Chapter 5

CSR- A Judicial Approach and Standard Guidelines in CSR Practices
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5.1: Introduction

The Earth is overburdened with population pressure in the 21st Century. As a consequence, there is huge demand for food, clothing, shelter and many more uncountable necessities in order to meet the day to requirements of people. The Earth is facing tremendous threat from loss of biodiversity, ecosystem, global warming and climate change and conflicts arising out of share of power between the government of different countries and multinational corporations. Many issues concerning pragmatic roles of the multinational enterprises, environmental and ecological balancing issues, decent treatment of employees by the employers, paying bribes to judges and other people in power, lobbying for or against legal measures in order to reduce greenhouse gases emission, sponsoring political campaign and so forth are coming into canvas of the Law in order to make CSR as a vehicle to address these issues for well being of the society (Lambooy). In this context, it is worthwhile to refer the preamble of the Earth Charter and it states, "We stand at a critical moment in Earth's history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny." From this, it appears that law has a significant role in making the society do or don’t certain things which are beneficial or detrimental to the interest of the society respectively. Law means creation of obligation for somebody to do or refrain from doing certain action in the interest of the humanity and the society at large. Administration of justice is one of the most important functions of the state and the same is carried out by the judiciary though judicial approach. If there would be no wrong doers in the society, there is no need of law nor need of judiciary. But there is tendency of the certain constituents of the society to violate the written or unwritten rule of the society and there lies the role of law and judiciary.

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166 Tineke Lambooy in his paper, Legal Aspects of Corporate social Responsibility, Utrecht Journal of International and European Law, Vol. 30, p. 78(2014), has portrayed a picture of relevance of law and its role in CSR.
167 Earth Charter<http://www.earthcharterinaction.org/content/pages/Read the Charter.html>
Wrongdoers are tried by judicial process under the superintendence and control of the judiciary. A state consists of four organs and they are legislature, executives, judiciary and press. Among them, legislature is the law making authority, executive implements the law and judiciary interprets the statutes and objective of particular piece of legislation and finally press has the authority to appreciate or criticize the benefits of good legislations or adversary of the bad legislations respectively. It may be mentioned that "the judiciary among them is the weakest of among all the organs of the state. It has neither power of the purse nor the power of sword, neither money nor patronage, not even the physical force to enforce its decision. Despite that courts have by and large enjoyed high prestige amongst and commanded respect of the people. This is so because of the moral authority of the courts and the confidence the people have in the role of the courts to dispense even handed justice(Khanna)\textsuperscript{168}. Therefore, judicial process is, in simplicity administration of justice for both the plaintiffs and defendants and our discussion is restricted to the role of judiciary and administration of justice in the context of CSR. In the context of global challenges, International law plays a prominent role and it is the backbone of the vision as enunciated in the Earth Charter. Let us discuss the role played by various laws and rules that guide the society in formulating the principles and practice of CSR here under.

5.2. The Law and The Society

Law is the prime instrument to maintain the discipline in the society and laws are made in accordance with the need of the society. If we look at our ancient history of judicial system, we may see that Manu and Brihaspati gave us Dharam Shastras, Narada the Smiritis and Kautilya the Arthshshastras. A study of these memorable books may reveal that in ancient India had a fairly well-developed and sophisticated administration of justice.\textsuperscript{169} Law is the instrument for guiding and keeping the society in right track. According to the relevant provisions of law, wrong doers shall be punished depending upon the degree of gravity of wrong and nature of wrong committed by the wrong doers. There are six types of punishment and they are fine, reprimand, torture, imprisonment, death and banishment (Khanna)\textsuperscript{170}. Indian judicial system has

\textsuperscript{168} Justice H. R. Khanna, former judge, Supreme Court of India has vividly portrayed the role of judiciary and the judicial process in his Tagore Law Lectures, Judiciary in India and Judicial Process, University of Calcutta, Ajoy Law House, S. C. Sarkar & Sons Private Limited, Kolkata, p. 4
\textsuperscript{169} ibid
\textsuperscript{170} ibid, p. 5 (1985)
root in British Judicial System as well as it has gradually evolved to the stage of present system through a social metamorphosis and changing pattern of the society that is dynamic in nature.

The society is guided by labour laws, laws of contract, economic laws, environmental laws, criminal law and personal laws. Labour laws make the employers give justice to the cause and interest of the labour force of the country, contract is an agreement enforceable in the court of law and if somebody promises to do something or refrain from doing something against a valid consideration and subsequently there is breach of contract, thus the party whose interest suffers deserve to be compensated under the contract law. Similarly, economic laws, environmental laws and personal laws have relevant roles in their respective domains. For instance, personal laws deal with the questions of law relating to succession, marriage, religious institutions etc. Therefore, law and society has symbiotic relationship and since CSR is a social science and it contains principles both moral and ethical for serving the society better by the corporations. Law steps into the shoes of judiciary to prescribe punishment for those who violate the obligatory duties and responsibilities as provided by various laws as stated above.

5.3: Linkage of CSR with Law

CSR as a social science has linkage with various kinds of laws and that include corporate law, corporate governance, environmental law, criminal law, law of tort, international law and European law and all of these laws have direct or indirect contribution to the constitution of CSR. In other words, CSR is the embodiment of all of these laws with which the world meets the challenges it faces in various issues concerning the CSR of business. Law plays a significant role in understanding the degree of sustainability and implementation of CSR by the corporations. No pretence is made to give a thorough analysis of the relationship between law and CSR (Buhmann)\textsuperscript{171}. All the laws stated above have their prominent roles in guiding CSR activities. As far as India is concerned, the Companies Act, 2013 provides for mandatory CSR activities in the specified areas and areas include eradicating extreme hunger and poverty, promoting education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired

\textsuperscript{171} Karin Buhmann(2006) in her seminal paper, "Corporate social responsibility: What role for law? Some aspects of law and CSR, Corporate Governance, the International Journal of business in society, Vol. 6, No. 2, pp.188-202 has discussed in details the relations between law and CSR.
immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, enhancing vocational skills, promoting social business projects and contributing to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and woman etc. (Ronald). The environmental issues are dealt with by the environmental law, civil wrongs are dealt with by law of tort etc.

5.4: Role of The Earth Charter in CSR

The Earth Charter is fundamental document that guides CSR activities. It is the embodiment of four pillars and sixteen principles and they are as follows (Wikipedia).

Principles

The four pillars and sixteen principles of the Earth Charter are:

I. Respect and Care for the Community Life

1. Respect the Earth and life in all its diversity.

2. Care for the community of life with understanding, compassion and love.

3. Build democratic societies that are just, participatory, sustainable and peaceful.


II. Ecological Integrity

5. Protect and restore the integrity of Earth's ecological systems, with special concern for biological diversity and the natural processes that sustain life.

6. Prevent harm as the best method of environmental protection and, when knowledge is limited, apply a precautionary approach.

7. Adopt patterns of production, consumption and reproduction that safeguard Earth's regenerative capacities, human rights and community well-being.

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8. Advance the study of ecological sustainability and promote the open exchange and wide application of the knowledge acquired.

III. Social and Economic Justice

9. Eradicate poverty as an ethical, social and environmental imperative.

10. Ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner.

11. Affirm gender equality and equity as prerequisites to sustainable development and ensure universal access to education, health care and economic opportunity.

12. Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health and spiritual well-being, with special attention to the rights of indigenous peoples and minorities.

IV. Democracy, Nonviolence, and Peace

13. Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision-making, and access to justice.

14. Integrate into formal education and lifelong learning the knowledge, values and skills needed for a sustainable way of life.

15. Treat all living beings with respect and consideration.

16. Promote a culture of tolerance, nonviolence and peace.

It may be mentioned that the Earth Charter is a modern declaration of fundamental ethical principles for building a just, sustainable and peaceful global society in the 21st Century (Wikipedia).

From the above, it can be enunciated that the Earth Charter contains fundamental values that are essential to maintain peaceful existence of human beings on the Earth. The Earth Charter may serve the purpose of assisting people in understanding their own responsibility.\textsuperscript{173} The above issues are vividly discussed in the Earth Charter. All the issues covered above are the concerns

of CSR. In this context, the work of Justine Nolan in 'Refining the Rules of the Game: The Corporate Responsibility to Respect Human Rights' investigates the interplay between legal norms for companies to avoid human rights violations and quasi-legal norms and programmes that help the companies in achieving such goals. She appreciates the companies who are steadily and slowly respecting international human rights standards but expresses her regrets that government are found to be much more negligent in enforcing legal provisions as contained in the concerned legislations with respect to the safety norms in the factory and work places. Justine Nolan further confirmed that after the collapse of the Ran Plaza in Dhaka, Bangladesh in 2013, causing death toll of 1100 textile workers, the role of multinational companies in preventing and remedying the problem of workers' safety in Bangladeshi Supply Chain Companies was severely criticized by the global press. Nolan further explains that subsequent to the happening of such tragic incidence, various non-legal initiatives made recognize the limited governmental capacity in order to provide short term remedy to prevent further disasters and accepting the CSR which extends beyond those that can be defined in legal terms. These multi-stakeholder initiatives adopted collective workplace safety standards and audit plans. Nolan stressed that such initiatives are helpful to fill in the gap of local public enforcement of labour laws. In her paper, Nolan further stated that legal mechanism imposed on companies can effectively complement the non-legal approach. She made it a point that the initiative of some states to legislate extraterritorially that companies create transparency about their human rights impact. The views of Justine Nolan converges with the provisions of the Earth Charter which advises that a multiplicity of stakeholders must work together in order to bring forth a sustainable global society founded on respect for nature and universal human rights' (Preamble Earth Charter).

Chilenye Nwapi provides a technical analysis of the arguments in his article ' Jurisdiction by Necessity and the Regulations of Transnational Corporate Actor' which national courts may use

175 Justine Nolan refers to the Sections 1502 and 1504 of the US Dodd Frank Act, the Burma Responsible Investment Reporting Requirements(http://www.humanrights.gov/wp-content/uploads/2013/05) and the 2013 EU Accounting and Transparency Directives.
176 Earth Charter (n 1) may please be referred to.
to accept or reject jurisdiction in respect of human and environmental rights claims filed by victims against multinational corporations. He examines the options to apply the 'forum necessitatis' doctrine (Jurisdiction by necessity doctrine) that offers access to justice to victims. Nwapi argues that the nature and reach of the operations of transnational corporation have rendered them almost impervious to traditional standards of jurisdiction. He is of the view that if a violation occurs in another location than that of the multinational enterprises' home state, the court in the home state may lack the territorial jurisdiction to adjudicate the litigation. However, the *forum necessitatis* doctrine allows such home state court to accept the case if there is technical or practical terms\(^\text{177}\) - no other forum in which the victim can initiate the suit. 'The dominant concern is therefore the need to avoid a denial access to justice-the fundamental objective of modern international law', says Nwapi.\(^\text{178}\) In the context of CSR, it may be mentioned that a variety of private self regulatory instruments with regard to social, environmental and economic activities such as code of conduct or private labels have emerged and some of them have been adopted unilaterally by multinational companies, other have been developed together with NGOs or international institutions.\(^\text{179}\) These instruments have very often acquired the characteristic feature of legal effect under private law because they have become part of supply chains contracts and under labour laws if they have been referred to in labour agreements.

5.5: OECD and MNE Guidelines Effectiveness

Scott Robinson takes initiative to discuss and address an important issue in the context of legal aspects of CSR in his paper 'International Obligations, State Responsibility and Judicial Review under the OECD Guidelines for Multinational Enterprises Regime' (the OECD Guidelines). He advocates the importance of OECD Guidelines and the regime of so-called 'National Contact Points (NCPs).\(^\text{180}\) It is necessary that each of the OECD Member States must set up a NCP within its domestic system and this NCP should be made responsible for promoting the MNE Guidelines and to resolve the issues that would come under the ambit of OECD Guidelines. The stakeholders are to lodge complaints with regard to violations of OECD Guidelines by the

\(^\text{177}\) This concerns the countries attributed with weak accountability mechanism.

\(^\text{178}\) Chilenye Nwapi refers to article 6(1) of the European Convention on Human Rights.

\(^\text{179}\) Lambooy (n 1) Ch 6’ private regulations: setting standards’, 227-276

companies with the NCP in their state. 181 NCP in different states are to co-operate on matters and report regularly and Scott Robinson plays an advisory role in the matter of establishing a NCP as the responsibility of a state under international law. He opines that states should institute effective and efficient access to administrative and independent judicial and non-judicial procedures including remedies and redress for environmental and human rights harm, also when this has been caused by the companies. 182

5.6: Functioning of The US Alien Tort Statute (ATS)

Benjamin Thompson analyzed and discussed a Supreme Court Case183 in his article, 'Kiobel, Corporation, the ATS & American Exceptionalism' In this case, the US Supreme Court gave decision on application of presumption against extraterritoriality to the ATS. Thompson evaluates the decision against the background of American exceptionalism. He concluded that ATS litigation in principle has the potential to provide accountability in the circumstances where MNEs commit serious violations with regard to human rights. However, the ATS is not a statute for enforcing the principles of international law. Moreover, it was also the result of the analysis of the case that there is no binding international law with respect of violations of human rights committed by the companies.

5.7: Legal Aspects of CSR On Climate Change -Roger Cox Case Note

Roger Cox ('Urgenda') case note184 is relevant for CSR on Climate Change. The researchers found that emission of greenhouse gases (GHG) must be reduced to a substantial extent if we want to make the Earth free from the danger of climate change affected by emission of GHG. It is worth mentioning that the corporate world and the legislatures are still not found to be serious to formulate suitable legislations for punitive measures for those who are not seriously taking

181 A NCP is a state based non-judicial grievance redressal mechanism (UN Guiding Principles (n 7)
182 Refer to the Earth Charter (n 1)
183 kiobel v.Royal Dutch Petroleum Co. 133 S SC 1659(2013)
184 Cox, for industrialized nations like Netherlands and other European countries, rates within the 25-40% range have been established by the international community of government representatives under 1992 UN Climate Convention as the scale of reduction of emission of GHG required by 2020 on the basis of climate science in order to secure any reasonable chance of preventing dangerous climate change. 195 countries including EU and Member States are a party to the Convention and to the Cancun Agreements of 2010 in which the signatory countries explicitly acknowledge that an average temperature increase of more than 2 degree Celsius qualifies as dangerous anthropogenic interference as referred to 1992 UN Climate Convention. In the Cancun Agreements, it also accepted that such an increase is a threat to humanity and could lead to the infringement of human rights in all countries and all regions of the world.
any steps to reduction of emission of GHG. Any country who is non-concerned of this serious issue may be directed to have global sanctions. On November 20, 2013, the Dutch NGO Urgenda\footnote{for details see the Dutch NGO Urgenda case.} and 889 individual citizens served summons on the Dutch state in an action to hold the Netherlands responsible for its role in causing dangerous global climate change. The fundamental objective of the action was to obtain an order in order to make the Netherlands take appropriate steps to reduce GHG emission before 2020. Cox is the legal counsel of the plaintiffs. In this particular case, Cox presents arguments against the Netherlands. He argued the tort of negligence, duty of care and principles of several proportionate liabilities as applicable in Dutch Law. Cox contends that other European countries employ similar approaches\footnote{Cox refers to Cees Van Dam, European Tort Law (OUP 2013), 1108. 1, Al Akkemans, 'Veroorzaking van deelschade'(1992)6043 Weekblad voor privatrecht, notaraat en registratie 250 and the European Group of Tort Law, Principles of European Tort Law , Text and Commentary (Springer 2005), Ch 3 'Causation articles 3:102-3: 106 and Ch 4 'Liability based on Fault , article 4:102} and that Urgenda's claim could also be installed against other European States. Cox advocated that according to the UN Human Rights Council Resolution 10/4 of 2009, the danger with the climate change poses a threat to human rights around the world, and most importantly to the right to life and right to health. Heat stress, floods, sea level rising, spread of infectious diseases, summer smog, degradation and loss of ecosystem and flora and fauna and the risks of drinking water and food supplies would contribute to substantial violations both in the Netherlands, Europe and around the world, of right to life (Article 2 of the European Convention of Human Rights) and the right to health and respect for private and family life (Article 8 of the European Convention of Human Rights). The initiative of the Urgenda court case addresses the Earth Charter's concern to 'Protect and restore the integrity of Earth's ecological systems'\footnote{Earth Charter (n 1)}

### 5.8: Legal Aspects Of CSR On Environment Protection

The Stockholm Conference contained in Principle 1 that man's solemn responsibility is to protect and improve environment. This responsibility is applicable to both the individuals as well corporations. Subsequent formulations emphasizes that it is an obligation of everybody whosoever reside in the Earth to protect the environment from degradation due to misuse of earthly resources or excessive use of resources. The World Charter reminds that everybody should act in accordance with the term of the World Charter. The draft principles on Human
Rights and Environment provides that all persons have the duty to protect and preserve the environment. None of these instruments creates any legally binding responsibility for the individuals as such but all of them are of the features of moral binding. But they provide a justification for using criminal responsibility as a means of enforcing international environment law. In this context, it is worth mention the Bhopal Gas Tragedy that took place in India in early 1980s. After the happening of that dreadful tragedy in Bhopal, environmentalists, social workers, governments, general public and other lovers of nature started thinking as to how to prevent the occurrence of such kind of incidents in future and it leads to the legislative and administrative activism. The Bhopal Gas Leak Accident, one of the tragic disaster in human civilization took place approximately two years before the Supreme Court of India prescribed the rule of absolute liability. It is in M. C. Mehta v. Union of India, the Supreme Court formulated the doctrine of absolute liability for the injury caused by the hazardous industry by interpreting the scope of power under Article 32 of the Constitution to issue directions and orders whichever may be appropriate in appropriate proceedings. Justice P. N. Bhagwati decided the case and enunciated the principles of absolute liability of the corporation dealing with the hazardous substances. While this case was brought before the Supreme Court, the Bhopal Gas Case was pending and the decision given in this case had to have an impact on the decisions of the Bhopal case. In the mentioned case i.e. M. C. Mehta v. Union of India, the learned Judge enunciated that an enterprise which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegatable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an absolute obligation to provide absolute compensation to the victims. The Supreme Court created the absolute liability principles-companies engaged in inherently activities had absolutely no excuse when an accident occurred. The essence of the judgment of the referred case is that any enterprise that is engaged in a an inherently dangerous activity is absolutely liable to compensate all those affected by an accident. The key feature of this judgment was the principle of absolute liability in which no exception(such as an act of God) are booked. According to the court, this power can be utilized for forging new remedies and formulating new

\[188\] AIR 1987 SC 982
strategies. This has overriding spirit of the decision of Ryland v. Fletcher\textsuperscript{189}. The rule of strict liability\textsuperscript{190} was decided in Ryland v. Fletcher. By analyzing the need to modify the 19th century rule of Strict Liability, the Supreme Court of India in M. C. Mehta case stated that "Moreover the principle so established in Ryland v. Fletcher of Strict Liability cannot be used in the modern world, as the very principle was evolved in 19th century and in the period when the industrial revolution has just begun, this two century old principle of tortuous liability cannot be taken as it is the modern world without modifications."\textsuperscript{191} In Deepak Nitrate v. State of Gujarat, the apex Court held that the liability should not be fixed without any nexus to the extent of fault and the compensation should have a relationship with the degree of harm suffered, rather than the capacity of the industry, by the victim. In Indian Council For Enviro-Legal Action v. Union of India with regard to environment pollution in village of Rajasthan, the Supreme Court directed the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment Protection Act expressly empowers the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment\textsuperscript{192}. Again in T. Dhamodar Rao v. Special Officer, Municipal Corporation of Hyderabad, the Andhra Pradesh High Court referred also Article 51A (g) and 48A and prevented conversion of open space to residential complex. The court held that protection of environment is the duty of the citizens as well as obligation of the State.

The Supreme Court of India imposed the principle of M. C. Mehta case in Indian Council for Environment Legal Action v. Union of India and held that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity is by far the more appropriate and binding".\textsuperscript{193} The scope of the new rule is very wider in all terms than old rule. This rule does not have any exception and is subject to having wider scope of application. Furthermore, it covers not only

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\textsuperscript{189} 1866 LR. 1 EX. 256, 1868 LR. 3 HL. 330
\textsuperscript{190} The rule of Strict Liability was subject to many exceptions and therefore practically very little rule was left.
\textsuperscript{191} W. V. H Rogers, Winfield and Jolowicz Torts, 8th ed. pp. 2010
\textsuperscript{192} AIR 1999 SC 1502
\textsuperscript{193} AIR 1996 SC 1448
public negligence or fault but cover even personal injuries caused due to the negligence of neighbor. Now it covers not only the occupier of land but cover also non-occupier of land.\textsuperscript{194}

Another landmark judgment of the Supreme Court in M. C. Mehta v. Union of India in the context of the Ganga pollution/Kanpur Tanneries Case, Justice ES Venkataramaiah ordered the closure of a number of polluting tanneries near Kanpur.\textsuperscript{195} Similarly, the pride of India and one of the wonders of the world i.e. Taj Mahal was facing threat due to high toxic emissions from Mathura Refineries, Iron Foundries and other various chemical industries. The acid rain was a serious threat to the Taj Mahal and 255 other historic monuments within the Taj Trapezium. The Supreme Court of India in M. C. Mehta v. Union of India(Taj Trapezium Case) delivered historic judgment in 1996 giving various directions including banning the use of coal and cake and directing the industries to Compressed Natural Gas(CNG)\textsuperscript{196}.

In the context of Sustainable Development, the bench of Justice P. N. Bhagwati and Ranganath Mishra in "Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh introduced the concept of sustainable development\textsuperscript{197}. An NGO named RLEK filed a case against limestone quarrying Valley in1987\textsuperscript{198}. It was stated that the permanent assets of mankind are not to be exhausted in one generation. It was directed that the natural resources should be used with requisite attention and care so that ecology and environment may not be affected in eye-catching way.

In order to substantiate judicial approach to CSR, it may be worth mentioning the Environmental Impact Assessment which was subject matter of Indian Council for Enviro-Legal Action v. Union of India\textsuperscript{199}. It was held in this case that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the Polluter Pays Principle\textsuperscript{200}. The Apex Court set a time limit for the coastal states to formulate coastal management plans and banned industrial or construction activity within 500 meters of the high tide line.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{194} J. N. Pandey: Law of Torts.
\item \textsuperscript{195} AIR 1988 SC 1037
\item \textsuperscript{196} air 1987 SC 1996
\item \textsuperscript{197} Sustainable development is possible if the natural resources are utilized with judiciousness.
\item \textsuperscript{198} AIR 1987 SC 2187
\item \textsuperscript{199} AIR 1999 SC 1502
\item \textsuperscript{200} Polluter pays principles advocates that the polluter is bound to compensate the damage or loss caused to anybody by the pollution doer and this is the cardinal principles of law under the Law of Torts..
\end{enumerate}
\end{footnotesize}
Causing pollution is a civil wrong. By its very nature, it is a tort committed against community as a whole. In M. C. Mehta v. Kamal Nath\textsuperscript{201}, (M/S Span Motel Pvt. Ltd. Case) it was held by the Apex Court of India that a person who is held guilty of causing pollution has to pay compensation for restoration of the environment and ecology. The wrong doer has also to pay damages to those who have suffered loss on account of the act of the offender. The power of the Court under Article 32 are not restricted and it can award damages in Public Interest Litigation (PIL) or a Writ Petition. Besides aforesaid damages, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as deterrent for others not to cause pollution in any manner.

Another important judgment delivered by the Apex Court Bench comprises of Justice Ruma Pal and B. N. Srikrishna in Essar Oil Ltd. v. Utarsh Samiti\textsuperscript{202} is mentionable here. Essar Oil Ltd. was lying pipeline for its Jamnagar Oil refinery due to which the ecological peace in general and wild life including flora and fauna in that area were facing danger of extinction and Utarsh Samiti, an environment protection forum, came forward and filed a Writ Petition. The referred Bench in its judgment maintained that "while economic development should not be allowed to take place at the cost of ecology or by causing wide spread environment destruction and violation, at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa but there should be development while taking due care and ensuring the protection of environment". From this part of the judgment, it is clear that it is the responsibility of the companies to exercise reasonable caution, while contemplating any project, so that environment is protected and no industry is allowed to be taken off at the cost of ecology.

Finally, Judicial approach to CSR may remain incomplete if the role of the Supreme Court in constitutional interpretation of environment remain unfocused. The 42nd Amendment to the Constitution of India added Article 48A and 51 A(g) which come under the Directive Principles of State Policy and the Fundamental Duties respectively. The Apex Court of India in

\textsuperscript{201} AIR 2000 SC 1997
\textsuperscript{202} AIR 2004 SC 1834
Sachidananda Pandey v. State of West Bengal\textsuperscript{203} stated that the court is bound to bear in mind the question of environment protection and issue strict directives to any company in the cases without second thought. In other words, environmental problem would receive prioritized treatment from the court. Article 48A states that the State shall endeavor to protect and improve the environment and safeguard the forest and wild life of the country. The Article 51A(g) imposes a duty upon every citizen of India to protect and improve the natural environment and confers right to come before the court for appropriate relief. The Supreme Court of India in Damodar Rao v. S. O. Municipal Corporation\textsuperscript{204} held that the environmental pollution and spoliation which is slowly poisoning and polluting the atmosphere should also be regarded as amounting to violation of Article 21 of the Constitution of India.

\textbf{5.9: Paris Convention On Climate Change}

The United Nation Climate Change Conference took place during November 30-December 12, 2015 in Paris, capital of France. It was decided in the said conference i.e. 21st Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 21) that all the parties to the Convention must report regularly on their emission and implementation efforts and undergo international review. The salient points of the COP 21 are as below:

1. Reaffirm the goal of limiting temperature increase well below 2 degrees Celsius, while urging efforts to limit the increase to 1.5 degrees.

2. Establish binding commitments by all parties to make 'nationally determined contributions' (NDCs) and to pursue domestic measures for achieving them.

3. Commit all countries to report regularly on their emissions and progress made in implementing and achieving their NDCs and to undergo international review.

4. Commit all countries to submit new NDCs every five years with clear expectation that they will "represent a progression" beyond previous ones.

\textsuperscript{203} AIR 1987 SC 1109
\textsuperscript{204} AIR 1987 AP 171
5. Reaffirm the binding obligations of developed countries under the UNFCCC to support the efforts of the developing countries and encouraging voluntary contributions by developing countries too.

6. Extend the current goal of mobilizing $100 billion a year in support by 2020 through 2025 with a new higher goal to be set for the period after 2025.

7. Extend a mechanism to address "loss and damage" resulting from climate change which explicitly will not "involve or provide a basis for any liability or compensation".

8. Require parties engaging in international emissions trading to avoid "double counting" and

9. Call for a new mechanism, similar to the Clean Development Mechanism under Kyoto Protocol, enabling emission reduction in one country to be counted toward another country's NDC.

French President Francois Hollande summed up by stating that "In Paris, there have been many revolutions over the centuries. Today it is the most beautiful and most peaceful revolution that has just been accomplished—a revolution for climate change". The Paris Agreement is a treaty under international law and certain provisions are legally binding and the issues of which provisions to make binding expressed as shall as opposed to should was the central concern for many countries including the United States which wanted an agreement the President could accept without seeking congressional approval. Meeting that test precluded binding emission targets and new binding financial commitments. Each country shall follow its domestic procedures for deciding whether to join an international agreement205.

5.10: Conclusion

Chapter 5 of the Thesis dealt with the available legal supports and backing in making the CSR a successful effort by the society implemented through the companies for overall good of the society. It has dealt with the provisions of the Indian Constitution with reference to Article 21, 48A, 51A(g), various Case Law Decisions, UN Charter and UNFCCC, Provisions of the Companies Act, 2013 and the Law of Tort. India is the only country where CSR is mandatory

23 Parties to the U. N. Framework Convention on Climate Change(UNFCCC) reached a landmark agreement on December 12, 2015 in Paris, charting a fundamentally new course in the two decade-old global effort.
and definition of CSR is very broad. The Apex Court hears the cases having direct or indirect relevance with environment protection, ecological balance, violation of human rights, exploitation of child labour, and if any company practices in any of the stated areas, it will be tried under tort or any other laws of the land. This chapter portrays the impact and influence of laws and various pronouncements of various national and international guidelines to deal with the problems relating to CSR. The European Commission defines CSR as "the responsibility of the enterprises for their impacts on the society,"

This definition of CSR is very comprehensive and broad and the thesis has favourably taken into consideration this for dealing with CSR problems throughout the thesis. Indian companies are guided by the relevant provisions of the Companies Act, 2013 and specified Articles of the Constitution of India while dealing with CSR related problems. However, Multinational Corporations follow many traditional practices and standards guidelines of the international bodies like, UNO, UNESCO, UNICEF and various resolutions adopted in various conventions and conferences. As far as Judicial Approach is concerned, High Courts and Supreme Court's decisions on various issues concerning CSR are adopted as guides and the pronouncements of various International Bodies as mentioned earlier are used as reference to settle CSR related problems. CSR has evolved into a complex concept which is now key component of the corporate decision making of a number of multinationals that are treated to be the frontrunners in integrating CSR. As it has been mentioned earlier that public scandals involving issues ranging from environmental pollution to child labour and racial discrimination resulted in unwanted media attention.

This candidly raises the note of interrogation whether reputation damage is a main motivation behind the adoption of CSR policies both by domestic front as well as international level also. In India, CSR is in infancy stage and thus judicial backing and guidelines of international bodies are quite helpful for grooming CSR practice to the stage of maturity. As far as International Standards and Guidelines are concerned, the reference of GRI may be well acceptable. The GRI Guidelines are a set of guidelines for businesses created to stimulate socially responsible corporate behaviour.

206 European Commission, communication from the Commission to the Economic and Social Committee and the Committee of the regions: A renewed EU Strategy 2011-14 for Corporate Social Responsibility, COM (211) 681 final, p. 6
The GRI came to picture in 1997 by the UN Environment Programme (UNEP) and CERES. The GRI is a useful tool for developing reporting guidelines for the companies to assist them in disclosing non-financial information about the way they pursue their activities and operations. The GRI guidelines address environment and social conduct besides including corruption and issues relating to human rights. In most of the countries, CSR is not mandatory but voluntary except in India. Thus, judicial pronouncements in the areas of torts and allied laws along with the standards guidelines issued by UNO, UNESCO, UNDP, etc are used as the guides in order to address the CSR related problems. However, different companies adopt different sustainability framework in the absence of purely judicial support to discharge the CSR. For Instance, Coca-cola has a code of business conduct which provides guidelines to its employees on amongst other things, competition issues and anti-corruption.\textsuperscript{207} The company has also adopted international CSR Guidelines such as Global Compact.\textsuperscript{208} It is hoped that CSR practice shall be strengthened down the line with Judicial and non-judicial support and it will become a disciplined institution globally as well as nationally.

\textsuperscript{207} The Coca-cola Company Code of Business Conduct, http://w.w.w.cocacola.com
\textsuperscript{208} Global Compact is an initiative created in 1999 under the leadership of UN Secretary General, Kofi Annan. It establishes ten principles for conducting responsible business covering the areas of human rights, labour, environment, anti-corruption etc.