg Summit recognized that globalization need not be demonized, but must rather be harnessed toward the goal of sustainable development. With the increase in wealth maximization as a result of globalization, more resources are available. As the Johannesburg Plan points out, “globalization offers opportunities and challenges for sustainable development.”

77 Luzius Wildhaber Some Aspects of the Transnational Corporation in International Law 27 Neth. Int’l. L. Rev. 87 (1980).
By specifically targeting the promotion of corporate responsibility and accountability for sustainable development, the Johannesburg Plan addresses an underdeveloped aspect of the free trade economic model—the need to equitably distribute the extra wealth created by globalization. The primary actors of globalization have been the MNCs. If sustainable development is to succeed, states have to engage these MNCs, and more importantly, influence their business decisions to take into account sustainable development. In order to achieve this, environmental policies must seek to utilize the motivating factors of “pain, gain, and shame” to integrate the environment into the corporate activities of MNCs. Environmental problems have become global, the actors have become global, and the law must also become global. The influences of MNCs are now far-reaching and their behavior has transboundary repercussions. Environmental law must therefore develop in legally holistic fashion.

Environmental organizations are active in securing corporate accountability. The approaches taken by the numerous organizations ranged from individual actions chosen for their public relations value and aimed at raising public pressure through symbolic effort, to less prominent lobbying work and cooperation with corporations in developing better products or standards. One of the most well known organizations, Greenpeace International, has used all these means.

3.8.1 CORPORATE SOCIAL RESPONSIBILITY IN INDIA

CSR in India has traditionally been seen as a philanthropic activity. And in keeping with the Indian tradition, it was an activity that was performed but not deliberated. As a result, there is limited documentation on specific activities related to this concept. However, what was clearly evident that much of this had a national character encapsulated within it, whether it was endowing institutions to actively participating in India’s freedom movement, and embedded in the idea of trusteeship.

The companies Act, 2013 has introduced the idea of CSR to the forefront and through its disclose-or-explain mandate, is promoting greater transparency and disclosure. Schedule VII of the Act, which lists out the CSR activities, suggests communities to be the focal point. On the other hand, by discussing a
company’s relationship to its stakeholders and integrating CSR into its core operations, the draft rules suggest that CSR needs to go beyond communities and beyond the concept of philanthropy.

In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013, which was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013. The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 to come into effect from April 1, 2014.

The Companies Act, 2013 (‘2013 Act’), enacted on 29 August 2013 on accord of Hon’ble president’s assent, has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle-blowers. The new law will replace the nearly 60- year- old companies Act, 1956 (‘1956 Act’). The 2013 Act has introduced several provisions which would change the way Indian corporate do business and one such provision is spending on Corporate Social Responsibility (CSR) activities. CSR, which has largely been voluntary contribution, by corporate has now been included in law.

With effect from April 1, 2014 every company, private limited or public limited, which either has a net worth of Rs.500 crore or a turnover of Rs. 1,000 crore or net profit of Rs. 5 crore, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities. The CSR activities should not be undertaken in the normal course of business and must be with respect to any of the activities mentioned in Schedule VII of the 2013 Act. Contribution to any political party is not considered to be a CSR activity and only activities in India would be considered for computing CSR expenditure.

Section 135 of Companies Act 2013.

(1) Every company having net worth of rupees five hundreds crore or more, or turnover of rupees one thousand crore or more or a net profit or rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board Consisting of three or more directors, out of which least one director shall be an independent director.
(2) The Boards report under sub-Section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee Shall,-
   
   (a) Formulate and recommend to the Board, a Corporate Social Responsibility policy which shall indicate the activates to be undertaken by the company as specified in Schedule VII;
   
   (b) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
   
   (c) monitor the Corporate Social Responsibility Policy of the Company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,

   (a) After taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company’s website, if any, in such manner as may be prescribed; and
   
   (b) Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two percent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

   Provided further that if the company fails to spend such amount, the board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

**Explanation:**

For the purpose of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

The activities that can be undertaken by a company to fullfil its CSR obligations include eradicating hunger, poverty and malnutrition, promoting preventive healthcare, promoting education and promoting gender equality setting up homes for women, orphans and the senior citizens, measures for reducing inequalities faced by socially and economically backward groups, ensuring environmental sustainability and ecological balance, animal welfare, protection
of national heritage and art and culture, measures for the benefit of armed forces veterans, war widows and their dependents, training to promote rural, nationally recognized, Para-Olympics or Olympic sports, contribution to the Prime Minister’s National Relief Fund or any other fund set up by the Central Government for socio economic development and relief and welfare of SC, ST, OBCs, minorities and women. Contributions or funds provided to technology incubators located within academic institutions approved by the Central Government and rural development projects. However, in determining CSR activities to be undertaken, preference would need to be given to local areas and the areas around where the company operates.

To formulate and monitor the CSR policy of a company, a CSR Committee of the Board needs to be constituted. Section 135 of the 2013 Act requires CSR Committee to consist of at least three directors, including an independent director. However, CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee and stipulates that the Committee for a private company and a foreign company need have a minimum of only 2 members.

A company can undertake its CSR activities through a registered trust or society, a company established by its holding, subsidiary or associate company or otherwise, provided that the company has specified the activities to be undertaken, the modalities for utilization of funds as well as the reporting and monitoring mechanism. If the entity through which the CSR activities are being undertaken is not established by the company or its holding subsidiary or associate company, such entity would need to have an established track record of three years undertaking similar activities.

3.8.2 CORPORATE SOCIAL RESPONSIBILITY AND SUSTAINABILITY

Sustainability (corporate sustainability) is derived from the concept of sustainable development which is defined by the Brundtland Commission as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”\(^79\), corporate sustainability

\(^79\) Brundtland Commission’s Report, 1987
essentially refers to the role that companies can play in meeting the agenda of sustainable development and entails a balanced approach to economic progress, social progress and environmental stewardship.

CSR in India tends to focus on what is done with profits after they are made. On the other hand, sustainability is about factoring the social and environmental impacts of conducting business, that is, how profits are made. Hence, much of the Indian practice of CSR is an important component of sustainability or responsible business, which is a larger idea, a fact that is evident from various sustainability frameworks. An interesting case in point is the NVGs for social, environmental and economic responsibilities of business issued by the Ministry of Corporate Affairs in June 2011. Principle eight relating to inclusive development encompasses most of the aspects covered by the CSR clause of the companies Act, 2013. However, the remaining eight principles relate to other aspects of the business. The UN Global compact, a widely used sustainability framework has 10 principles covering social, environmental, human rights and governance issues, and what is described as CSR is implicit rather than explicit in these principles.

Globally, the notion of CSR and sustainability seems to be converging, as is evident from the various definitions of CSR put forth by global organizations. The genesis of this convergence can be observed from the preamble to the recently released draft rules relating to the CSR clause within the Companies Act, 2013 which talks about stakeholders and integrating it with the social, environmental and economic objectives, all of which constitute the idea of a triple bottom line approach. It is also acknowledged in the Guidelines on Corporate Social Responsibility and sustainability for Central Public Sector Enterprises issued by the DPE in April 2013. The new guidelines, which have replaced two existing separate guidelines on CSR and sustainable development, issued in 2010 and 2011 respectively, mentions the following:

“Since corporate social responsibility and sustainability are so closely entwined, it can be said that corporate social responsibility and sustainability is a company’s commitment to its stakeholders to a conduct business in an

economically, socially and environmentally sustainable manner that is transparent and ethical”.

3.8.3 ENVIRONMENTAL ORGANIZATIONS & CORPORATE ACCOUNTABILITY

Accountability is at the heart of Justice-as it is at the heart of Partnership. It is the key to the building of trust and the realization of human dignity and development within secure and sustainable communities. Such communities require a just and moral economy where people are empowered to participate in decisions affecting their lives; where the power is balanced and shared among government, business and civil society; and where public and private institutions are held accountable for the social and environmental consequences of their operations.

Justice demands corporate accountability and indeed the transformation of all global economic governance to serve all people, not only the wealthy and powerful. To “remake the world” and tackle growing inequality, concentration of power, and social exclusion, we need a people-centered, poverty reducing and planet-friendly approach to financing sustainable development.

Corporate Accountability-preferred by environmentalists and NGOs as more verifiable and enforceable-either through statutes, legal and regulatory compliance or through civil legal proceedings. The problem is that the levels of compliance required by national jurisdictions are inadequate, and an international robust legal framework does not yet exist, except in some narrow specific environmental and trade agreements, and therefore corporations, especially those who are transnational, can easily get around or not comply with exiting regulations. This argument maintains that the use of voluntary initiatives undermines any extant legislative requirements as well as progress toward developing new international standards, norms and laws.

Corporate Social Responsibility and good Corporate Governance are important but they cannot be seen as a substitute for Corporate Accountability in a legislated framework with enforceable mechanisms. Sustainable Development requires a new method of Accounting-Triple Bottom Line-full-cost accounting,
internalization of environmental and social as well as economic costs. This requires a new arrangement with Government Sustainable Development policies.

The nexus between Corporate Social Responsibility and Sustainable Development appears in a number of Principles and Resolutions that emerged from the 1992 Rio Declaration and Earth Summit and Agenda 21. For example, Principle 10 of the Rio Declaration promotes the disclosure and dissemination of information on environmental performance. Principle 16 of Rio Declaration calls for the increased incorporation of economic instruments and environmental protection. Agenda 21 also “requests industry to contribute to the development and transfer of clean technology and the building of local capacity in environmental management in developing countries.”

Principles for Global Corporate Responsibility, Benchmarks for Measuring Business Performance\(^8\) is a model framework that faith-based institutional investors use to assess the adequacy of company policies, codes of corporate conduct and company performance in relation to their stated expectations for corporate social responsibility action. It sets out principles, criteria and benchmarks on a range of issues: from the wider community ecosystems, national and local communities, indigenous communities; to the corporate business community of the employed, women, minorities, disabled, child labour, forced labour; to suppliers, shareholders, joint ventures, partnerships, subsidiaries, customers and consumers; an ethical and financial integrity. It references many international codes, covenants, conventions, rules and practices, as well as standards of international organizations like the ILO, to establish the best agreed practices of CSR and Accountability.

3.8.4 INTERNATIONAL PROCESSES AND OPPORTUNITIES

1. OECD Guidelines for Multi-National Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for accounting and auditing regulations. These principles and standards are designed to enhance the transparency and accountability of multinational enterprises in their interactions with governments and other stakeholders.

\(^8\) Principles for Global Corporate Responsibility: Benchmarks for Measuring Business Performance- Taskforce on the Churches and Corporate Responsibility, Canada (TCCR), The Interfaith Center on Corporate Responsibility, USA (ICCR), The Ecumenical Council for Corporate Responsibility, UK (ECCR), 1998.
responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology.

2. Global Reporting Initiative (GRI) provides an intellectual framework to analyze CSR issues, and benchmarks to monitor and measure corporate activity, but has no verification mechanisms or enforceability. Its mission is to develop global guidelines for reporting on the economic, environmental and social performance of organizations. It is true that since its launch in 1997, a wide range of stakeholders-including business, nonprofits, accounting bodies, investor organizations and trade unions have participated in the GRI. An agreed set of revised 2002 Sustainability Reporting Guidelines was released at the Johannesburg Summit, and there is much talk about connecting the GRI as a step further in implementing the Principles of the Global Compact.

3. United Nations Global Compact initiative challenges business leaders to “embrace and enact” nine basic Principles with respect to human rights, including labour rights and environment. It has been controversial, accused of Blue Wash; nevertheless, it has been endorsed by a wide range of companies, organizations, labour and NGOs, while other have declined to endorse it until it has “some teeth”. The codification of principles has been voluntary and adopted without any additional criteria or benchmarks for monitoring, verification or enforcement. However there is an interesting conversation now underway to link this initiative to the GRI, as well as other processes such as the World Bank Safeguard Policy-re environmental and social protection, including indigenous or aboriginal rights. It will be interesting to see whether critics will be more supportive of this process if the recent Draft Norms on the responsibilities of transnational corporations with regard to human rights gain more support and a clearer global mandate.

4. Draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights were adopted in August 2003 by the Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights-Economic, Social and Cultural Rights-(Fifty-fifth
The work of this sub-committee began in 1998 with a Working Group on the Working Methods and Activities of Transnational Corporations (TNCs). The work on Draft Norms was summarized as follows. The Norms are expressly aware of and complementary to the UN Global Compact and may be viewed as an explication of the compact’s Principles. They are intended to provide a level playing field for all large businesses, while always being aware of the greater leverage and responsibilities of Transnational Corporations (TNCs), and conversely the much lesser ability of small local businesses to fulfill the Norms in their entirety. The Norms do not attempt to provide a “one-size fits all” approach, but instead offer specific human rights guidance on the many diverse challenges that affect a broad spectrum of industries. The Norms will be similar to many U.N. declarations and resolutions which interpret existing international law and summarize international practice without reaching the status of a treaty.

The Norms assert that it is the primary responsibility of governments to protect human rights, but that within their spheres of activity and influence businesses also have human rights obligations. The Norms are arguably more comprehensive than any other single international standard, addressing a very broad spectrum of human rights. Draft Norms on the Responsibilities of Transnational Corporations (TNCs) and Other Business Enterprises with Regard to Human Rights.

The Norms Cover the Following areas;

- General Obligations;

• Right to equal opportunity and non-discriminatory treatment;
• Right to security of persons;
• Rights of Workers;
• Respect for national sovereignty and human rights;
• Obligations with regard to consumer protection.
• Obligation with regard to environmental protection;
• General Provisions for implementation.

5. JPOI – Johannesburg Platform of Implementation 2002 – One of the most debated issues at the Johannesburg Summit was CSR and Corporate Accountability. There is a growing broad-based international movement to encourage companies and international organizations to integrate social and environmental concerns into their operations, either voluntarily or in response to mandatory regulations. The issue of the sovereign power of countries to legislate and regulate versus the enormous power of TNCs to implement best practices over and above minimum environmental and even social requirements, and specific to their sectors, was hotly debated. In the end, Member States agreed to “Promote Corporate Social Responsibility and accountability and the exchange of best practices in the context of Sustainable Development.” This shows up in several more specific contexts in the JPOI. The linking of CSR/Accountability with Sustainable Development is one of the more encouraging trends.

3.9 DIFFUSION OF TECHNOLOGY AND ENVIRONMENTAL DEVELOPMENT

Transfer of technology has been, as we have seen, inherent in the growth of multinational enterprise (MNEs) particularly during the last several decades. Historically speaking, the transfers of technology made by the multinational firms were a means for the transferees to catch up economically speaking to the transferors.84 After World War II, most of the studies in international business were concentrated on the role of multinational corporations (MNCs) and their direct investment strategies. 1970’s onwards, there has been an emphasis both at

84 Michel Ghertman and Margaret Allen An Introduction to the Multinationals 1984 at pp.82-83.
national and international levels, involving technology transfer. This is supposed to be a constructive or creative aspect of multinational enterprise, because world economic development is so dependent on the transfer and diffusion of modern industrial technology.

Until the late 1980s, when the world wide trend towards liberalization set in, foreign capital and technology were under severe restrictions in many developing and socialist/communist countries. Restrictions on foreign capital and technology constrain not only the foreign firms but also the domestic firms because it may come in their way of acquiring the technology of their choice from the best source. Restrictions on foreign capital may affect the growth plans of firms, including establishment of joint ventures.

The multinational firm has been a principal though not the sole vehicle for the transfer of technology. If the multinational corporation is best understood as a vehicle of change, then perhaps technology transfer should be understood as change itself. The significant role of multinational firm in this process can be seen as a two-way flow between home and host countries. Technology capability is most usually transferred from the central headquarters of the firm to its affiliates abroad, in the form of managerial know-how, production techniques, new products and processes, and patent licensing. The second type of technology transfer is a reverse flow, from the host to the home country. It is not unusual for a multinational firm to purchase an operating company for the purpose of acquiring its advanced technology.

The MNC has been a source of technology transfer to the LDCs. The technology they transfer may be embodied in capital goods (machinery, equipment, and physical structures) or disembodied as in industrial property

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88 Remarks by Matthew W. Perry, Jr., U.S. Foreign Policy and Emerging Legal and Policy Issues of Technology Transfer April 22-24, 1976, Proceedings of the 70th Annual meeting Washington, D.C. Published by American Society of International Law.
rights, unpatented know-how, management and organization, and design and operating instructions for production systems.\(^{91}\) Payment for technology in the context of foreign direct investment may be both explicit and implicit.\(^{92}\) Developing countries have three distinct options in obtaining technology from MNC through:\(^{93}\)

1. A one time purchase on payment of fees for consultation and capital goods; or
2. A technical collaboration with an MNC under a licensing arrangement; or
3. A joint venture with an MNC having equity shares of varying proportions.

Of these options, the first is obviously very expensive and hence may not be a feasible option to many. Licensing arrangements though beneficial, are only successful under the preconditions of an intensive R&D activity by indigenous firms. The third option of the JV with an MNC is the most preferred one. It not only provides easy access to technology but also to capital and provides a brand image that is crucial for increasing competitiveness in the local market. An association with an MNC is also viewed as a springboard to enter the global market.\(^{94}\) These methods of technology transfer as ‘externalized transfers’. Technology transfers within the subsidiaries of MNCs are categorized as ‘internalized transfers’\(^{95}\).

The elements of technology provided by transnational corporations (TNCs) under joint venture arrangements can include any or all of those provided under foreign direct investment. The main difference is that, because of the sharing of control and benefits, the nature and quality of the technology supplied will tend to be made more explicit, in the form of contractual arrangements between the transnational partner and the joint venture enterprise. Similarly, technology

\(^{91}\) Supra Note 2 at p. 63.
\(^{93}\) Manik Kher Technology Assimilatin in Joint Ventures: The Indo-MNC Experience 2001 at p. 38.
\(^{94}\) Ibid at p. 39.
\(^{95}\) The United Nations World Investment Report, 1999 at p. 207.
payments will also tend to be more explicit than in the case of the establishment of a wholly owned or majority-owned affiliate.\(^{96}\)

Given the importance of this function, both to the TNC itself and to the recipient countries, it is not surprising that controversy should have arisen as to the way in which the task is being carried out. The technology supplied by the TNC comes in a number of different forms. In other cases, it is transferred under licence or through management contracts to the LDC, through permission to use brand names and so on. In yet other cases, TNC technology may be transferred as part of official aid programmes of both bilateral and multilateral aid agencies.\(^{97}\) They transfer ‘know-how’ (production engineering) and not ‘know why’ (basic design, research and development).\(^{98}\)

Internal technology transfer between international subsidiaries is an MNC-specific attribute. Host countries are usually very happy for this to occur not only does the local MNC subsidiary benefit from the inward transfer from the parent, but there are usually substantial (eventually total) leakages of the new technology into the local economy. It is principally for this reason that technology transfer is much less attractive to the MNCs home government. However, considering the multilateral nature of technology transfers and leakages and the time gap in operationalizing a technology transfer, governments are probably over-sensitive about this, especially in view of the substantial product and process patent law which is widely enforced.\(^{99}\)

Technology is also transferred through commercial channels on a bilateral from private firms, mostly MNCs, to state-owned enterprises, and branches of MNCs operating in the LDCs. This is also known as intra-firm technology transfer which is in the following forms:\(^{100}\)

a. turnkey projects;

\(^{96}\) Supra Note 86 at p. 86.  
\(^{97}\) Supra Note 7 at p. 144.  
\(^{98}\) Sanjaya Lall Multinationals, Technology and Exports 1985, at p. 74.  
\(^{99}\) James H. Taggart & Michael C. McDermott The Essence of International Business 1996 at p. 44.  
b. Specialized services such as financial, managerial, engineering, construction, etc.;
c. “Project packed” sales of technology which may include raw materials, machinery, equipment, spare parts, management, brand names, patents, trademarks, licensing, joint ventures, wholly owned subsidiaries, etc.;
d. “process packed” sales of technology which include complete production processes or plants along with market survey, product-mix, drafts, designs, technical specifications, knows-how, commissioning, supervision, and services of experts for training local personnel;
e. "technological package" or "simple direct" sales of technology, which include "embodied" or outright sales of machinery and equipment or consulting services (disembodied) like managerial, marketing, including access to foreign markets and other expertise; and
f. “unpackaged” sales of technology or direct investment in the form of machinery, equipment, raw materials, processed products, commissioning, designing, licensing, training, management or supervision.

Controversy arises over the ‘appropriateness’ of the technology that is transferred (the term ‘technology’ is used in a broad sense to include the nature and specification of what is produced as well as the actual techniques of production). On the one hand, the supporters of the TNC argue that it is only through direct investment or licensing agreements that LDCs can acquire the technology and know-how essential for rapid development. On the other hand, critics of TNCs maintain that they transfer an ‘inappropriate’ technology, inconsistent with the factor endowments of LDCs.101 The New Delhi Declaration and Plan of Action of Industrialization of Developing countries and International Co-operation is even more specific, calling on the international community to ensure that technological transfers do not harm the environment of developing countries, that they do not exhaust the natural resources, and that environment protection technologies are made available to developing countries.102

101 Supra Note 7 at p. 144,
Transfer of technology takes numerous forms but the UNCTAD has identified the following eight (important) ones.\textsuperscript{103}

(i) flow of books, journals and other published information;
(ii) the movement of people between countries. Including immigration, study visits and other travel;
(iii) knowledge of goods produced elsewhere;
(iv) training of students, technical staff and employment of external experts;
(v) exchanges of information and personnel through technical cooperation programmes;
(vi) import of machinery and equipment and related literature;
(vii) agreements on patents, licensing and know-how; and,
(viii) direct foreign investment and operation of multinational corporations.

Actual transfer may be through one of the above ways or a combination of more than one, depending on the situation. For the channel of transfer several forms have been evolved. Some of these are:

(1) Direct investment by foreign enterprise, which is usually a MNC;
(2) Establishing subsidiary or affiliates in the LDCs;
(3) Public Undertakings;
(4) Joint ventures etc.

In each of this from the MNCs have an upper hand because of the oligopolistic nature of the market, and the LDCs have weak bargaining power. Further, because of the extent and imperfection of the technology market, it is difficult, indeed most difficult, to know the prevailing prices, and bargain for the transfer.\textsuperscript{104}

MNCs may restrict the access of particular affiliates to technology in order to minimize inter-affiliate competition. It is noted that MNCs are more likely to license older technologies from which they have already derived significant rents than newer technologies on which there are still relying for market leadership.

\textsuperscript{103} Chapter III of Transfer of Technology, including know-how and Patents: Elements of a Programme of work for UNCTAD T/D/B/310.
\textsuperscript{104} V.B. Singh \textit{Multinational Corporations and India}. 1979 at p. 129.
Further, they may hold back the upgrading of the affiliate technology or invest insufficiently in host-country training and R&D in accordance with their global corporate strategies. Therefore, arguing that FDI inflows and economic liberalization automatically facilitates technology transfer is being extremely native.

The extent of technology and management of know-how transfer by the MNCs depend to a large extent on their corporate strategy; for example, firms desiring to have a longer-term relationship with the suppliers (rather than those simply using the host country as a marketing/export base) will be more inclined to effect transfer technology. It has been observed that the MNCs generally do not transfer their advanced technology to the host country. They carry out their research and development in the home country only. Further, technology supplied by the MNCs to LDCs is capital-intensive and import-oriented which may not suit the real need of these countries. Moreover, they are most obsolete.\textsuperscript{105}

In the highly imperfect international market for the sale of technology, it has long been the convention to regard TNC entry as a particularly costly means of transferring technology to Third World countries. Apart from the questions of appropriateness and local technological development, it has been felt that the host country would do better to ‘unbundled’ the package which TNCs bring, and to buy the technological element on its own. This would provide cheaper technology, not under control of the TNC (which may prevent its dissemination within the host country and its utilization for export activity) and more amenable to local adaptation and subsequent development.\textsuperscript{106}

Transnational Corporations Shall conform to the transfer of technology laws and regulation of the countries in which they operate. They shall co-operate with the competent authorities of those countries in assessing the impact of international transfer of technology in their economies and consult with them regarding the various technological options which might help those countries, particularly developing countries, to attain their economic and social development.

\textsuperscript{105} D.M. Mithani \textit{International Economics} 2002 at p. 410.

\textsuperscript{106} Supra Note 93 at p. 71
Transnational corporations in their transfer of technology transactions, including intra-corporate transactions, shall avoid practices which adversely affect the international flow of technology, or otherwise hinder the economic and technological development of countries, particularly developing countries. A general complaint, however, is that the required technology transfer to the developing countries is not taking place. When the technology transfer by the MNCs is internalized it does not help the domestic firms much. Without technologies and practices that can be applied at reasonable cost, environmental improvement is difficult.

3.10 ENVIRONMENTAL IMPACT ASSESSMENT

Environmental Impact Assessment (EIA) procedure development is a prerequisite for sound law development. It is an important tool of environment management. EIA is concerned basically, with identifying and assessing the environmental consequences of development projects, programs, and policies in an attempt to ensure that the best alternative for development is selected. The results of EIAs are usually presented in documents or reports known as Environmental Impact Statement (EIS). The identification assessment of the impacts requires collection and manipulation of large amount of data and most importantly, communicating the final results to decision makes and members of public, many of whom may not be experts in environmental studies.

The EIA process varies from nation to nation. Broadly they can be classified under two heads:

(i) The Statutory Mandatory Model; and
(ii) The Administrative Discretionary Model.

In the Mandatory Model the scope, nature and limits of discretion and the protection in which the impact assessment is made are governed by legislation. There may be specific legislation or delegated legislation obliging the decision
maker to assess the impact or review the assessment. In the Administrative discretionary model all matters are left to be decided by the administrative agency and are controlled only by executive policy, administrative discretion and political expediency. There may not be any enacted law to impose on the authority the compulsion to consider objective criteria.\(^\text{112}\)

Environmental Impact Assessment is a part of the decision-making process.\(^\text{113}\) The use of EIAs will play a major role in influencing the environmental practices of corporations. In order to secure investments in foreign states, corporations will have to assess the impact that their investment and business operations will have on the environment. If these corporations do not conduct EIAs, quite apart from the potential legal consequences (the ‘pain’) there also could be a negative effect on their public reputation. Indeed, the naming of these corporations in a law suit or in the press will serve to “shame” these corporations, which could also ultimately have an effect on their financial bottom line. Therefore, in addition to adopting environmentally friendly practices to satisfy the EIAs\(^\text{114}\) and ultimately state obligations in their financing agreements, MNCs will want to develop their processes in an environmentally friendly way in order to increase their market shares and profitability.

There has long been a concern that the need to attract MNCs, and the Foreign Direct Investment (FDI) they bring in, could potentially lead to a race to the bottom.\(^\text{115}\) There was a belief that MNCs would seek to use environmentally damaging but profit maximization processes in developing countries that were prohibited from use in their home countries. Fortunately, this has not completely come to pass. Concerns among the local population of potential host states have led many developing countries to adopt EIA legislation and other forms of environmental regulation to limit this. In a strict sense, Stockholm Conference might accordingly have to be viewed as implying a duty on the part of states to

\(^{113}\) Madhav Chandra Shah *Man and Environment* 2001 at p. 259.
\(^{115}\) Zarsky & Simon S.C. Tay, *Civil Society and the Future of Environmental Governance in Asia*, in Asia’s Clean Revolution Industry, Growth and the Environment at 134 (David P. Angel & Michael. T. Rock eds; 2000) (The Political will raise environmental performance may even weaker now, given increased hunger for FDI and investor concerns about the competitiveness and stability of the region.”)
devise domestically a general environmental assessment procedure. Indeed, an Organization of Economic Cooperation and Development (OECD) Council recommendation calls for the assessment of projects likely to have significant impact on the environment.

The important lesson of the Bhopal catastrophe is to enforce the people’s right to know and to participate in the various stages of environmental decision-making. Had the people living in Bhopal slums known beforehand the dangers of the MIC leaking out from the factory many of the lives of those helpless victims would have been saved. Had the scientists and doctors any idea of the effective antidotes to the MIC poison the menace would have been reduced to a considerable minimum. The cause of these woes can very well be traced to the fact that our legal system does not recognize the compulsory statutory need to have an impact study before any project is designed or approved. Rightly, it was canvassed for an enactment compelling any new company to file an environmental impact assessment before its letter of intent is converted into an industrial licence and making this a public document.

Bhopal catastrophe discloses tragedy – the tragedy of a legal regime which did not provide for a mandatory EIA. It does not strike at the source and prevent the evil but instead make an attempt to cushion the impact of environment assaults after damage was already done. EIA rooted on the principle of prevention rather than cure should not remain alien to Indian Law.

In few cases the Supreme Court appointed commissions to study environmental impact of mining activities for which licence were already granted. In Tarun Bharat Singh v. Union of India the court directed stoppage of mining

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118 Alfred de Grazia, op. cit., Ch. 3. Also see Shiv Viswanathan, Bhopal: The Imagination of a Disaster, 11 Alternatives 147 at pp. 151-154 quoted in P. Leelakrishnan Law and Environment at p. 267.
119 The Law was pictured in this fashion held at Ahmedabad by the Consumer Education and Research Centre and the Indian Law Institute. See Darryl D’ Monte, Environment Law has no Teeth. Indian Express, September 10, 1986 quoted in P. Leelakrishnan Law and Environment at p. 267.
120 P. Leelakrishnan, Environmental Impact Assessment: Legal Dimensions 34 JILI 556.
121 AIR 1982 SC 514 at 518.
activities till a decision was taken on the report of the expert committee appointed by the court. In Rural Litigation and Environmental *Kendra v. State of U.P* the court appointed commissions to assess the impact of mining activities. The commission found that some of the activities caused ecological imbalance. The court ordered the permanent stoppage of those activities.

Location of industrial projects in India is more often than not based on parochial, regional and political considerations rather than environmental factors. The need for prior study of the environmental impact before any project is cleared is undisputed. It is true that in India the Ministry for Environment and Forest makes an impact study of certain major projects before sanction is given. But with the scant manpower and facilities to assess each project the Ministry in India may not be in a position to carry out this watch-dog function in relation to thousands of projects proposed off and on throughout the country. Only if it is called upon to do, the Ministry comes to the picture. It does not utilize services of outside experts, not can it look into the projects proposed by private agency.

Strangely, the new Environment Act, 1986 does not provide for an environmental impact study before a proposed action impacting on the environmental is taken. This evidences that the Act does not envisages a break from the past. Nor does it lay emphasis on meaningful and active public involvement in environmental decision-making. It is necessary that either the law should be amended or a new law be brought incorporating the concept of environmental impact assessment which should from the backbone of any

122 AIR 1985 SC at 658.
123 Darryl D’ Monte, Temples or Tombs? (1985), Chh. 6 and 7. Siting of Rashtriya Chemicals and Fertilizers Ltd., factory in Thal-Vaishet within a few kilometers away from the heart of the city of Bombay was cited as an example. Environmentalists, journalists and experts raised their objection against the location of the factory in this geographical area which had sustained the life of the people of the locality for centuries. They warned that the advent of the industrial leviathan would upset the ecology of the place transforming it into industrial slums where the people would find it hard to make both ends meet. Further, the urban people would be greater. But these words of sanity and wisdom fell on deaf ears and considerations aiming at immediate gain on industrialization but with permanent calamity to the environment weighed more with decision-makers. Later story of the Thal-Vaishet fertilizer factory proves that the apprehensions were correct. The local people were thrown out of their traditional occupations. Their burden of soaring cost of living increased. The factory posed the real threat of pollution to the city quoted in P. Leelakrishnan *Law and Environment* at p. 268.
environmental decision-making process. However, till this is done one step can be taken. The Environment Act has viable mechanisms. Under the Act the Central Government can take all measure necessary and expedient for protecting and improving the quality of the environment and constitute authorities for the purpose.\textsuperscript{125} It can also make rules for carrying out the purposes of the Act.\textsuperscript{126} Nothing in the Act prevents the Central Government from framing rules for a mandatory environmental impact assessment with public participation and constituting authorities saddled with the responsibilities of making assessment.

The important lesson of Bhopal catastrophe is to enforce the people’s right to know and participate in various stages of environmental decision making. The cause of these woes can very well be traced to the fact that our legal system does not recognize the compulsory statutory need to have on impact statement before any project is designed or approved.\textsuperscript{127}

While the role of the MNC has been emphasized in recent years, the role of the state and the role of the individual in environmental protection will doubtless continue. MNCs are not monolithic entities, but are rather a collection of individual decision makers. At the same time, the corporate entity is a construct of the state. Thus, domestic laws and international treaties which affects individual decision making and state policymaking will play a major role in ensuring that sustainable development becomes integrated into the world’s activities.

It was criticized that in the name of economic development Third World counties are thus becoming dumping grounds for hazardous technologies from the industrially advance countries. The strong environmental awareness and environmental movements in the industrially advanced countries have enforced strict legislative safeguards that have made the operation of hazardous technology economically unviable. Many pesticides that are being pushed in Third World countries by multinationals are already banned in industrially advanced countries. DDT is a typical example which is being freely overused in India. To expect strict

\textsuperscript{125} Environment (Protection) Act, 1986, S.3(1) and (3).
\textsuperscript{126} Section 25(1) of the Environment (Protection) Act, 1986.
enforcement of environmental safeguards is to forget the basic economic fact that it is that relocation is taking place to avoid such enforcements that relocation is taking place. Statistics state that every year approximately 22,000 people die in the developing countries from the use of pesticides no longer manufactured in the West. MNC activities need to be directed within a policy framework oriented towards ensuring a healthy competition and development of domestic economy.

We need a comprehensive global regulatory regime covering all aspects of transnational corporate activity that not only endorse the practice of equality in principle, but voluntarily follows it in practice.

- First, the plans need to be designed so that international business activities are compatible with the aspiration of the people of the host countries, as well as the objectives of multinationals.
- Second, these activities should be carried through without severely impinging the legitimate expectations of any party.
- Third, the execution of these plans should lead to the achievement of the social ends of economic development without sacrificing the ecological sanctity of our planet in ways that are efficient and consistent with global social justice.
- Fourth, the scheme, of international social cooperation must be stable.

Fifth, these rules must be regularly compiled with and willingly acted upon. If and when infractions occur, the apex organization should act as a stabilizing force to prevent further violations and to restore the arrangement of safe and ecologically would business practices.

An attempt has been made in this present chapter to discuss MNCs contribution for development and also the related problem of environment. Environment and Development is interlinked with each other. It is the acceptable fact that environment pollution is an in escapable by – product of industrial development. To balance the conflicting interest between development and environment the Doctrine of Sustainable Development was adopted. This chapter had dealt this Sustainable Development and its three pillars i.e International Environmental Law, International Human Rights law and International Economic
Law. The inter-relationship between the environment and human rights, environmental regulation have also been discussed above. The Modern Concept of Corporate Social Responsibility, transfer of technology and environmental development, and Environmental Impact Assessment have also been discussed under this chapter. Role of Indian judiciary to achieve the level of Sustainable Development by judicial decision has also been discussed above.

The hypothesis that MNCs are violating human rights by their activities proved to be correct. Further, issues of jurisdiction were central to the legal battle that followed the industrial accident by MNCs proved to be correct.