During the past two decades the idea of transparency, accountability in environmental and sustainability performance, human rights in general and labour rights in particular have taken root in the discourse on corporate social responsibility. The intergovernmental organization like the UN, ILO, and regional organizations like EU while addressing this discourse drafted and issued various voluntary guidelines for TNCs. At the same time, various independent institution or organization emerged as part of this trend and offered various tools for compliance of human rights by TNCs. Most of these different techniques focused on several specific issues, which gives the liberty to the TNCs to choose the techniques of their own choice or more suitable to their needs, but in general, all the techniques touched upon the issues relating to human rights and labour rights.

The idea of Social auditing went through a period of considerable discussions since its adoption. During 1950s to 1970s many practical implementation were reported but it fell off the public agenda in the 1980s at international level. However, in the Indian Context, it’s worth was recognized at the time of Bhopal gas tragedy by the academicians, and NGOs, but at the same time the lackadaisical attitude played by the Indian judiciary and government has proved sufficient to not to frame any regulations regarding the powerful TNCs.

However, in the mid 1990s and early 2000 this idea re-emerged and gained a wider attention particularly when inter-governmental organisations like UNO adopted various norms and the Global Compact to cope with the increasing demand for transparency and ethical performance measurement. Since international social accountability standards, which are mostly based upon a broad normative ground, their universal applicability is often criticized and therefore they are considered a means of imposing Western norms on

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developing countries.\textsuperscript{3} As a result several independent agencies and institutions, free from governmental influence, developed several techniques as well as standards to measure the implementation of the business ethics in general and the rights in particular at international level.

The researcher in this chapter has focused upon the fact that how social auditing can play an important role in protection of human rights in TNCs and further discusses the different systems of social auditing developed by various independent institutions and agencies.

5.1 Meaning and Definition of Social Auditing

In the era of Corporate Social Responsibility (CSR), where corporations are often expected not just to deliver value to consumers and shareholders but also to meet environmental and social standards deemed desirable by some vocal members of the general public, social audits can help companies create, improve and maintain a positive public relations image.\textsuperscript{4} The social audit is a natural evolutionary step in the concern for operationalizing CSR and, its essence, represents a managerial effort to develop a calculus for gauging the firm’s socially oriented contributions.\textsuperscript{5} The goal is to identify what, if any, actions of the corporation have impacted the society in some way. A social audit may be initiated by the corporation that is seeking to improve its cohesiveness or improve its image within the society.\textsuperscript{6}

The social audit today is a vehicle or device by which individual businesses can monitor, measure, and appraise their social performance. It is a document published annually with information on the activities developed by a company in the area of human and social promotion, directed towards its employees and the community to which it belongs.\textsuperscript{7} It is a systematic study and evaluation of an organization’s social performance, as distinguished from its economic performance. It is concerned with possible influences

\textsuperscript{3} Ibid.
\textsuperscript{7} <http://www.balancosocial.org.br/media/textofisuc2.pdf> Accessed on March 31, 2013.
on the social quality of life instead of the economic quality of life.\(^8\) Besides this, some of the prominent definitions of the terms “Social Audit” are as follows:

Alen Couret and Jacque Igalense define:\(^9\)

social audit aims at analyzing each risk factor and provides recommendations on the possible means for their limitation.

Raymond Vatier, founder of the social audit in France, considers social audit as “a managerial tool for managing and monitoring the company’s ability to manage human or social issues related to the professional activity”.\(^10\)

Bauer and Fenn, pioneers in the development of modern forms of social auditing, take it to mean: “A commitment to systematic assessment of and reporting on some meaningful, definable domain of a company’s activities that have social impact”.\(^11\)

Pierre Candou defines social audit as an independent activity for monitoring, analysis, assessment and presentation of recommendations for the activity based on methodologies and applied methods that permit, upon comparison with the reference books, to determine first the strengths and problems in the field of using staff in relation to costs and risks. This allows the diagnosing and clarifying the problem causes, assessing their significance and last but not least making recommendations for the implementation of specific activities which are not performed by the auditor himself.\(^12\)

M. Geddes defines:\(^13\)

Social audit is best understood as a reaction against conventional accounting principles and practices. These centre on the financial viability and profitability of the individual economic enterprise. By contrast, social audit proposes a broader financial and economic perspective, reaching far beyond the individual enterprise....Social audit posits other goals as well as, or instead of, financial profitability....Moreover social audit attempts to embrace not only economic and

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\(^10\) Ibid.
\(^11\) *Supra* note 5, at 595.
\(^12\) *Supra* note 9.
monetary variables but also - as its name suggests - social ones, including some which may not be amenable to quantification in monetary terms.

S. Prakash Sethi captures the essence of the social audit in following words: ¹⁴

At the risk of oversimplification, we might say that the purpose of the social audit is to help break down the broad term “social responsibility of business” into identifiable components and to develop scales that can measure these components.

A social audit takes into consideration the factors such as a company’s record of charitable giving, volunteer activity, energy use, transparency, work environment and worker pay and benefits to evaluate what kind of social and environmental impact a company is having in the locations where it operates. Social audits are optional - companies can choose whether to perform them and whether to release the results publicly or only use them internally. ¹⁵ The key difference between development and social audit is that a social audit focuses on the neglected issue of social impacts, while a development audit has a broader focus including environment and economic issues, such as the efficiency of a project or programme.

5.2 Evolution and Development of Social Auditing

The word ‘audit’ is derived from Latin, which means ‘to hear’. In ancient times emperors used to recruit persons designated as auditor to get feedback about the activities undertaken by the kings in their kingdom. These auditors used to go to public places to listen to citizen’s opinions on various matters like behaviour of employees, incidence of tax, image of local officials, etc. ¹⁶

The social audit as a concept for monitoring, appraising and measuring the social performance of business dates back to 1940. In 1940, Theodore J. Kreps used the term ‘Social Audit’ in a monograph, entitled “Measurement of the Social Performance of Business”, which was part of a Temporary National Economic Committee series of studies and investigations concerning the concentration of economic power. However, in 1962,

Kreps in an article, made a reference to Aristotle for the usage of the same term, which suggests usage of the term prior to Kreps time.17

Another interesting fact is that not only was the term ‘social audit’ used by Kreps in 1940 but it was utilized in a vein similar to that employed today as a concept for measuring the social performance of corporations. Indeed, Kreps entitled the chapter in which he introduced the term, “Tests of Social Performance.” Not surprisingly, however, is the disclosure that social performance during this late depression/pre-World War II era related more closely to the economic performance of the firm.18

Kreps, while expanding on the social measurement problem, states:19

Any attempt to make an objective social audit of business must be limited to the items that are measurable. These, while few in number, are by no means of small import or significance. In fact, they are basic to the concept of business, even as defined by business itself.

To demonstrate his expertise in using measurable criteria, Kreps conducts an analysis and presents findings for what he terms a social audit with respect to 22 industries (knit goods, iron and steel, automobile, etc.), nine groups of industries (mining, government, finance, etc.), and three of the largest TNCs at that time (General Motors, United States Steel, and American Telephone and Telegraph). He qualifies his efforts by asserting that “the scarcity of data together with the limitations of time and funds which made impossible any attempt to collect new figures on a large scale have restricted this attempt at a social audit of business to the 20 years period from 1919 to 1938 and in addition limited it to only six measurements: Employment; Production; Consumer effort commanded; Consumer funds absorbed; Payrolls; and Dividends and interest. Even though, concerning his measurement, Kreps indicates that they do not constitute an exhaustive audit, but his analysis served to show that application of the social audit was

18 Supra note 5, at 591.
20 What have consumers been compelled to surrender in exchange for what they got?
21 What has happened to the stream of dollars which the industry has collected from the public and its customers, in exchange for services rendered?
feasible on an entire industry, on a segment of the economy, or on an individual company basis.22

Second instance in which the term ‘social audit’ used is by Howard R. Bowen in his work entitled, Social Responsibilities of the Businessman in 1953. In fact, Bowen asserts in his discussion, “To my knowledge the concept of social audit has not been suggested previously”.23 Bowen suggested social audit as a measure of ‘possible institutional change’ to the businesses, which might help in strengthening the social point of view in business management.24

Bowen suggested that “the social auditors would make an independent and disinterested appraisal of a company’s policies regarding prices, wages, research and development, advertising, public relations, human relations, community relations, employment stabilization, etc.”25 He further went on to explain how social auditors should be selected. He felt that personnel conducting the audit should be (a) oriented towards the social point of view, (b) conversant with business practices and problems and (c) technically trained in such fields as law, economics, sociology, psychology, personnel, government, engineering, philosophy, and theology.26 The purpose behind the proposal was to increase the responsiveness of business management to the social interests.27

The wave of social auditing captured almost all the industrialised countries very quickly. To improve their images world over, in absence of any standards tools of social audit, the TNCs adopted their own auditing and certification systems under a range of names to measure the labour standards and overall social performance. Therefore, to institutionalise the concept of social audit as a system/tool, in USA, UK, and Europe some individuals and consultants as well as business schools were experimenting with the forms of the social audit to develop classification schemes for audit approaches.

The common aspect in all these systems/tools was that the corporations opened their doors for an external verification and independent monitoring of their social performance.

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22 Supra not 19, at 3.
23 Howard R. Bowen, Social Responsibilities of the Businessman, 156 (1953).
24 Id., at 155.
25 Ibid.
26 Supra note 5, at 594.
27 Supra note 23, at 163.
Their methodologies and experiences are cited in the social audits of ARA Services, Inc. and Abt Associates to which Arthur D. Little, Butcher and Linowes were represented. Butcher suggested that major social audit projects that have been undertaken thus far can be grouped into three general categories: the social indicators approach; the constituent impact approach; and the corporate rating approach.

In 1972, Charles Medawar pioneered the concept of social auditing with the application of the idea in medicine policy, drug safety issues and on matters of corporate, governmental and professional accountability. According to Charles Medawar, the concept of social auditing starts from the principle that in a democracy the decision makers should account for the use of their powers and that their powers should be used as far as possible with the consent and understanding of all concerned.

The concept of social audit then evolved among corporate groups as a tool for reporting their contribution to society and obtaining people's feedback on their activities to supplement their market and financial performance. In the mid 1970s, in the UK and Europe, the term social audit emerged to describe evaluations that focused on the likely impact on jobs, the community and the environment, if a particular enterprise or industry were to close or relocate. These evaluations used the term social audit to clearly make the point that they were concerned with the 'social' and not the 'economic' consequence of a particular action. Trade unions, local government authorities, industry and private companies carried them out.

During the industrial restructuring of the UK economy in the 1970s and 1980s several local authorities, often in association with trades unions, commissioned reports into the likely impact of plant closures on local communities. As pressures built during the 1980s about the impact of industry on the environment, standards began to be developed

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30 The social indicators approach evolved out of the concept of developing some form of quality - of - life index which would monitor the ups and downs of the nation’s social health. For details see: Ibid.
31 The constituent impact approach to the social audit was an effort to set out in traditional balance sheet form all of the numerous interrelations between a company and its various constituents - consumers, employees, suppliers, etc. For details see: Ibid.
32 The corporate rating approach was an effort by individuals and groups outside the corporate structure to assess which companies are responding appropriately to social demands. For details see: Ibid.
33 Supra note 16, at 15.
34 Ibid.
requiring companies (and others) to report on likely and actual environmental impacts. 

The growth of interest in ethical investment led to the need to uncover and better understand just what corporations do and how they use the funds invested in them. The ‘watchdog’ role was taken forward by such organisations as the ‘Ethical Investment Research Service and Ethical Consumer’.35

At the same time in the United States, public repudiation of the war in Vietnam triggered a movement to boycott the goods and shares of some companies that were associated with the conflict. Society demanded a new ethical attitude and some companies began to provide accounts for their social actions and objectives. The Social audits rose to prominence in the 1970s when a number of North American companies in particular began to incorporate them into their annual reports. In essence they involve an examination of the costs and benefits of a company’s activities in the broader social context, including factors such as health, safety and pollution, and then costing these.36

In England, the Industrial Common Ownership Movement (ICOM) through its Beechwood College near Leeds developed during the 1980s a social audit model aimed in the first instance at worker co-operatives.37 This model was piloted in the early 1980s and was developed by the Social Enterprise Partnership into the “Social Audit Toolkit” and used within the community sector, especially in the context of a number of transnational European programmes.38 The fourth edition of the “Social Audit Toolkit” contains many new features like social audit process, standards and team.39

In Scotland, Strathclyde Community Business Ltd (SCB) recognised the need to understand, account for and report on the social benefits of the community businesses which were being established in the 1980s throughout Scotland. SCB’s thinking and experimentation led to what became known as “the Scottish model” which, blended with

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38 Freer Spreckley, Social Audit Toolkit, at 7 (2000).

the experience of the New Economics Foundation (NEF) working with Traidcraft plc, was published later in “Social Auditing for Small Organisations: the Workbook”, 1996.40

5.3 Scope and Main Features of the Social Auditing

The scope of the social audit includes all the activities of a corporation, which have significant social impact. To be more precise, to know the social impact of the corporation one has to work on the components of a corporation’s Social Policy. Generally, a good social policy includes provisions relating to Ethics, Labour, Environment, Human Rights, Community, Society, and Compliance. Normally, a social audit can determine only what an organisation is doing in social areas, not the amount of social good that results from these activities. It is a process of audit rather than an audit of results.

The functions of the Social auditor is to see whether the ethical policy of the corporation include the pledge not to participate in a series of activities that are deemed offensive like exploitation of children, unethical treatment of animals, damage to the environment and dealing with undemocratic regimes. The creation of a working environment allowing all employees to develop their potentials. The corporations must adopt environment policies which reduce emission and waste.41

The scope of the social audit further extends to the limit that the corporation should neither violate human rights nor supports human rights violators even if the violator is a State. It also includes partnerships with voluntary local organizations, with financial donations, donations in kind such as computers for education, food and clothes for the poor. The auditors jurisdiction extends to the level to check whether the corporation are complying with the identified legal obligations relating to changing rules related to its workforce, its products, its administration and its dealings.42

Social audits can be made either by internal specialists, outside consultants, or a combination of the two. A significant issue is whether the audit, or any portion of it, is to be made public by means of a social performance report.43 Howard R. Bowen’s original proposal was that a social audit should be made by outside consultants for inside use only, and that it should be made only every five years.44 However, at present most of the TNCs,

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40 Supra note 35.
42 Ibid.
43 Supra note 8, at 14.
44 Supra note 23, at 155.
hire the services of the international institutions, which have developed standards tools and techniques, to do social auditing or measure the social performance of the TNCs which can be later published or make the report public by putting it on the official website of the TNCs.

5.4 Benefits of Social Auditing

The number of TNCs, which publish social audit reports are continuously increasing. There are many reasons behind this increase: Firstly, the social audit report supplies data for comparison with policies and standards so that management can determine how well the organization is living up to its objectives. Secondly, it encourage greater concern for social performance throughout the organization. Thirdly, it provides data for comparing the effectiveness of different types of programs. Fourthly, it helps in creating the provision of cost data on social programs, so that management can relate this data to budgets, available resources, company objectives and to projected program benefits. Fifthly, benefits of social audit is that it provides information for effective response to external groups which make demands on the organization.45

The key benefits of carrying out a social audit are: (a) social and ethical impact are monitored and, where appropriate, improvements to performance are agreed; (b) stakeholders - members, shareholders, staff, customers, the community, investors and grant providers - can see what the enterprise is achieving and this, in turn, will develop stakeholder confidence, trust and respect; (c) the enterprise can see how well it is achieving its goals, and can use information from the social audit to help with the goal - setting process for the coming year; (d) non - traded income strategy will be informed by the social audit, as in most cases, businesses and individuals prefer to support organisations that are known to be ethically, environmentally and socially sound; and (e) staff are more likely to enjoy job satisfaction, a sense of job security and commitment to an organisation which is sticking to its vision, values, ethics and mission - all of which can be evidenced through the process of social auditing.46

Howard R. Bowen has also highlighted several advantages of social audit in his landmark work. They are: (a) it would provide a recognised method for bringing the social point of view to the attention of management; (b) the appraisal of individual corporations

45 Supra note 8, at 16.

188
would be made by persons outside the company who would have a more disinterested and detached view of its activities than company employees; (c) the creation of a specialized group of social auditors would give an impetus to the consideration and development of recognized social standards for corporate practice; (d) the fact that the report on the audit would be made to the company and not to the public would make possible complete frankness and at the same time would make the scheme more acceptable to businessman.47

5.5 The Social Audit Process

The Social Audit process is cyclical, it is made up of four accumulative elements each one following on from the previous one and informing the next element until the audit cycle is completed. The process itself creates a learning culture which grows and strengthens year on year. The four elements of the Social Audit cycle are as follows: governance statement; external view and stakeholders; internal view and organisation; and social accounting and verification.48

(i) Governance Statement: This element is used to establish clarity about the organisation: the principles and values, its objectives and commercial operations. The element includes a review of the constitutional aims and objectives, a review of the rule book and clarification of the main values that guide the operational management. Current practices and new areas for development are identified, objectives are set for the following

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47 Supra note 23, at 156.
48 Supra note 39, at 8.
audit period and the measurement of objectives set in the previous audit period takes place.49

(ii) External View and Stakeholders: This element is used to examine the organisation’s relations with a broad set of stakeholders and its social, environmental and commercial environment. The element includes stakeholder mapping, profiling and analysis, and an assessment of consistency between the Governance Statement and current practice. Strengths and weaknesses in current practices and new areas for development are identified, and objectives are set for the following audit period.50

(iii) Internal View and Organisation: This element is used to examine the organisation’s structure and relations with its staff, board members and volunteers, and how it delivers its operations. The element includes an analysis of Roles and Tasks and a comparison with job descriptions and terms of reference for consistency. Consistency with the Governance Statement is assessed. Strengths and weaknesses in current practice and new areas for development are identified and objectives set for the following audit period.51

(iv) Social Accounting and Verification: This element is where the Outline Objectives set in the other elements are brought together, prioritised and planned for the following audit period. The previous year’s achievements are analysed for their consistency with the Governance Statement to determine the organisation’s degree of integrity. Objectives that have not been achieved are analysed, the Quality Assurance checks are assessed and the process and results are reported formally to stakeholders in the Social Audit Report.52

5.6 Systems of Social Auditing

5.6.1 Global Reporting Initiative

Global Reporting Initiative (hereinafter GRI) is a multi-stakeholder, network-based organization. Its Secretariat is headquartered in Amsterdam, the Netherlands. The Secretariat acts as a hub, coordinating the activity of GRI’s many network partners. GRI has focal points - regional offices – in Australia, Brazil, China, India and the USA. Its global network includes more than 600 Organizational Stakeholders - core supporters –

49 Ibid.
50 Ibid.
51 Ibid., at 9.
52 Ibid.
and some 30,000 people representing different sectors and constituencies. GRI also enjoys strategic partnerships with the UN Environment Programme, the UN Global Compact, the Organisation for Economic Co-operation and Development (OECD), International Organization for Standardization and many others.  

5.6.1.1 GRI Guidelines: Transition from G to G4

GRI was founded in Boston in 1997. Its roots lie within the US non-profit organizations the Coalition for Environmentally Responsible Economies (CERES) and the Tellus Institute. Former CERES Executive Director Dr. Robert Massie, and acting Chief Executive Dr. Allen White, pioneered a framework for environmental reporting as CERES advisors in the early 1990s. To develop the framework, CERES established a ‘Global Reporting Initiative’ project department. The aim was to create an accountability mechanism to ensure companies were following the CERES Principles for responsible environmental conduct. Investors were the framework’s original target audience.  

In 1997, the process started with producing several conceptual papers by five working group of the Steering Committee, and by devising the future GRI institutional model. A pivotal mandate of the Steering Committee was to “do more than the environment.” On this advice, the framework’s scope was broadened to include social, economic, and governance issues. GRI’s guidance became a Sustainability Reporting Framework, with Reporting Guidelines at its heart.  

The first official edition of the GRI Guidelines was released in June 2000, and the work on the next edition commenced immediately thereafter. A group of 31 companies invested considerable resources towards pilot testing the Guidelines. The second GRI international symposium successfully drew in the stakeholder groups (labor, international NGOs, investors) and the geographic regions (Africa, Asia, Southern and Central America) that until then were underrepresented within the GRI network. It also gave birth

54. Ibid.  
55. Supra note 1, at 5.  
56. Supra note 53.  
57. Agilent, USA; BASF, Germany; Baxter International, USA; Bayer AG, Germany; British American Tobacco, UK; CWS Powder Coatings, Germany; ESAB, Sweden; Ford Motor Company, USA; Gaz de France; General Motors, USA; Halliburton, USA; Ito Yokado, Japan; J ebsen and Jessen, Singapore, Kirin Brewery Co., Natura, Brazil; Nike, USA; Panasonic, Japan; P&G, USA; Renault, France; Rio Tinto, UK; Royal Dutch/Shell, UK; Siam Kraft, Thailand; SKF Group, Sweden; Sunco Energy, Canada; Sydkraft Group, Sweden; Texaco, USA; TotalFinaElf, France; TransAlta, Canada; TXU Europe, UK; Vivendy Environmental, France; WSP Group, UK.
to the global multi-stakeholder network, the signature of GRI. In April of 2002, at a ceremony hosted at the UN headquarters in New York, GRI was inaugurated as an independent organization, whose mission was to provide “stewardship of the Guidelines through their continuous enhancement and dissemination (GRI 2000 Guidelines).” It subsequently incorporated in Amsterdam as a non-profit organization and a collaborating Centre of the United Nations Environment Programme. By August 2002, the second edition of the Guidelines, so-called G2, was released in Johannesburg during the World Summit on Sustainable Development, which was followed in quick succession by a series of supplements tailored for individual industrial sectors and by scores of technical protocols and resources materials. By the end of 2005 the governance structure of GRI was completed.58

The third generation of Guidelines, G3, was released in October 2006. After G3 was launched, GRI expanded its strategy and Reporting Framework, and built powerful alliances. Formal partnerships were entered into with the UN Global Compact, the OECD, and others. A regional GRI presence was established with Focal Points, initially in Brazil and Australia and later in China, India and the USA. Sector-specific guidance was produced for diverse industries in the form of Sector Supplements (now called Sector Guidelines). Educational and research and development publications were produced, often in collaboration with academic institutions, global centres of excellence and other standard-setting bodies. GRI’s services for its users and network expanded to include coaching and training, software certification, guidance for small and medium sized enterprises in beginning reporting, and certifying completed reports. GRI’s outreach was strengthened by its biannual Amsterdam Conference on Sustainability and Transparency, beginning in 2006; the third conference in May 2010 attracted over 1,200 delegates from 77 countries.59

In March 2011, GRI published the G3.1 Guidelines - an update and completion of G3, with expanded guidance on reporting gender, community and human rights-related performance. The G3.1 Guidelines are made up of two parts. Part 1 - Reporting Principles and Guidance features guidance on how to report. Part 2 - Standard Disclosures features guidance on what should be reported, in the form of Disclosures on Management Approach and Performance Indicators. G3.1’s Performance Indicators are organized into

58 Supra note 1, at 4.
59 Supra note 53.
categories: Economic, Environment and Social. The Social category is broken down further by Labor, Human Rights, Society and Product Responsibility sub-categories.\textsuperscript{60}

Recently, in May 2013, GRI launched the fourth generation of Guidelines, the G4. Together with the aim of being more user-friendly than previous versions of the Guidelines, G4 was developed to increase emphasis on the need for organizations to focus the reporting process and final report on those topics that are material to their business and their key stakeholders. This ‘materiality’ focus will make reports more relevant, more credible and more user-friendly. This will, in turn, enable organizations to better inform markets and society on sustainability matters.\textsuperscript{61}

The G4 offer \textit{Reporting Principles, Standard Disclosures} and an \textit{Implementation Manual} for the preparation of sustainability reports by organizations, regardless of their size, sector or location. The Guidelines also offer an international reference for all those interested in the disclosure of governance approach and of the environmental, social and economic\textsuperscript{62} performance and impacts\textsuperscript{63} of organizations. The Guidelines are useful in the preparation of any type of document which requires such disclosure. The Guidelines are developed through a global multi-stakeholder process involving representatives from business, labor, civil society, and financial markets, as well as auditors and experts in various fields; and in close dialogue with regulators and governmental agencies in several countries. The Guidelines are developed in alignment with internationally recognized reporting related documents, which are referenced throughout the Guidelines.

The G4 Guidelines are presented in two parts. The first part, Reporting Principles and Standard Disclosures, includes: (1) Purpose of the Guidelines; (2) An overview of how to use the Guidelines; (3) A new section: Using the Guidelines: The steps to follow (a) Obtain an overview (b) Choose preferred ‘in accordance’ option (c) Prepare to disclose General Standard Disclosures (d) Prepare to disclose Specified Standard Disclosures (e) Prepare the sustainability report; (4) Reporting Principles; (5) Standard Disclosures; (6) A

\textsuperscript{60} \url{https://www.globalreporting.org/reporting/G3andG3-1/g3-1-guidelines/Pages/default.aspx} Accessed on April 08, 2013.

\textsuperscript{61} \url{https://www.globalreporting.org/reporting/g4/g4-developments/Pages/default.aspx} Accessed on April 08, 2013.

\textsuperscript{62} The economic dimension of sustainability concerns the organization’s impacts on the economic conditions of its stakeholders and on economic systems at local, national, and global levels. It does not focus on the financial condition of the organization.

\textsuperscript{63} In the Guidelines, unless otherwise stated the term ‘impact’ refers to significant economic, environmental and social impacts that are: positive, negative, actual, potential, direct, indirect, short-term, long-term, intended, unintended.
new section: Quick Links (a) References to reporting documents (linking documents) – UNGC, OECD, assurance, supply chain, etc.; and (7) Definitions of Key Terms.

The second part, Implementation Manual, includes: (1) Detailed guidance for the Reporting Principles and Standard Disclosures; (2) A complete list of references; (3) A glossary; (4) General reporting notes; (5) Information on the Guidelines’ development.

5.6.1.2 Global Reporting Initiative and India

India is a newly industrialized country and a key market for boosting the practice of sustainability reporting. By having an office on the ground, GRI can help change the sustainability reporting landscape and improve overall transparency. Since the Focal Point was established, the number of reporters in India has increased. The support of the GRI Focal Point India provides Indian corporations a chance to shape GRI’s continuously developing Sustainability Reporting Framework, as well as standards and the emerging regulatory landscape for sustainability reporting in India.64

The Focal Point India was established in January 2010, and is hosted by the German International Corporation, India (GIZ) until December 2013. The Focal Point has advised GIZ on the development of national voluntary disclosure frameworks as part of the IICA-GIZ Corporate Social Responsibility Initiative, which facilitated the developmental process of the National Voluntary Guidelines launched by the Ministry of Corporate Affairs in 2011.65

Focal Point India operates at the heart of the CSR and sustainability landscape in India. The Focal Point has an important strategic collaboration with the Indian Institute of Corporate Affairs (IICA), an independent think tank under the Ministry of Corporate Affairs, Government of India through the IICA-GIZ CSR initiative.66

The Focal Point maintains close working and collaborative engagements through capacity building, policy advocacy, research and consultations with Ministries, regulators, business, industry associations, financial market players, B-Schools and civil-societies from India and South Asia. Given the growing importance of sustainability topics, GRI Focal Point India will soon publish two research studies. One would be on the trends and

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65 Ibid.
66 Ibid.
practices of Sustainability reporting in 8 economically important sectors and the other on Non Financial Reporting Preparedness of Banks in India.\textsuperscript{67}

The Indian Focal Point also has a strategic collaboration with the South Asian Federation of Accountants (SAFA). SAFA has member bodies from both the accounting and the cost and works institutions of each of the South Asian countries of India, Pakistan, Sri Lanka, Nepal, Bangladesh, and the Maldives. GRI’s Focal Point India also contributed to the South Asian agenda by collaborating with ACCA, Sri Lanka, CIM Sri Lanka, ICAB, Bangladesh, CSR Centre for Bangladesh.\textsuperscript{68}

5.6.1.3 Global Reporting Initiative and Human Rights

The GRI is one of most useful instruments which not only clearly states human rights along with references as a sub-category of the Standard Disclosures but also prescribes how to apply the Reporting Principles, how to prepare the information to be disclosed, and how to interpret the various concepts in the Guidelines. In 2006, while releasing G3, the GRI opted for human rights as a performance indicator for standard disclosure. These Performance Indicators require organizations to report on the extent to which human rights are considered in investment and supplier/contractor selection practices. Additionally, the Indicators cover employee and security forces training on human rights as well as non-discrimination; freedom of association; child labor; forced and compulsory labor; and indigenous rights.\textsuperscript{69}

Further, to mark the 60th anniversary of the UDHR in December 2008, the GRI, the UN Global Compact and Realizing Rights: The Ethical Globalization Initiative, joined together in a project to foster greater integration of human rights issues into corporate sustainability reporting. The project - Human Rights: A Call to Action - aimed to improve understanding significantly of how and why to publicly disclose policies and practice relating to human rights and how to embed this better understanding into global reporting standards.\textsuperscript{70}

\textsuperscript{67} Ibid.
\textsuperscript{68} Ibid.
\textsuperscript{70} Ibid.
After reviewing the GRI G3 Guidelines and the project - Human Rights: A Call to Action, the following elements are considered as part of good human rights reporting:

- Adherence to principles (such as those of the GRI) on report content (materiality, stakeholder inclusion, sustainability context, completeness) and quality (balance, comparability, accuracy, timeliness, clarity, reliability), which apply to all sustainability reporting, not just human rights reporting.

- Materiality through a human rights-specific lens (identifying human rights issues that are particularly important to the company and its industry, both generally and with regard to specific operations).

- Disclosure on relationships (indirect impact of companies on human rights through other parties).

- Human rights due diligence reporting (discussion of the human rights-related policies and procedures a company has in place).

- Human rights performance data (how the company carries out its policies and procedures as well as incidents related to human rights; this can encompass human rights implementation reporting and impact reporting, both positive and negative). These are still evolving, with much more work needed to define human rights impact and performance indicators. One place to start is with the human rights-related indicators such as those contained in the GRI G3 Guidelines.

The GRI added 2 core aspects in G3.1 Guidelines namely assessment and remediation. Assessment indicates the percentage and total number of operations that have been subject to human rights reviews and/or impact assessments. Whereas remediation highlights number of grievances related to human rights filed, addressed, and resolved through formal grievance mechanisms. Further the G3.1 Guidelines while recognizing the relevance expressed that Human Rights Performance Indicators elicit disclosures on the impacts and activities an organization has on the civil, political, economic, social and cultural human rights of its stakeholders. The Aspects within these Performance Indicators are based on internationally recognized standards, primarily the UN UDHR and the ILO Declaration on the Fundamental Principles and Rights at Work of 1998 (in particular the

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eight core Conventions of the ILO). Although closely related, the categories of Human Rights and Labor Practices serve different purposes. Human Rights Indicators focus on how the reporting organization maintains and respects the basic rights of a human being, whereas the Indicators on Labor Practices reflect the quality of the work conditions and the working environment.  

As compared to G3 Guidelines, the G3.1 Guidelines expanded the scope to define the term human rights besides the International Bill of Human Rights. It identified additional instruments which are of particular relevance to business. These are:  

1. ILO Declaration on Fundamental Principles and Rights at Work, 1998 (in particular the eight core conventions of the ILO consisting of Conventions 100, 111, 87, 98, 138, 182, 29, 105);  
2. Convention on the Elimination of All Forms of Racial Discrimination, 1966;  
5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990; and  

However, the recent version of GRI i.e. G4 Guidelines covers almost all the grey areas which G3 and G3.1 did not address. The G4 Guidelines have recognized that there is growing global consensus that organizations have the responsibility to respect human rights. In G4 Guidelines, human rights are included as sub-category of the Social aspects covered under the specific disclosure standards in the guidelines. It covers the extent to which processes have been implemented, incidents of human rights violations, and changes in stakeholders’ ability to enjoy and exercise their human rights. The G4 covers the following aspects of human rights: investment; non-discrimination; freedom of

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73 Ibid.
association and collective bargaining; child labour; forced or compulsory labor; security practices; indigenous rights; assessment; supplier human rights assessment; and human rights grievance mechanism.  

The last two aspects makes the G4 special when the concern is about human rights issues and corporations. The implementation manual of the guidelines provide the method to implement these aspects. It is mandatory for the corporations to follow these guidelines to remain registered with the GRI. Under the G4 Guidelines, it becomes mandatory for all the corporations to ‘report the percentage of new suppliers that were screened using human rights criteria’. It is further required to prepare a report on the significant actual and potential negative human rights impacts in the supply chain and action taken.

To make the system full proof, the guidelines as well as the implementation manual provides human rights grievance mechanism. Every registered corporation with GRI is bound to report the total number of grievances about human rights impacts filed through formal grievance mechanism during the reporting period. And further report how many of the identified grievances were addressed and resolved during the reporting period. The provision includes even the past impacts filed prior to the reporting period.

The G4 Guidelines has also numerous reference points for any organization reporting on human rights. Besides, three key instruments covered under the International Bill of Human Right, the international legal framework for human rights is underpinned by over 80 other instruments. These instruments range from soft declarations and guiding principles to binding treaties and conventions, and range from universal to regional instruments.

5.6.2 Social Accounting 8000
In 1969, the Council on Economic Priorities (CEP) was founded with a mission to provide accurate and impartial analysis to evaluate corporate social performance and to promote excellence in corporate citizenship. For nearly three decades, CEP has rated corporate performance to provide consumers and investors with information tools for change. During the mid 1990s, the customers became concerned about the conditions under which the goods especially clothes was produced, hundreds of businesses drafted codes of conduct describing the appropriate workplace conditions for goods they manufactured and produced. However, various studies showed that many codes did not include key International Labour Organization (ILO) or UDHR and the UN Convention on the Rights of the Child nor a management system to provide the basis for an industrial relations or human resources system and the documents needed to enable reliable auditing.

In order to avert consumer boycotts or claims for compensation, in early 1997, an agency was established under the aegis of CEP known as the Council on Economic Priorities Accreditation Agency (CEPAA) and also convened an expert Advisory Board to assist in drafting standards to address workers’ rights. As a result, the CEPAA has driven the development of Social Accountability 8000 (SA8000), a system which defines a set of auditable standards and an independent auditing process for the protection of workers’ rights. SA8000 has been developed to serve as a global CSR standards. It was designed to complement and extend ISO9000 quality management standards and ISO14000 environmental management certificate standards.

Today, the SA8000 standard is under the control of Social Accountability International (SAI), which emerged out of CEPAA, for its implementation. SAI is a non-governmental, multi-stakeholder organization whose mission is to advance the human

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78 The Council comprises such companies as Otto and Avon, as well as a number of non-governmental organizations (NGOs). The background of the organization was based on the development of a standard of socio-ethical engagement of companies that would lead to worldwide consensus. At the same time, economic reasons played an important role in its establishment.


81 Supra note 79.


rights of workers around the world. It partners to advance the human rights of workers and to eliminate sweatshops by promoting ethical working conditions, labor rights, corporate social responsibility and social dialogue. It works to protect the integrity of workers around the world by building local capacity and developing systems of accountability through socially responsible standards.84

In 2007, the accreditation agency (CEPAA) was spun off to become Social Accountability Accreditation Agency (SAAS). SAAS provides accreditation services for SAI, InterAction, and the Business for Social Compliance Initiative (BSCI). Since its formation, SAI has worked cooperatively with stakeholders to improve the social performance of organizations around the world. SAAS is now an independent decision-making agency, linked to SAI only through contractual arrangements. Till March, 2013 SAAS has provided 3,137 SA certified facilities in 69 countries across 65 industrial sectors employing over 1,829,776 million workers, and 21 SAAS Accredited Certification Bodies.85

5.6.2.1 Purpose and Scope of SA 8000

The intent of SA 8000 is to provide a standard based on international human rights norms and national labour laws that will protect and empower all personnel within a company’s scope of control and influence, who produce products or provide services for that company, including personnel employed by the company itself, as well as by its suppliers/subcontractors, sub-suppliers, and home workers.86

SA8000 is verifiable through an evidence-based process. Its requirements apply universally, regardless of a company’s size, geographic location, or industry sector. Its subject consists mainly of working conditions and rights for co-workers. The ILO aligns itself with the SA8000, but resorts mainly to United Nations conventions for matters of human rights. The SA 8000 norm has two main goals:87

(a) Develop, maintain, and enforce policies and procedures in order to manage those issues which it can control or influence;

87 Thomas Beschomer and Martin Muller, “Social Standards: Towards an Active Ethical Involvement of Business in Developing Countries”, Journal of Business Ethics, The Social Responsibility of International Business in Developing Areas, Vol. 73, No. 1, 11-20 at 14 (June, 2007).
(b) Demonstrate to interested parties that policies, procedures and practices are in conformity with the requirements of this standard.

5.6.2.2 Social Accountability Requirements

To achieve the above mentioned purpose and scope, the SA8000 standards not only impose conditions on the company to comply with national laws regarding industry standards but also to respect the principles laid down in the ILO Convention; UDHR; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the UN Convention on the Rights of the Child; the UN Convention on the Elimination of All Forms of Discrimination Against Women; and the UN Convention on the Elimination of All Forms of Racial Discrimination. Further to achieve its intent, the SAI while drafting the SA8000 standards specially mentioned the social accountability requirements. These are:88

1. **Child Labor**: the SA8000 prohibits the use of child labor i.e., less than 15 years of age, unless local regulations are higher, requires corporate support for the education of school-age workers; time spent daily on work and school cannot be more than 10 hours; that the corporation does not expose children either inside or outside the workplace to hazardous or unhealthy situations.

2. **Forced and Compulsory Labour**: the company shall not engage in or support the use of forced or compulsory labour as defined in ILO Convention 29. It should not either engage in or support trafficking in human being.

3. **Health and Safety**: the company shall provide a safe and healthy workplace and to take effective steps to prevent potential accidents and injury to workers during work. It should give health and safety training to all personnel besides providing first aid and follow up medical treatment in the event of work related injury. It should also ensure clean and sanitary working and living conditions.

4. **Freedom of Association and Right to Collective Bargaining**: All persons shall have the right to form, join, and organise trade unions of their choice and to bargain collectively on their behalf with the company. The company shall not in any way interfere with the

88 *Supra* note 86, at 5-10.
establishment, functioning, or administration of such workers' organisations or collective bargaining.

(5) Discrimination: The standards prohibits the company to engage or support discrimination in hiring, remuneration, access to training, promotion, termination, or retirement based on race, national or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, upon membership, political opinions, age, or any other condition that could give rise to discrimination.

(6) Disciplinary Practices: The Standards prohibits use of corporal punishment, mental or physical coercion, or verbal abuse of personnel and any inhuman treatment.

(7) Working Hours: The standards prohibits required work in excess of 48 hours per week. It requires at least one day in seven off. It allows up to 12 hours/week overtime at a wage premium.

(8) Remuneration: The standards laid down an obligation on the company to respect the right of personnel to a living wage and ensure that wages paid for a normal work week shall always meet at least legal or industry minimum standards and shall be sufficient to meet the basic needs of personnel and to provide some discretionary income.

(9) Management Systems: This is the most important part of the standards as it integrate SA8000 standards into the management systems and ensure the fulfilment of all other requirements. The company shall recognize that workplace dialogue is a key component of social accountability and ensure that all workers have the right to representation to facilitate communication with senior management in matters relating to SA8000. Top management shall periodically review the adequacy, suitability, and continuing effectiveness of the company’s policy, procedures, and performance results vis-à-vis the requirements of this standards and other requirements to which the company subscribes.\(^{89}\)

\(^{89}\) Ibid.
5.6.2.3 Implementation of the Standards

Operative implementation on the micro-level takes place at local production facilities. A “guidance document” issued by SAI provides instructions concerning the local adaptation and basic compliance rules of SA 8000. To foster implementation, SAI suggests dividing the process into four phases. In the first phase (plan), the corporation chooses a certification company (auditor) that is accredited by SAI and conducts a first self-assessment. During the second phase (do), necessary modifications of production processes and management systems are accomplished. The auditor analyzes the production processes and informs the company about deviations from SA 8000. Within the third phase (check), the actual audit takes place once a production facility meets all demanded requirements. Auditor, production facility, and affected stakeholders (e.g., unions) work together while the audit is conducted. In case of a successful certification, the production facility is awarded the SA 8000 seal for three years. The last phase (act) is supposed to guarantee constant compliance with SA 8000; auditors are allowed to make follow-up visits and are permitted to withdraw certification. To ensure dialogue, corporations are asked to set up a system by which employees can report their complaints in an anonymous way. The description of the different phases demonstrates that corporations need to understand the reorganization of their production processes as an ongoing task and challenge—a challenge that is not completed once the certificate is awarded. Certification is not supposed to provide a snapshot at a single point in time but rewards sustainable efforts to improve working conditions. SA 8000 tries to guarantee that standards are still met after the external auditor has left to ensure a continuous improvement of workplace conditions.

5.6.2.4 Relevancy of SA8000

SA 8000 is currently one of the most developed and widely used social accounting standards for TNCs. The opportunity to gain even wider acceptance seems to be substantial, at least at first glance, because SA 8000 not only provides proper guidelines to

92 Supra note 2, at 199.
improve working conditions but also is auditable. In fact, SA 8000 is the first auditable standard on workers’ rights. Corporations receive a quasi-objective confirmation for socially responsible production and represent themselves as “good corporate citizens” on an international level. McIntosh et al. consider auditability to be the major advantage and most important distinguishing feature of the standard. Regular audits help companies to ensure that they are respecting workers’ rights and enable them to take responsibility for the consequences of their economic activities.

SA 8000 does not only ask for pragmatic discourses to enhance the effectiveness of production by improving workplace conditions, introducing better management systems, lowering the risk of liabilities, and increasing product quality, but also fosters authentic ethical reflection on the ends of business practices.

5.6.2.5 Role of SAI in India

In 2009, SAI conducted a two-part seminar in India to inform suppliers about key concepts of social compliance. Supported by GTZ, these seminars addressed improving management systems to sustain social compliance, thus enhancing international competitiveness and corporate sustainability.

The SAI along with the Business Social Compliance Initiative (BSCI) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH initiated a project to address the lack of adequate CSR related support structure as well as proliferation of standard systems in India. The project aims at scaling up current CSR initiative in India, by developing local enabling and qualifying structures which are harmonized, correspond with local conditions, and are affordable for companies. Its main aim is to support coordination and linkages among CSR initiatives and to foster the mainstreaming of CSR among the Indian industry. To this end, local trainers will be qualified to provide CSR-related services via the CSR Expertise Centre and on an independent basis.

94 Ibid.
95 Supra note 2, at 201.
96 M. McIntosh et al., Living Corporate Citizenship: Strategic Routes to Socially Responsible Business, at 117-120 (2003).
97 Supra note 2, at 201.
In 2010, SAI embarked on two large-scale development partnerships in India to build the capacity of India-based suppliers and enhance local infrastructure to reach smaller companies. Through these two programs - the Public Private Partnership (PPP) and RAGS - SAI and a variety of partners will jointly seek to impact all levels of the supply chain.100

PPP: As an emerging economy and powerhouse in the global supply chain, India plays a significant role in the international CSR movement. Although national labor laws in India are protective of workers, enforcement is hampered by capacity constraints in labor inspectorates and producers’ lack of access to support structures to maintain ethical workplaces. This project works closely with Indian industry, and other key partners to help scale up the adherence to CSR standards in the country. Additionally, the approach will enable Indian producers and suppliers, from large to small, to access relevant and affordable responsible business related trainings and technical assistance, thus improving their social and ethical performance.101

RAGS program partners will address these issues in India by focusing on home workers and discrimination on the basis of gender and caste. Participating companies—Gap Inc., PGC Switcher and Timberland - and Indian NGO, Prakruthi, will engage a select group of their suppliers based in India. In cooperation with the Ethical Trading Initiative (ETI) UK, along with its grass roots partner the National Home Workers Group (NHG) in New Delhi, and SAI’s development partnership with GIZ and BSCI in India, this project will improve the lives of thousands of primarily female garment workers through four measures: (a) develop training tools and standards, (b) build local training capacity, (c) Increase worker and manager skills and awareness of rights, and (d) strengthen local audit capacity.102

In 2011, the RAGS Project focused on scaling up impacts and participation of brands and suppliers: Build Local Trainer Capacity: The systematic ‘Training of Trainers’ (ToT) strategy set in place in 2011 and taking place in 2012 is an opportunity to jointly build and enhance the capacity of brands and their suppliers on how to address gender discrimination and home workers, increase worker and manager communication skills and
awareness of rights, and build an internal social performance team to sustain improvements.103

**Strengthen Local Audit Capacity:** Local guidance of responsible management and effective social auditing is a way to ensure ongoing social compliance. SAI recognizes the significance of local knowledge to maintain momentum, and has included auditors of various standards in the training courses to participate.104

**Multi-Stakeholder Dialogues on Gender Discrimination:** SAI convened two forums, in New Delhi and Tirupur, to engage key stakeholders - NGOs, trade unions, companies, factory managers - on strategies that focused specifically on stakeholders’ experiences and challenges in the garment sector and gender discrimination.105

5.6.2.6 The UN Guiding Principles and SA8000

In June 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights based on the UN Protect, Respect and Remedy Framework which includes three pillars: (i) the state duty to protect against human rights abuses by third party, including business, through appropriate policies, regulation, and adjudication; (ii) the corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved; (iii) and the need for greater access by victims to effective remedy, both judicial and non-judicial.106

The groundbreaking principles seeks to ensure that business respect human rights. The challenge now is in their implementation. To meet this challenge, the SAI has initiated a two days training course for company representatives. This course introduced attendees to a six step method on how to implement a supply chain management system that integrate human rights. These six steps are: (i) committing to a human rights policy; (ii) assessing human rights impact; (iii) integrating human rights in policies, procedures and responsibilities; (iv) tracking human rights implementation; (v) communicating human

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103 Ibid.
104 Ibid.
rights impact; and (vi) remediating adverse human rights impact. The SAI has published a Handbook and Toolkit as a ready reference for the companies.107

5.6.3 Fair Labor Association

In 1990s, the inter-governmental organisation, regional organisations, NGOs, workers, consumers and the world community at larger raised their voices against the ‘sweatshop practices’, wherein grave human rights/labour rights violations were reported, adopted by many transnational/multinational corporations and their subsidiaries. Most of such practices were being followed by the TNCs in their setup units established in the developing or least developed countries. In 1996, the then USA President Bill Clinton convened a meeting of Transnational Companies and NGOs at the White House and challenged them to work together to improve working conditions in the apparel and footwear industries. This group became the Fair Labor Association, a 501(c)3 non-profit organization incorporated in 1999.108

The mission of the Fair Labor Association (hereinafter FLA) is to combine the efforts of business109, civil society organizations110, and colleges and universities111 to promote and protect workers’ rights and to improve working conditions globally through adherence to international standards. The FLA adopted a Charter to achieve this mission. The Charter of the FLA contains: (a) participation criteria for companies; (b) affiliation criteria for colleges and universities; (c) accreditation criteria for independent External Monitors; (d) Workplace Code of Conduct; and (e) principles of Monitoring.112 Companies that join the FLA commit to 10 Principles of Fair Labor and Responsible Sourcing and agree to upholding the FLA Workplace Code of Conduct throughout their entire supply chain. Further, the FLA developed Sustainable Compliance methodology (hereinafter SCI) to respond to its affiliates need for a more effective social performance system.

5.6.3.1 **FLA Workplace Code of Conduct**

The FLA Workplace Code of Conduct defines labor standards that aim to achieve decent and humane working conditions. The Code’s standards are based on International Labor Organization standards and internationally accepted good labor practices. The FLA monitors compliance with the Workplace Code by carefully examining adherence to the Compliance Benchmarks and the Principles of Monitoring. The Compliance Benchmarks identify specific requirements for meeting each Code standard, while the Principles of Monitoring guide the assessment of compliance. The FLA expects affiliated companies to make improvements when Code standards are not met and to develop sustainable mechanisms to ensure ongoing compliance.  

The FLA provides a model of collaboration, accountability, and transparency and serves as a catalyst for positive change in workplace conditions. As an organization that promotes continuous improvement, the FLA strives to be a global leader in establishing best practices for respectful and ethical treatment of workers, and in promoting sustainable conditions through which workers earn fair wages in safe and healthy workplaces.  

*Employment Relationship:* Employers shall adopt and adhere to rules and conditions of employment that respect workers and, at a minimum, safeguard their rights under national and international labor and social security laws and regulations.  

*Non-discrimination:* No person shall be subject to any discrimination in employment, including hiring, compensation, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, social group or ethnic origin.  

*Harassment or Abuse:* Every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse.  

*Forced Labor:* There shall be no use of forced labor, including prison labor, indentured labor, bonded labor or other forms of forced labor.  

*Child Labor:* No person shall be employed under the age of 15 or under the age for completion of compulsory education, whichever is higher.

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113 The Preamble of FLA Workshop Code of Conduct.  
Freedom of Association and Collective Bargaining: Employers shall recognize and respect the right of employees to freedom of association and collective bargaining.

Health, Safety and Environment: Employers shall provide a safe and healthy workplace setting to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employers’ facilities. Employers shall adopt responsible measures to mitigate negative impacts that the workplace has on the environment.

Hours of Work: Employers shall not require workers to work more than the regular and overtime hours allowed by the law of the country where the workers are employed. The regular work week shall not exceed 48 hours. Employers shall allow workers at least 24 consecutive hours of rest in every seven-day period. All overtime work shall be consensual. Employers shall not request overtime on a regular basis and shall compensate all overtime work at a premium rate. Other than in exceptional circumstances, the sum of regular and overtime hours in a week shall not exceed 60 hours.

Compensation: Every worker has a right to compensation for a regular work week that is sufficient to meet the worker’s basic needs and provide some discretionary income. Employers shall pay at least the minimum wage or the appropriate prevailing wage, whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by law or contract. Where compensation does not meet workers’ basic needs and provide some discretionary income, each employer shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does.

5.6.3.2 Sustainable Compliance Methodology

In 2011, the SCI was developed by FLA, an organization of colleges and universities, civil society organizations, and companies that are committed to protecting the rights of workers around the world. This methodology was developed directly in response to affiliates’ need for a more effective social compliance system, and many of
FLA’s leading company affiliates and stakeholders contributed their time and effort to develop, test and validate the system.\textsuperscript{115}

Since 2003, the FLA has conducted more than 800 independent audits around the world, and has analysed the results to uncover what works (and what doesn’t) for improving labour practices and conditions. No doubt the conventional framework for conducting audits is useful for remedying immediate problems in the workplace, but it does little to prevent recurring violations or drive sustainable and progressive improvements in working conditions. This system of assessment helps improve workers’ lives by gauging usual and normal working conditions rather than a snapshot on a particular day; and uncovering root causes of problems and providing systemic, sustainable solutions so that problems are fixed in a lasting way.\textsuperscript{116} The SCI measures and tracks improvements in working conditions, thus providing useful information to conscientious buyers and civil society organizations. It makes monitoring and assessing easier for all stakeholders by providing standardized assessments and scores that allow for benchmarking, comparison and tracking progress. It further emphasizes worker-friendly management systems and greater participation of workers in the formulation, implementation and review of policies.\textsuperscript{117}

In 2012, the FLA assessments were conducted based on the SCI methodology. The data and findings are from 2011 due diligence activities. In the year 2011 alone, the number of factory audits are 141, and estimated number of workers in those factories were 185,437. Further in the same year, the total number of factories used by FLA affiliates were 4,787 and more interestingly the number of workers impacted by FLA program was 5,545,439.\textsuperscript{118}

The largest concentration of factories supplying FLA companies in 2011 was in China, where 1,841 factories or 38.5% were located. Whereas, in India only 257 factories were covered by supplying FLA companies, with an estimated 0.192 million workers. Under the FLA’s program, an independent external monitoring (IEM) and independent external verification audit were conducted. The 7 audits conducted in South Asia (mainly India and Bangladesh) resulted in 75 findings of noncompliance, or roughly 10.7 findings

\textsuperscript{117} Supra note 115.
of noncompliance per audit. In all of the 7 audits conducted in the region, FLA-accredited monitors recorded at least one violation of the benchmark regarding Health & Safety and Hours of Work. Non-compliances were also high for Wages, Benefits & Overtime i.e. compensation with at least one benchmark of this code element breached in 6 of 7 inspections.\textsuperscript{119}

5.6.3.3 \textit{The UN Guiding Principles and FLA}

The UN Guiding Principles are explained in the previous pages. There are many ways in which the FLA’s policies, processes and practices are well aligned with the UN Guiding Principles. The Principles of Fair Labor and Responsible Sourcing in most regards closely parallel the UN Guiding Principles’ six core requirements of policy commitment, four due diligence steps and remediation. The inclusion in the Principles of Fair Labor and Responsible Sourcing of key aspects of purchasing/sourcing practices is notable in filling a previous gap with regard to embedding respect for human rights across all relevant company departments. The FLA’s requirements regarding reporting from Participating Companies on their internal compliance program and access to their documentation of supplier audits provides significant insights into achievements and challenges in implementation. This has been further reinforced by the independence of the FLA’s own external monitoring program and the public reporting and verification of those visits and remediation requirements.\textsuperscript{120}

5.6.4 \textit{Accountability 1000}

Accountability is a leading global organisation providing solutions to the most critical challenges in corporate responsibility and sustainable development. The founder of Accountability 1000 (AA1000) is Social and Ethical Accounting, Auditing and Reporting (SEAAR), formerly known as Institute for Social and Ethical Accountability (ISEA), which compiles, controls and publishes ethically relevant facts and their results in organisations. The main goal of AA1000 is what is called ‘stakeholder engagement’.\textsuperscript{121} Its mission is to lead and advise the global community on ethical, environmental, and socially

\textsuperscript{119} \textit{Id.}, at 15, 16 and 19.
\textsuperscript{121} \textit{Supra} note 87.
responsible practices. Its core organizational principles are Inclusivity, Materiality and Responsiveness.122

Since its inception in 1995, AccountAbility has sought to maintain the highest standards of governance to support our mission and values. The firm's governance practices emphasise active engagement across a broad community of stakeholders to promote transparency, accountability, innovation and impact.

The top governing body for AccountAbility is the Advisory Council, a veritable “Who’s Who” of internationally renowned CEOs, policymakers, thought leaders, and regulators from the public and private sectors and civil society. The Council members reflect AccountAbility’s commitment to diversity and global impact. It’s role is to advise and support the firm in the development and execution of its strategy, help operationalise its core principles and be a catalyst for engagement with the broader community of stakeholders.123

AccountAbility’s AA1000 series are principles-based standards to help organisations become more accountable, responsible and sustainable. They address issues affecting governance, business models and organizational strategy, as well as providing operational guidance on sustainability assurance and stakeholder engagement. The AA1000 standards are designed for the integrated thinking required by the low carbon and green economy, and support integrated reporting and assurance.124 The AA1000 Series of Standards includes:

(i) The AA1000 AccountAbility Principles Standard (AA1000APS) provides a framework for an organisation to identify, prioritise and respond to its sustainability challenges.

(ii) The AA1000 Assurance Standard (AA1000AS) provides a methodology for assurance practitioners to evaluate the nature and extent to which an organisation adheres to the AccountAbility Principles.

(iii) The AA1000 Stakeholder Engagement Standard (AA1000SES) provides a framework to help organisations ensure stakeholder engagement processes are purpose driven, robust and deliver results.

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Accountability worked in partnership with other organisations to continue the
development of standards for sustainability management. The first of these initiatives was
Project Sigma, developed in partnership with the UK Government and the British
Standards Institution. Accountability also worked with BSI on the next generation of this
work, BS 8900, Guidance for Managing Sustainable Development, which was published
in 2006. Accountability has also contributed to the Guidance Document on Social
Responsibility being developed by ISO, ISO26000. As a result there is no management
systems standard in the AA1000 series.125

5.6.4.1 AA1000 AccountAbility Principles Standard (AA1000APS)

Evolution of the AccountAbility Principles: The AccountAbility Principles for
Sustainable Development first appeared in the AA1000 AccountAbility Framework
Standard published in 1999. During the consultations for the development of the first
edition of the AA1000 Assurance Standard, which was published in 2003, the principles
underwent significant debate and revision. The result was the Commitment to Inclusivity
supported by the three principles of Materiality, Completeness and Responsiveness. These
principles were at the heart of the AA1000 Assurance Standard published in 2003,
AA1000AS (2003), and the AA1000 Stakeholder Engagement Standard published in
2005, AA1000SES (2005). They were further clarified in a Guidance Note on the

During the consultation process for the 2008 revision of the AA1000 Assurance
Standard there was consensus that the AA1000 AccountAbility Principles be placed in a
separate standard in order to allow for broader application and to facilitate their use during
sustainability assurance engagements. This standard, the AA1000 AccountAbility
Principles Standard, AA1000APS (2008), is the product of this consensus and includes
three principles: the foundation principle of Inclusivity and the principles of Materiality
and Responsiveness. While completeness is not included as an AccountAbility Principle it
remains key to providing sustainability assurance, since it refers to the extent to which
these three principles have been achieved.127

127 The AA1000APS (2008) was developed using a broad-based, multi-stakeholder process. A period of
initial research that included a widely broadcast e-survey was followed by face-to-face consultations in
Purpose: The purpose of the AA1000APS (2008) is to provide organisations with an internationally accepted, freely available set of principles to frame and structure the way in which they understand, govern, administer, implement, evaluate and communicate their accountability. Its aim is to make it obligatory for an organisation to involve stakeholders in identifying, understanding and responding to sustainability issues and concerns, and to report, explain and be answerable to stakeholders for decisions, actions and performance. It includes the way in which an organisation governs, sets strategy and manages performance.

Accountability Principles: There are three AA1000 Accountability Principles one of which is a foundation principle.

(a) The Foundation Principle of Inclusivity: For an organisation that accepts its accountability to those on whom it has an impact and who have an impact on it, inclusivity is the participation of stakeholders in developing and achieving an accountable and strategic response to sustainability. Inclusivity requires a defined process of engagement and participation that provides comprehensive and balanced involvement and results in strategies, plans, actions and outcomes that address and respond to issues and impacts in an accountable way. It is much more than a stakeholder engagement process. It is about collaborating at all levels, including governance, to achieve better outcomes.

(b) The Principle of Materiality: Materiality is determining the relevance and significance of an issue to an organisation and its stakeholders. A material issue is an issue that will influence the decisions, actions and performance of an organisation or its stakeholders. The principle of Materiality has been revised and updated to embrace developments in understanding in 2008. Materiality now links strongly to business performance, through analysis of both the relevance and significance.

20 countries with a comprehensive range of stakeholders and a series of workshops with specific stakeholder groups. For details see: Ibid.
128 Accountability is acknowledging, assuming responsibility for and being transparent about the impacts of your policies, decisions, actions, products and associated performance.
129 Stakeholders are those individuals, groups of individuals or organisations that affect and/or could be affected by an organisation’s activities, products or services and associated performance.
of issues, which will help organisations become more strategic in
dealing with sustainability issues. Stakeholder concerns remain at the
heart of materiality and it requires organisations to take a longer term
and deeper view of materiality.\textsuperscript{131}

c) The Principle of Responsiveness: Responsiveness is an organisation’s
response to stakeholder issues that affect its sustainability
performance and is realised through decisions, actions and
performance, as well as communication with stakeholders. The
principle of Responsiveness is still about acting and communicating.
The new standard places additional emphasis on the understanding
behind the response. The criteria in the standard focus on the
processes used to develop responses as well as the responses
themselves. As communications is part of Responsiveness, this
principle also links to the use of reporting frameworks and
guidelines.\textsuperscript{132}

The AA1000 AccountAbility Principles are used to guide sustainability assurance in
accordance with the AA1000AS (2008) and stakeholder engagement in accordance with
the AA1000SES (2011). The term AA1000 AccountAbility Principles shall not be used in
relation to principles that are significantly modified, supplemented or referred to in
isolation, as this may mislead users.

\textbf{5.6.4.2 AA1000 Assurance Standard (AA1000AS)}

\emph{Evolution of the AA1000AS:} The first edition of the AA1000AS was published in
2003 as the world’s first sustainability assurance standard. It was developed to assure the
superseded the information on sustainability assurance provided in the AA1000
Framework Standard published in 1999. The 2003 edition was supported by a Guidance
Note on the application of the principles; and a User Note including five case studies on
the application of the principles during assurance engagements. The 2008 edition of the
AA1000 Assurance Standard, AA1000AS (2008), is the second edition of
AccountAbility’s assurance standard. It draws on the growing body of practice and

\footnotesize{\textsuperscript{131} Ibid.\textsuperscript{132} Ibid.}

\hfill 215
experience in sustainability assurance and supersedes all previous versions published by AccountAbility.133

Aim and Purpose of AA1000AS: AA1000AS (2008) assurance provides a comprehensive way of holding an organisation to account for its management, performance and reporting on sustainability issues by evaluating the adherence of an organisation to the AccountAbility Principles and the reliability of associated performance information. It also provides a platform to align the non-financial aspects of sustainability with financial reporting and assurance through its understanding of materiality. The AA1000AS (2008) also delivers a means to capture and place in context all of the different certification schemes that deal with specific dimensions of sustainability such as those for labour and human rights, sustainable forest management, fair trade labeling or environmental management systems.134

The AA1000AS (2008) is a principles-based standard that provides a rigorous framework for sustainability assurance while at the same time providing enough flexibility to adapt to the context of the individual organisation. It provides findings and conclusions on the current status of an organisation’s sustainability performance and provides recommendations to encourage continuous improvement. It is not a certification standard which leads to a pass or fail, and so can be used by organisations at all stages of maturity as an assurance statement reports findings and conclusions on current status.135

AA1000AS (2008) provides the requirements for conducting sustainability assurance. It is primarily intended for use by sustainability assurance providers but is also useful for report preparers who will be seeking assurance. AA1000AS (2008) assurance provides a methodology for assurance providers to evaluate and provide conclusions on:
- the nature and extent of adherence to the AA1000 AccountAbility Principles, and
- the quality of the information publicly disclosed on sustainability performance.136

5.6.4.3 AA1000 Stakeholder Engagement Standard (AA1000SES)

Evolution of AA1000SES(2011): In the AA1000 Framework Standard published in 1999, AccountAbility first introduced the principle of inclusivity. Inclusivity is the
participation of stakeholders in developing and achieving an accountable and strategic response to sustainability. Stakeholder Engagement is a tool that organisations use to help them achieve inclusivity. By 2005, the guidance on how to design and conduct stakeholder engagement, which was included in the 1999 AA1000 Framework Standard, had evolved into the AA1000SES, the first international standard on stakeholder engagement to be published. The 2nd edition of the AA1000SES (2011) builds on the revisions to the A1000APS (2008) and on advances in engagement practice over the last six years. It was developed using a broad-based, multi-stakeholder process.\(^\text{137}\) It consists of 4 parts as follows:

(a) Purpose and Scope of the Standards: The AA1000SES is a generally applicable, framework for the design, implementation, assessment and communication of quality stakeholder engagement. It describes how to establish commitment to stakeholder engagement; how to integrate stakeholder engagement with governance, strategy and operations; how to determine the purpose, scope and stakeholders for engagement; and the processes that will deliver quality and inclusive engagement practice, and valued outcomes.

The AA1000SES is applicable to all types and levels of stakeholder engagement. It is applicable to both internal and external engagement, for public, private and civil society organisations of all sizes. It can be used for project-based activities as well as for on-going purposes. The AA1000SES is intended for use by stakeholder engagement process owners. It will also be of use to managers and others responsible for making decisions, as well as to participants in stakeholder engagement.\(^\text{138}\)

AA1000SES may also be used to support a wide range of other standards that recommend or require stakeholder engagement. It may be used, for example, to support risk, quality, relationship and knowledge management; social responsibility and sustainability; transparency and reporting; and governance and accountability. The AA1000SES has not been designed to replace or undermine existing frameworks, such as government consultation requirements or formal collective bargaining arrangements.

\(^\text{138}\) Id., at 11-12.
between organisations and workers. It may, nevertheless, usefully inform and support these engagements.\footnote{Ibid.}

\textit{(b) Commitment and Integration:} The organisation shall make a formal commitment to the accountability principles: Inclusivity, Materiality and Responsiveness as defined in AA1000APA (2008). This commitment shall be communicated both internally and externally. The AccountAbility principles require a defined process of stakeholder engagement that provides comprehensive and balanced involvement and results in outcomes that address and respond to issues and impacts in an accountable way. The commitment to the three principles should be formalised in a way consistent with the governance of the organisation. This may require a specific policy statement or the inclusion of the commitment in vision, mission or value statements. In doing this there is a need to be sensitive to cultural context and any other values or principles that the organisation has committed to.\footnote{Id., at 13-15.}

Further, the organisation shall integrate stakeholder engagement into governance and relevant decision-making processes. The organisation shall also integrate stakeholder engagement into all relevant policies and/or processes for: Strategy development (including the vision, mission and values that underlay strategy); and Operations management.

\textit{(c) Purpose, Scope and Stakeholders:} Successful engagement depends on understanding why to engaging (the purpose), what to engaging on (the scope), and who needs to be involved in the engagement (ownership, mandate, stakeholders). The commitment to the AA1000APS (2008) principles and the integration of stakeholder engagement into governance, strategy and operations require stakeholder engagement to be used systematically and regularly across the organisation. The purpose shall be connected to the overall strategy and operations management of the organisation.\footnote{Id., at 16-21.}

There are two broad categories of purpose: strategy and operations. That is, stakeholder engagement takes place to develop or improve strategy or to help identify and address operational issues. Building trust-based relationships is inherent to both strategic and operational stakeholder engagement. The purpose may be associated with on-going activities, such as aiming to ensure that the organisation has a good understanding of

\footnotesize{\begin{itemize}
  \item \footnotesize{Ibid.}
  \item \footnotesize{Id., at 13-15.}
  \item \footnotesize{Id., at 16-21.}
\end{itemize}}
stakeholder views or to foster positive stakeholder relationships, or it may be associated with a specific project or need.\textsuperscript{142}

The scope of the engagement shall be defined by determining: the subject matter the engagement will address; the parts of the organisation (e.g. regions, divisions etc.) and associated activities, products and services the engagement will address; and the time frame the engagement will address. Depending on the engagement issue, stakeholders may be involved in defining the scope of the engagement.\textsuperscript{143}

The owners of the engagement shall identify stakeholders relevant to the purpose and scope of the engagement. They shall establish a methodology to identify stakeholders. A method for systematically identifying stakeholder groups should consider the scope of the engagement and may be guided by attributes of stakeholders such as dependency, responsibility, tension, influence and diverse perspectives. Stakeholder may also include those who, through regulation, custom, culture or reputation, can legitimately claim to represent any of these interests as well the interests of the voiceless such as future generations and the environment.\textsuperscript{144}

\textbf{(d) Stakeholder Engagement Process:}\ The AA1000SES stakeholder engagement process includes four stages: Plan; Prepare; Implement; and Act, Review and Improve. The owners of the engagement shall profile and map the stakeholders and further determine the level(s) and method(s) of engaging with them that are best suited to the purpose and scope of engagement and to the relevant stakeholders. The method of engagement should be selected to best meet the needs, capacity and expectations of the relevant stakeholders. More than one method may be selected for any given engagement. Different methods may be used concurrently or sequentially. They shall develop an engagement plan. The engagement plan shall be made available to stakeholders. Stakeholders shall have the opportunity to provide input into the plan.\textsuperscript{145}

The owners of the engagement shall identify and gain approval for the resources required for successful engagement. They shall identify where capacity to engage needs to be built and work with the stakeholders to respond appropriately to these needs in order to enable effective engagement. They shall analyse the engagement and its outputs and

\begin{flushright}
\textsuperscript{142}\textit{Id.}, at 17.  \\
\textsuperscript{143}\textit{Id.}, at 20.  \\
\textsuperscript{144}\textit{Id.}, at 21.  \\
\textsuperscript{145}\textit{Id.}, at 22-30.  \\
\end{flushright}

219
develop an action plan that articulates how the organisation will respond to the outputs of the engagement. The action plan shall provide a response to all outputs of the engagement. The action plan shall be developed in consultation with those who will have responsibility for implementing it.  

The organisation shall systematically monitor and evaluate the overall quality of the stakeholder engagement, and the owners of engagements shall evaluate the quality of individual engagements. This shall include monitoring and evaluation of Commitment and integration; Purpose, scope and stakeholder participation; Process (planning, preparing, engaging, acting, reviewing and improving); Outputs and outcomes; Reporting. The organisation, with input from stakeholders, shall strive to continually improve its stakeholder engagement. It shall identify and act on specific improvements. The organisation shall review and monitor the outcomes associated with the engagement action plans and provide feedback on progress to the stakeholders. Organisations shall publicly report on their stakeholder engagement. 

5.7 Social Auditing as an Instrument for Human Rights Compliance

Due to globalization, liberalization and privatization, the TNCs joined a race to increase their profits by all means. During 1980s - 90s, the social audit approach laid down immense impact on the corporate world. The TNCs were trying hard to prove themselves as a socially responsible organ of the society rather than a mere profit making institutions, because NGOs, social workers, human rights activists were not leaving any stone unturned in highlighting the anti-social face of the TNCs. At this juncture, besides a number of organizations took initiatives to institutionalize the social audit approach by standardizing the parameters, new approaches emerged, besides the service provider organizations, like Sullivan Principles, Triple Bottom Line, the Corporate Social Responsibility, which according to the researcher, are the outcome of the imminent impact of the social audit approaches.

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146 Id., at 31-40.
147 Id., at 41-43.
148 The idea behind standardizing the parameters was to measure the social performance of the corporations at a particular scale and to make it easy to have a comparison with other TNCs. Four such tools are explained in this chapter named SA8000, AA1000, FLA, and GRI.
5.7.1 Sullivan Principles

An early example of a business approach towards human rights enforcement was the Sullivan Principles. In 1977, the Sullivan Principles were developed by Rev. Leon Sullivan\textsuperscript{149}, as a code of conduct for U.S. Companies\textsuperscript{150} doing business in apartheid - South Africa. Even more significantly, he developed the means for the code’s implementation and the organizational structure to evaluate corporate social performance in South Africa. The original code called for U.S. companies to follow these six Principles:\textsuperscript{151}

(i) non-segregation of the races in all eating, comfort and work facilities;

(ii) equal and fair employment practices for all employees (Imbedded in this principle is the notion that Black trade unions should be recognized, although South African law at the time did not allow this.);

(iii) equal pay for all employees doing equal or comparable work for the same period of time;

(iv) initiation of and development of training programs that will prepare, in substantial numbers, Blacks and other non-Whites for supervisory, administrative, clerical and technical jobs;

(v) increasing the number of Blacks and other non-Whites in management and supervisory positions; and

(vi) improving the quality of employees’ lives outside the work environment in such areas as housing, transportation, schooling, recreation and health facilities.

\textsuperscript{149} A Black minister who was a member of the Board of Directors for General Motors formulated the Principles to guide U.S. business in its social and moral agenda in South Africa. See: D Hauck, \textit{Two Decades of Debate: The Controversy Over US Companies in South Africa}, 155 (1983).

\textsuperscript{150} At the time of the original announcement in March 1977, there were twelve corporate signers: General Motors, Union Carbide, Ford, Otis Elevator, 3M, IBM, International Harvester, American Cyanamid, Citibank, Burroughs, Mobil and Caltex. However, the next year when the first report was compiled, membership in the signatory group had grown to 105 companies, and finally grew to 183 for the tenth reporting period, 1986. In 1987 the number of U.S. Signatories dropped to 90, as a result of 52 company withdrawals from South Africa, 8 cases where U.S. companies remained in South Africa but withdrew from the Signatory Group, and 2 cases where Signatories were dropped from the group because of non-payment of dues. The U.S. Department of State reported that at the end of 1986 there were just 29 U.S. companies operating in South Africa who were not signatories to the Sullivan Code, but this number increased by about 10 during 1987. See: infra note 151.

The code was not a static statement. The Rev. Sullivan made “four amplifications”\textsuperscript{152} over the years that expanded the scope of the original goals. Most significant was the fourth amplification issued in November, 1984, which become “Principle 7” for the tenth and subsequent reporting periods, was phrased there as “working to eliminate laws and customs that impede social and political justice.” This new requirement put U.S. companies in the position of challenging existing legislation such as the Population Registration Act, the Group Areas Act, influx control measures, and other laws which institutionalized apartheid.\textsuperscript{153} However, as South Africa’s system of apartheid persisted relatively unchanged from the 1970s into the late 1980s, Sullivan “abandoned [his principles] as not going far enough” complaining that the principles by themselves were not enough to pressure a South African government steadfast in its refusal to yield to change.\textsuperscript{154}

In 1999, Rev. Sullivan and then UN Secretary General Kofi Annan jointly unveiled the Global Sullivan Principles. The new and expanded corporate code of conduct, as opposed to the originals’ specific focus on South African apartheid, were designed to have companies and organisations of all sizes, in widely disparate industries and cultures, working toward the common goals of human rights, social justice and economic opportunity at the international level.\textsuperscript{155} Each endorser of the Principles makes a commitment to work towards the goals of the Principles, including through the implementation of internal policies, procedures, training and reporting structures. Endorsing companies and organisations are asked to take part in an annual reporting process to documents and share their experience in relation to implementation of the Principles.\textsuperscript{156}

The overarching objective of these principles, according to Leon Sullivan, is “to support economic, social and political justice by companies where they do business,”

\textsuperscript{152} (i) To use influence and support the unrestricted rights of Black businesses to locate in the urban areas of the nation;  
(ii) To influence other companies in South Africa to follow the standards of equal rights principles;  
(iii) To support the freedom of mobility of Black workers to seek employment opportunities wherever they exist, and make possible provisions for adequate housing for families of employees within the proximity of workers’ employment;  
(iv) To support the retention of all apartheid laws. See: \textit{Id.}, at 464.

\textsuperscript{153} \textit{Id.}, at 465.


\textsuperscript{156} Ibid.
including respect for human rights and equal work opportunities for all peoples. He further believe that the application of these Principles will achieve greater tolerance and better understanding among peoples, and advance the culture of peace. According to the Principles a company which endorses the global Sullivan Principles will:

- Express our support for universal human rights and, particularly, those of our employees, the communities within which we operate, and parties with whom we do business.
- Promote equal opportunity for our employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse.
- Respect our employees’ voluntary freedom of association.
- Compensate our employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities.
- Provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development.
- Promote fair competition including respect for intellectual and other property rights, and not offer, pay or accept bribes.
- Work with governments and communities in which we do business to improve the quality of life in those communities - their educational, cultural, economic and social well-being - and seek to provide training and opportunities for workers from disadvantaged backgrounds.
- Promote the application of these principles by those with whom we do business.

The company will be transparent in the implementation of these principles and provide information which demonstrates publicly our commitment to them.

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157 Supra note 154.
5.7.2 Corporate Social Responsibility

“Good people do not need laws to act responsibly, while bad people will
find their ways to detour them.”

Platonas159

Known by different names such as Corporate Responsibility, Corporate Citizenship,
Community Relations, and Social Responsibility, the phrase “Corporate Social
Responsibility” was first coined in 1953 with the publication of Bowen’s ‘Social
Responsibilities of Businessmen’,160 the work laid the emphasis on widening the ambit of
responsibility of businessmen and shifting the business aim from “corporate financial
performance” to “corporate social performance” so that it can be made liable for their
action. Corporate Social Responsibility is based on the concept of Triple Bottom Line161
which state that firm should work on three P’s i.e. Profit, People and Planet. It aims to
measure the financial, social and environmental performance of the corporation over a
period of time.

Beginning in the 1980s and 1990s, many governments presiding over planned
economies began deregulating and moving towards market-based economies by allowing
the private sector to make the pricing, production, and distribution decisions. The market
economy faces deficiencies, such as monopolies, environmental pollution, contribution to
climate change, exploitation of resources and the violation of human rights.

Corporate Social Responsibility (CSR) 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 balance of economic, environmental and social
imperatives162 (“Triple-Bottom-Line-Approach”), while at the same time the view that a
corporation has responsibilities in the area of human rights and environment and towards
other stakeholders is contentious. The entire discussion is deeply rooted in corporate law

160 Supra note 23.
161 Please refer to next subheading of this chapter.

224
There are basically two different views: the shareholder and the stakeholder view.\textsuperscript{163} Milton Friedman outlined the shareholders view as “there is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits.”\textsuperscript{165} Henry Hansmann and Reinier Kraakman, as corporate law theorists, also support a similar shareholder theory of the corporation.\textsuperscript{166} It states that corporations have no specific social responsibilities beyond profit-maximizing for the benefits of shareholders, but that such profit-maximizing must occur within the confines of the law. Following this view, corporations meet their proper social responsibilities by excelling in their economic activities, which then contributes to a well-functioning economy by employing people, paying taxes and contributing to the social welfare system.\textsuperscript{167}

The researcher has highlighted the view of stakeholders that a corporation must be responsible to more than solely the shareholder’s interests. The corporations should also take into account the interest of its supplier, its employees, its community and the state in which it is operating. It should, in essence, be responsive to the interests of all persons that are affected by its operations. In contrast to the shareholder view, it is not entirely obvious who the stakeholders are and to what degree their interests have to be taken into account. Usually proponents of this view demand higher standards of social and environmental behaviour of corporations.

It seems that the two views - the shareholder and stakeholder view - may not be so divergent. Even if a strict shareholder or anti-stakeholder view is taken, there are many compelling arguments for a corporation to behave according to the standards of CSR. According to the shareholder view, the corporation has to reflect the will of the shareholders. There is evidence that a growing number of the world’s population and also

\begin{thebibliography}{9}
\bibitem{Friedman}M Friedman, “The Social Responsibility of Business is to increase its Profit”, \textit{New York Times (Magazine)} at 32 (September 13, 1970).
\bibitem{Supra}Supra note 164, at 714.
\end{thebibliography}
shareholders do not support the goal of profit-maximization at any cost. They want their corporations to follow environmental and social standards. Since there is a principal-agent relationship between shareholder and corporation, the agent has to reflect the will of the principal. Since a growing number of shareholders wish their share in the corporation to be managed according to certain social and environmental standards, the corporation has to reflect this will.\textsuperscript{168}

And even if the shareholders would not be interested in social and environmental performance there is compelling evidence there is a correlation between ethical behaviour and financial performance. There is strong empirical evidence that ethical behaviour will reflect positive on the financial and overall performance of a corporation.\textsuperscript{169} Taking a brief glimpse at the negative correlation of financial performance and ethical behaviour: Scandals in which child labour was used by Nike in the production of soccer balls or the Brent Spa oil platform sinking by Shell caused massive public outcries. This damages the corporation’s reputation and its brand image. It can also harm the sales and stock prices of those companies. Therefore, many corporations are aware that they will have a more sustainable growth, when they ensure safe working conditions and social and environmental standards, as was the case with the US TNC Interace Inc. or the German TNC Otto GmbH & Co KG.\textsuperscript{170}

Lastly, even if a strict anti-stakeholder view is followed, corporations have to stay within the “rules of the game,”\textsuperscript{171} which also means that they have to comply with legal obligations to follow human rights and environmental policies. Friedman himself as one of their main proponents admits that the goal of profit-maximization can only be pursued as long as the corporation stays “within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.” It means that they have to comply with the law. If the law enforced on the business corporation includes human rights and

\begin{footnotesize}
\begin{enumerate}
\item Supra note 163, at 86.
\item Supra note 163, at 87.
\item Supra note 165, at 32. (“[T]here is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.”)
\end{enumerate}
\end{footnotesize}
principles of environmental protection, because they represent national and international law, then Friedman’s view also include CSR.  

The CSR movement has now grown out of its fledgling stages. Whereas in the beginning of the movement (in the 1970s) corporate managers might have neglected any social responsibility and argued that states are responsible for the protection of humans and the environment, this view is uncommon in modern corporate boardrooms. Because, even though there is no universal definition of corporate social responsibility, but it generally refers to transparent business practices that are based on ethical values, compliance with legal requirements, and respect for people, communities, and the environment. Thus, beyond making profits, companies are responsible for the totality of their impact on people and the planet. “People” constitute the company’s stakeholders: its employees, customers, business partners, investors, suppliers and vendors, the government, and the community. Increasingly, stakeholders expect that companies should be more environmentally and socially responsible in conducting their business. In the business community, CSR is alternatively referred to as “corporate citizenship,” which essentially means that a company should be a “good neighbour” within its host community.

In the first days of CSR, the term was also sometimes used for charitable donations by the TNCs for community projects or art galleries. Now an increasing number of TNCs are developing enforceable and elaborated codes of conduct. Codes of conduct are often seen as instrument to address human rights and environmental policies. An extensive mapping of voluntary standards, as adopted by major corporations and industry initiatives, demonstrated that leading firms today recognize an array of human rights, though often haphazardly, and they have adopted at least rudimentary accountability mechanism, including internal and external reporting. 

At present, most of the TNCs publish the CSR reports annually, which generally remain available on their website as well. Even the TNCs which have been a very bad record of serious human rights violations as early as five years ago, like China National

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172 Ibid.
173 Supra note 163, at 87.
176 Ibid.
Petroleum Corporation, Nike, Caterpillar Ltd, Wal-Mart, Shell, British Petroleum, Siemens and many more, are claiming as promoters of the various international documents like the UN Global Compact, UN Code on Transnational Corporations, and UN Norms on the Responsibility of Business with Regard to Human Rights and so on. Most of the TNCs have opted for international professional organization to prepare CSR reports for them.

5.7.2.1 Corporate Social Responsibility: Indian Experiences

CSR is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large. The development of CSR can be broadly categorized into three phases: Ethical Mode (1930-1960), Statist Mode (1960-1980) and Shareholder Model (1980-Present).

Ethical Model (1930-1960): During the independence movement, there was increased stress on Indian Industrialists to demonstrate their dedication towards the progress of the society. This was when Mahatma Gandhi introduced the notion of “trusteeship”, according to which the industry leaders had to manage their wealth so as to benefit the common man. Gandhi’s influence put pressure on various Industrialists to act towards building the nation and its socio-economic development. According to Gandhi, Indian companies were supposed to be the “temples of modern India”. Under his influence businesses established trusts for schools and colleges and also helped in setting up training and scientific institutions. The operations of the trusts were largely in line with Gandhi’s reforms which sought to abolish untouchability, encourage empowerment of women and rural development.

Statist Model (1960-1980): The second phase of CSR had its relation to the element of “mixed economy”, emergence of Public Sector Undertakings (PSUs) and laws relating labour and environmental standards. During this period the private sector was forced to take a backseat. The public sector was seen as the prime mover of development. Because of the stringent legal rules and regulations surrounding the activities of the private sector, the period was described as an “era of command and control”. The policy of industrial

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177 Supra note 163, at 90-93.
178 World Business Council for Sustainable Development.
licensing, high taxes and restrictions on the private sector led to corporate malpractices. This led to enactment of legislation regarding corporate governance, labour and environmental issues. PSUs were set up by the state to ensure suitable distribution of resources (wealth, food etc.) to the needy. However the public sector was effective only to a certain limited extent. This led to shift of expectation from the public to the private sector and their active involvement in the socio-economic development of the country became absolutely necessary. In 1965 Indian academicians, politicians and businessmen set up a national workshop on CSR aimed at reconciliation. They emphasized upon transparency, social accountability and regular stakeholder dialogues. In spite of such attempts the CSR failed to catch steam.\footnote{<http://en.wikipedia.org/wiki/Evolution_of_corporate_social_responsibility_in_India> Accessed on August 23, 2013.}

Shareholder/Stakeholder Model (1980-Present): Indian Business houses left the practice of traditional CSR and merged into a sustainable business strategy in late 1980s. In 1990s post liberalisation period, company’s economy improved with many fold growth. Many companies took to CSR with positive attitude and adopted ‘Triple Bottom Line’ approach.\footnote{<http://www.kpmg.com/in/en/services/advisory/risk-compliance/documents/whitepaper%20on%20csr.pdf> Accessed on August 23, 2013.} India became a hub for manufacturing and production multinational companies. Indian companies had to meet the requirements of international companies concerning labour practices and child labour etc.

Recently, the Companies Act, 2013 has introduced a small measure that has the potential to change the way business and society engage with each other.

Section 135 of the Companies Act, 2013 says:

The board of directors must create a special Corporate Social Responsibility Committee, which will devise, recommend, and monitor CSR activities for the corporation.

The company must adopt a CSR policy formulated by the CSR Committee and that policy must be disclosed or posted on the company’s website. The law states that companies should give preference to CSR spending to local areas where the company operates.

The company must spend at least two percent of its average net profits made in the preceding three financial years (the “Two-Percent Formula”)

on government-approved categories such as education, environmental sustainability, or fighting hunger, among others.

CSR activities developed and implemented during the financial year by the company must be detailed in the annual board report. If the company is unable to spend the required amount on CSR, the company must explain why in its board report or be subject to liability. Otherwise, they would face action, including penalty.

The new law also makes it mandatory for companies that one-third of their board comprises independent directors to ensure transparency. Also, at least one of the board members should be a woman.

The Ministry of Corporate Affairs also on conclusion of “India Corporate Week-2009” announced Corporate Social Responsibility Voluntary Guidelines, 2009 which advocates value based and ethical business practices, cordial labor relations, customer satisfaction and loyalty, generating benefits to the community and the environment, being the major stakeholder.182

_CSR Practices in India_: Big Corporate houses have been involved in community service and development through charity and community development. The basic objective of CSR in these days is to maximize the company’s overall impact on the society and stakeholders. CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations and processes. A growing number of Corporates feel that CSR is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness. Provision of improved medical and sanitation facilities, building schools and houses, and empowering the villagers and in process making them more self-reliant by providing vocational training and a knowledge of business operations are the facilities that these corporations focus on.183

In the last decade many Indian TNCs came forward to perform their social responsibilities. To name a few examples: Tata Cancer Research Centre, Mumbai, Tata Institute of Fundamental Research and many social development project initiatives of Tata Group of companies is well known.184 Reliance Industries Ltd. launched a countrywide

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183 _Supra_ note 179.
184 _Ibid._
initiative known as “Project Drishti”\textsuperscript{185}, to restore the eye-sights of visually challenged Indians from the economically weaker sections of the society. Hero MotoCorp takes considerable pride in its stakeholder relationships, especially ones developed at the grassroots. The Company believes it has managed to bring an economically and socially backward region in Dharuhera, Haryana, into the national economic mainstream.\textsuperscript{186} Infosys promoted, in 1996, the Infosys Foundation as a not-for-profit trust to which it contributes up to 1\% PAT every year. Additionally, the Education and Research Department (E&R) at Infosys also works with employee volunteers on community development projects.\textsuperscript{187}

ITC partnered the Indian farmer for close to a century. It is now engaged in elevating this partnership to a new paradigm by leveraging information technology through its trailblazing ‘e-Choupal’ initiative. ITC is significantly widening its farmer partnerships to embrace a host of value-adding activities viz. creating livelihoods by helping poor tribes make their wastelands productive, investing in rainwater harvesting to bring irrigation to parched dry lands, empowering rural women by helping them evolve into entrepreneurs, and providing infrastructural support to make schools an exciting platform for village children.\textsuperscript{188}

Dr. Reddy’s lab started ‘LABS’ (Livelihood Advancement Business School) in the year 1999. It trains the underprivileged youngsters, even street children for livelihood earnings in the job areas i.e. technology, healthcare, hospitality, finance and marketing issues. It involves four types of volunteers viz Student volunteer mentors, Faculty volunteer mentors, Network mentors and Resource mentors.\textsuperscript{189}

However in many cases small and big companies have acquired land, displacing population by promising jobs in upcoming industry, shops nearby area, good business opportunities, housing, local area development for poor with better living conditions, electricity, drinking water accessibility and so on, but all these promises remain a dream to original inhabitants of the area and even distant population gets affected due to pollution of air, water, law crimes due to migrant population and other social evils. Not only this


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there are many more example when TNCs not only failed in performing their corporate social responsibility but their actions proved as crime against humanity also. To quote a few examples:

Beginning in the mid to late 1970s, international and Indian campaigns against Nestle. The Nestle controls about half the global baby food business and is notorious for sales practices such as giving away free food samples in hospitals and elsewhere as well as aggressive and misleading advertisements which undermine breastfeeding. There are numerous problems associated with the replacement of breastfeeding with infant formula, particularly in the social contexts of India and other less-industrialized countries like in many Indian households, the shortage of safe drinking water, lack of proper kitchen facilities, and scarce supply of fuel make it difficult to sterilise the bottles and nipples or boil the water. Thousands of babies in India die of diarrhoea and gastroenteritis every year.190

The most infamous Bhopal gas leak case, in which the American TNC ‘Union Carbide Corporation’ escaped the civil as well as criminal liability with a compensation settlement of US $470 million, a dismally paltry amount incapable of providing adequate monetary recompense for the many thousands of death claims and many hundreds of thousands of injury claims the toxic gas release has generated.191

In October 2003, a Cadbury stockiest in Mumbai detected worms in Cadbury’s Dairy Milk chocolate. Then the Commissioner of Food and Drug Administration of Maharashtra examined the sealed Dairy Milk packs and found worms in them. He immediately ordered the seizure of all Cadbury’s Dairy Milk chocolates from the company’s factory in Talegaon near Pune. This attracted lots of criticism from consumer activists on lack of appropriate laws on storage. They also demanded immediate government action against Cadbury. Another factor brought to light was that the chocolates were delivered by three wheelers, which did not have refrigeration facility for appropriate transit maintenance of the product. The plant remained closed for three months.192

191 Id., at 26.
In the year 2001 the Unilever Company has dumped 300 metric tons of mercury at Kodaikanal located at South India. In order to tackle above situations a new initiative has taken by Government of India, that is CREP, or “The Corporate Responsibility for Environmental Protection” initiated by the Indian government in the year 2003.  

A guideline for a set of non-mandatory norms for 17 polluting industrial sectors has been set but there is no real pressure for implementation or internalization. An ethical being which claims to respect the earth cannot have discontinuities in its practices. Ethical practices have to place in an integrity framework, and that implies at the very least a lack of multiple ways of ‘being.’ This can be no different for individuals as for companies.

Most infamous example of the recent year regarding gross violations of human right by TNC in India is Coca Cola. Coca Cola Company came in for severe criticism from activists and environmental experts who charged it with depleting groundwater resources in the areas in which its bottling plants were located, thereby affecting the livelihood of poor farmers, dumping toxic and hazardous waste materials near its bottling facilities, and discharging waste water into the agricultural lands of farmers. Moreover, its allegedly unethical business practices in developing countries led to its becoming one of the most boycotted companies in the world.

5.7.3 Triple Bottom Line

The Triple Bottom Line (TBL/3BL) is an accounting framework that incorporates three dimensions of performance: social, environmental and financial. This differs from traditional reporting frameworks as it includes ecological (or environmental) and social measures that can be difficult to assign appropriate means of measurement. The 3BL dimensions are also commonly called the 3Ps: People, Planet and Profits. In 1994, John Elkington coined the phrase 3BL and later used it in his book “Cannibals With Forks: The Triple Bottom Line of 21st Century Business” in 1997. He argued that companies should prepare three bottom lines - the 3BL - instead of focusing solely on its finances, thereby giving consideration to the company’s social, economic and environmental impact.

Andrew Savitz defines 3BL “captures the essence of sustainability by measuring the impact of an organization’s activities on the world ... including both its profitability and shareholder values and its social, human and environmental capital.”

Elkington’s consultancy company, SustainAbility, which he founded in 1987, gives a big picture description of 3BL, as well as an accounting concept.

At its broadest, the term is used to capture the whole set of values, issues and processes that companies must address in order to minimise any harm resulting from their activities and to create economic, social and environmental value. This involves being clear about the company’s purpose and taking into consideration the needs of all the company’s stakeholders—shareholders, customers, employees, business partners, governments, local communities and the public.

The core value of 3BL is sustainability.

**The Three Spheres of Sustainability**

![Diagram](https://example.com/diagram.png)

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The idea enjoyed some success in the turn-of-the-century zeitgeist of corporate social responsibility, climate change and fair trade. After more than a decade in which cost-cutting had been the number-one business priority, the hidden social and environmental costs of transferring production and services to low-cost countries such as China, India and Brazil became increasingly apparent to western consumers. These included such things as the indiscriminate logging of the Amazon basin, the excessive use of hydrocarbons and the exploitation of cheap labour.\(^{199}\)

Growing awareness of corporate malpractice in these areas forced several companies, including Nike and Tesco, to re-examine their sourcing policies and to keep a closer eye on the ethical standards of their suppliers in places as far apart as Mexico and Bangladesh, where labour markets are unregulated and manufacturers are able to ride roughshod over social and environmental standards. It also encouraged the growth of the Fairtrade movement, which adds its brand to products that have been produced and traded in an environmentally and socially ‘fair’ way.\(^{200}\)

However, the main drawback highlighted by few authors\(^{201}\) in 3BL is that there is no universal standard method for calculating the 3BL. Neither is there a universally accepted standards for the measures that comprise each of the three 3BL categories. This can be viewed as a strength because it allows a user to adapt the general framework to the needs of different entities (businesses and nonprofits), different projects or policies (infrastructure investment or educational programs), or different geographic boundaries (a city, region or country).\(^{202}\) Another interesting fact is that UN Global Compact, and its 10 principles covers all three bottom lines: 6 principles on human rights, including core labour rights, 3 principles on the environment and 1 principle on the Economic Bottom Line.

Besides the above mentioned business approaches, some other initiative and standards on business and human rights were taken by the State governments and independent groups to develop various methods to address the issues relating to human rights. Some of the most prominently in the consultations are as follows:

\(^{200}\) Ibid.  
\(^{202}\) Supra note 195, at 5.
Ibase/Betinho Social Audit Stamp: In Brazil the idea began to be discussed in the 70s, but only in the 80s the first social audits were published. From the 90s onward, corporations of various sectors began to publish their results annually. The issue only gained national attention in June 1997 when sociologist Herbert de Souza - Betinho - launched a campaign for companies to publish their social audit on a volunteer basis. With the support and participation of prominent business personalities, the campaign took off and led to a series of debates in the media and in seminars and forums. Betinho observed:

The idea is Social demonstrate qualitatively and quantitatively the role played by the social enterprises, both internally and in its role in the community. Items such verification are various education, health care for women, work in the preservation of the environment, improvement in quality of life and work of its employees, supporting community projects aimed at eradicating poverty, generating income and new jobs. The field is vast and several companies are already treading this path. Perform the Social means a great contribution to the consolidation of a truly democratic society.

In 1998, in order to encourage more corporations to participate, Ibase launched the Ibase / Betinho Social Audit Stamp, awarded each year to companies that publish their social audit according to the model suggested by Ibase. The stamp allows companies to show - on their packaging and in reports, sites and publicity campaigns - that they invest in education, health, culture, sports and the environment. The Ibase/Betinho Social Audit Stamp shows the company has already taken the first step towards becoming a citizen-company committed to increasing quality of life of its employees, the community and the environment.

Caux Round Table Principles for Business: Designed in 1994 by a network of business leaders, the Caux Round Table Principles aim to express a standard to measure business behaviour through the identification of shared values and the reconciliation of differing values. The Principles set out responsibilities of business in relation to a range of issues including respect for the environment, avoidance of illicit operations and respect for customers, employees, investors, suppliers, competitors and communities. The Principles identify the responsibility of business to respect human rights and democratic institutions.

205 Supra note 203.
and promote them wherever possible. The Caux Round Table promotes the Principles through a range of networks that includes employer associations, civil society and the Global Compact Office.\footnote{Supra note 155, at 894.}

The Danish Institute for Human Rights (DIHR) Human Rights and Business Project: Since 1999, the Human Rights and Business Project of DIHR, in joint sponsorship with the Confederation of Danish Industries and Industrial Funds for Developing Countries, has focused on clarifying the responsibility of business in relation to human rights through the development of concrete tools which can be used by companies to evaluate their human rights performance. DIHR has focused in particular on the development of the Human Rights Compliance Assessment tool – a diagnostic test, consisting of individual indicators which companies run to ensure that their practices remain compliant with human rights.\footnote{Ibid. Also See: <http://www.humanrightsbusiness.org/about> Accessed on October 06, 2013.}

Kimberley Process Certification Scheme: In 2002, 36 States and the European Union, representing countries that mine, trade and cut rough diamonds, formally adopted the Kimberley Process Certification Scheme with the ultimate aim of putting an end to trade in conflict diamonds. A declaration outlines all the steps that Governments should take to ensure certification of diamonds under the scheme. Steps include the creation of systems of internal control – including penalties for violations – to prevent conflict diamonds entering shipments of rough cut diamonds. The signatory Governments have also undertaken to monitor effectively diamond trade in order to detect and prevent trade in conflict diamonds. The Kimberley Process is ongoing and participating Governments rotate the chairpersonship of the process on an annual basis.\footnote{Id., at 893. Also see: <http://www.kimberleyprocess.com/en/about> Accessed on October 06, 2013.}

The Extractive Industry Transparency Initiative: In 2002, the United Kingdom Government announced the Extractive Industries Transparency Initiative at the World Summit on Sustainable Development in Johannesburg. The initiative aims to increase transparency over payments by companies to governments and Government-linked entities, as well as transparency over revenues by those host country Governments through voluntary reporting submitted to an independent third party. The initiative is multi-stakeholder and seeks the involvement of small, medium and multinational businesses,
industry groups, intergovernmental and non-governmental organizations as well as host
and home country Governments.209

Business Leaders’ Initiative for Human Rights (BLIHR): BLIHR brings together
ten companies (ABB, Barclays plc, Gap, Hewlett-Packard Company, National Grid
Transco plc, Novartis, Novo Nordisk, MTV Networks Europe, Statoil and the Body Shop
International plc) for a 3 years period beginning in May 2003 to explore the ways that
human rights standards and principles can inform issues of corporate responsibility and
corporate governance. During the first year of the initiative, BLIHR worked together in
collaboration with leading human rights and corporate responsibility experts and
organizations to examine a range of relevant standards and initiatives, with a particular
focus on the draft Norms. It ceased its activities in March 2009.210

Goldman Sachs Energy Environmental and Social Index: Goldman Sachs, a
global investment banking, securities and investment management firm, has developed an
environmental and social index for the oil and gas industry to identify specific
environmental and social issues likely to be material for company competitiveness and
reputation. The index relies on 30 criteria over 8 categories, namely: climate change,
pollution; human rights; management diversity and incentives; investment in the future;
workforce; safety; and transparency and vision. Goldman Sachs published its first index in
2004.211

Voluntary Principles on Security and Human Rights for the Extractive and
Energy Sectors: The Governments of the United States and the United Kingdom,
companies in the extractive and energy sectors and non-governmental organizations
developed a set of voluntary principles to provide practical guidance to strengthen human
rights safeguards in company security arrangements in the extractive sector. The
Voluntary Principles are the basis of a global standard for the extractive sector and address
three areas of mutual concern to both companies and civil society, namely: engagement
with private security; engagement with public security; and risk assessment supporting
security arrangements consistent with human rights. While the Voluntary Principles are

209 Id., at 894. Also see: <http://eiti.org/files/English_EITI%20STANDARD_11July_0.pdf> Accessed on
October 06, 2013.
essentially voluntary, they have also been annexed to contracts and can therefore also potentially become legally enforceable.\textsuperscript{212}

\textit{Worldwide Responsible Apparel Production} (WRAP): WRAP is a certification programme, requiring manufacturers to comply with 12 universally accepted principles including principles, relating to compliance with laws and workplace relations; the prohibition of forced labour; prohibition of harassment and abuse; compensation and benefits; hours of work; prohibition of discrimination; health and safety; freedom of association and collective bargaining; environment; customs’ compliance and security. The programme’s objective is to monitor independently and certify compliance with these socially responsible global standards for manufacturing and ensure that sewn products are produced under lawful, humane and ethical condition.\textsuperscript{213}

\textit{FTSE,Good Index}: FTSE Group, an independent company whose sole business is the creation and management of indices and associated data services, has developed the FTSE,Good index series to measure the performance of companies that meet globally recognized corporate responsibility standards and to facilitate investment in those companies. For inclusion in the company assessment process, a company must meet criteria requirements in three areas: working towards environmental sustainability; developing positive relationships with stakeholders; and upholding and supporting universal human rights.\textsuperscript{214}

\textit{Global Business Initiative on Human Rights} (GBI): The GBI exists to advance human rights in a business context around the world. The underlying vision is a global community of corporations from all sectors knowing and showing that they respect the dignity and rights of the people they impact and interact with. From a business perspective this supports an enhanced approach to global leadership and risk management, and can provide access to markets, customers and capital. GBI is led by a core group of 18 major corporations headquartered in Asia, Europe, Latin America, Middle East, North Africa and North America.\textsuperscript{215}

\textsuperscript{212} Id., at 893. Also see: \texttt{<http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf>} Accessed on October 06, 2013.

\textsuperscript{213} Ibid. Also see: \texttt{<http://www.wrapapparel.org/>} Accessed on October 06, 2013.

\textsuperscript{214} Id., at 894. Also See: \texttt{<http://www.ftse.com/About_Us/FTSE_CorporateResponsibility/index.jsp>} Accessed on October 06, 2013.

The GBI work plan is organised into two parallel tracks: First, Member Peer Learning creates a safe space for the 18 GBI companies to share practices, challenges and innovations with peers focused on respecting human rights in practice and implementation of the UN Guiding Principles for Business and Human Rights. Second, Global Business Outreach focuses on awareness-raising and capacity building for business in diverse regions of the world, particularly in emerging and developing markets. In the course of delivering its work, GBI seeks to share business experiences publicly, identify challenges and enablers regarding business respect for human rights, and support our partner organisations to be local and global leaders in the Business and Human Rights agenda. Through regular engagement with international organisations (particularly the United Nations) GBI also seeks to support constructive business inputs into the international policy agenda.216

5.8 Social Auditing in Corporate Sector in India

The social audit movement was a precursor to corporate social monitoring. When the concept of social responsibility has been gaining momentum, the Indian corporations have also started initiating the process of social audit to retain their customers’ value and contribute positively towards their social goal. In 1970, Tata Steel, which happens to be the largest Private Sector Steel Company or TNCs in India, was the first company which took initiatives to start the process of social audit. It formally incorporated its commitment to the stakeholder concerns, including those of the nation, and environment, in its Articles of Association.217

The Company shall have among its objectives the promotion and growth of the national economy through increased productivity, effective utilisation of materials and manpower resources and continued application of modern scientific and managerial techniques in keeping with the national aspirations, and the Company shall be mindful of its social and moral responsibilities to the consumers, employees, shareholders, society and the local community.218

In order to objectively and effectively assess its corporate social responsibility in terms of the impact of its activities on stakeholders, Tata Steel conducts a Social Audit of

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216 Ibid.
the organisation every ten years, carried out by an Audit Panel consisting of members, independent of, and unconnected with, the Company, selected by the Board. The exercise is guided by the following ‘Terms of Reference’ (TOR), based on the ‘Articles of Association’:

To examine and report whether, and the extent to which, the Company has fulfilled the objectives contained in Clause 4A of its Articles of Association regarding its social and moral responsibilities to the consumers, employees, shareholders, society and the local community.

As is evident from the TOR, the scope of the Social Audit is quite vast and broad, touching every aspect of organisational activities and performances, and leaves little for interpretation. TOR engages assessment of the organisation’s social and moral responsibilities to the consumers, employees, shareholders, society and the local community. Besides, the environment or ‘Mother Nature’ is also an implicit stakeholder of an organisation, though common to other stakeholders, as social accounting without including environmental aspects means little to stakeholders. Accordingly, the scope of audit is integral to ‘Corporate Sustainability’, addressing all three key organisational aspects, i.e. economic, societal and environmental, and, therefore, involves recording, consulting, analysing and reporting of its findings vis-à-vis consumers, employees, shareholders, society, local community and ‘Mother Nature’.219

The 1st Social Audit, for the period prior to 1980, was conducted in the year 1980 based on the ‘Articles of Association’. The Audit Panel interacted with stakeholders, visited the organisation’s premises and other places of relevance to the audit, as per a mutually agreed schedule, and submitted its views and recommendations to the Board on 9th July 1980. This report covered social and moral responsibilities to consumers, society, employees, shareholders and the local community. In order to formalise the audit process, a ‘Terms of Reference’ for the Social Audit was laid down, as mentioned above. Accordingly, the 2nd Social Audit, for the period 1981 - 1991, was conducted in the year 1991, as per the given ‘Terms of Reference’. The 3rd Social Audit being reported, for the period 1991 - 2001, was conducted during the period 2002-03 within the framework of the same ‘Terms of Reference’ as that of the 2nd Social Audit.220

219 Supra note 217, at 6.
220 Id., at 3.
Subsequently, Indian Tobacco Company (ITC) published its social report in 1978 that discussed the company’s social responsibilities in three different aspects: nation orientation and economy; nation and people; and nation and the society. From 1970-80 many public sector units like Cement Corporation of India (CCI) Limited, Bharat Heavy Electrical Limited (BHEL), Bharti Airtel Ltd., Oil and Natural Gas Commission (ONGC), Mineral and Metal Trading Corporation (MMTC), Steel Authority of India Limited (SAIL) and Oil and Natural Gas Corp Ltd., Tata Consultancy Services, Suzlon Energy Ltd., Reliance Communications Ltd. India Limited have prepared ‘social income statement’ and ‘social balance sheet’ along with their financial statements depicting their social performance and corporate growth together in their annual report.221

In 2012 annual report, Tata Steel reaffirmed its policy towards social responsibility and social auditing. Tata respects and protects human rights both within and outside the workplace through the application of frameworks such as SA 8000 and the United Nations Global Compact based on the Universal Declaration of Human Rights and ILO conventions. Tata Steel’s commitment to human rights is reflected in its Human Resource Policy, Procurement systems, Affirmative Action Policy and Social Strategy, all of which are aimed at fostering socio-economic empowerment through inclusive growth. Tata Steel's CSR and Accountability Policy upholds applicable laws while dealing with stakeholders, avoiding any direct or indirect complicity in the Infringement of fundamental rights.222

By 1990-2000, Tata’s social audit reports proved itself to be a usher for the most of the domestic TNCs as well as companies. Tata’s audit reports were made public which helped the corporation in earning the trust and profits of the customers, employee, contractors and society at large not only at national level but also at international level. As a result most of the domestic TNCs to name few Reliance Industries, Birla, Bajaj Automobiles, BHEL, SAIL, BAHART, Dr Reddy’s Foundation, BPCL, Hero, Maruti Udyog, IOC, Ranbaxy etc. opted for social audit of their social performance. Today, one can find social audit reports of most of the corporations on their website. Moreover, the process of social auditing become very easy as there are number of organization to do

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social audit on standard parameters. Some of these international organisations are explained in this chapter at a later stage.223

Since 1990s, the era of globalization, not only a good number social auditing systems/tools were in force even though on voluntary basis but the States also recognised the needs to fix the responsibility of the corporations keeping in view the economic influence these TNCs have. However, the States were seems to be helpless in front of them, because most of the TNCs shifted their subsidiaries in the least developed countries to earn more profit at a lesser cost i.e., by not paying the minimum wages, lenient labour legislations and weak governments. During this period NGOs played an important role by awareness campaigns against the TNCs for violations of fundamental human rights.

5.9 NGOs Influence on Human Rights Performance of Corporations

Non-Governmental Organisations (NGOs) has played a crucial and important role in enforcing human rights as against TNCs. Since 1990s, NGOs activities, mirroring the traditional NGO campaigning strategies of confrontation and protest against governments, have included high-profile boycott campaigns against clothing and shoe manufacturers and retailers, support for litigation against companies accused of involvement in human rights violations, shareholder resolutions, protests outside company offices and reports highlighting company involvement in or complicity with human rights violations. Human rights NGOs have relied heavily on ‘business care’ arguments to support their engagement with companies, arguing that the benefits of good business performance in relation to the protection and promotion of human rights can include adverse publicity, avoiding litigation, improving reputation, and a more secure ‘licence to operate’. These arguments have been used as a point of ‘entry’ to allow, NGOs to raise specific concerns and/or to develop relationships with companies.224

The credit goes to the NGOs for bringing significant changes in the debate around the human rights responsibilities of TNCs. The discussion has moved from the question of whether TNCs should have human rights responsibilities to the question of what exactly these responsibilities are. Moreover, the debate on TNCs and human rights also has broader implications as it sees one set of non-state actors i.e. human rights NGOs, working

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to define norms and legal obligations for another set of non-state actors i.e. corporations, with limited involvement of government. For example, human rights NGOs were actively involved in the four year process of drafting the UN *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights.*

Human rights NGOs have been heavily involved in efforts to develop legal instruments to hold companies to account for their human rights impact. For example, the NGO campaign against the Multilateral Agreement on Investment (MAI), proposed by the OECD, has been described as ‘...represent(ing) one of the fastest, most resounding defeats for a treaty - a defeat attributable to the efforts of NGOs’. The campaign illustrates the potential for NGOs to play an oppositional role in the international law process, although it remains to be seen whether such opposition can be sustained over the longer term or whether the defeat of the MAI is simply seen as a delay rather than a derailing of efforts to develop an international investment regime. More positively, human rights NGOs have played an important role in the development of international legal instruments in areas such as bribery and corruption and in efforts to regulate or control the movement of products such as diamonds from conflict zones.

The United Kingdom Section of Amnesty International (AI) established a Business Group in 1991 with the objective of encouraging companies to use their legitimate influence in defence of the civil and political rights which were AI’s main focus. Initially, the efforts of the Business Group to engage with senior members of the chief UK based TNCs were not successful. This changed with the controversies around Shell’s activities in Nigeria in the mid - 1990s, in particular the allegations of Shell’s complicity in the arbitrary execution of Ken Saro-Wiwa and eight other Ogonis by the Nigerian dictatorship of General Abacha in November 1995. Shell’s insistence that it was improper for the company to play any role in trying to influence the Nigerian government’s decision was heavily criticised on the grounds that the company should have sought to use its influence...
and that the company had a moral duty to speak out and make its view clearly known. This episode, following on the heels of the international outcry which had greeted Shell's plans to jettison the Brent Spar oil platform in the deep ocean, proved a watershed both for the company and for the human rights movement. In 1996, when British Petroleum (BP) faced with accusation about its handling of security problems in Colombia followed suit shortly afterwards, acknowledging that the defence of human rights was part of their direct legitimate responsibilities.

Another difficulty was observed by the NGOs while interactions, conferences and working group that there is a general lack of understanding within the companies of how human rights may relate to their business activities. Consequently, NGOs have produced a range of publications to assist companies better understand human rights issues. As an example, AI's publications have included: Human Rights Guidelines for Companies, Human Rights: Is It Any of Your Business, Business and Human Rights: A Geography of Corporate Risk, and The UN Human Rights Norms for Business: Towards Legal Accountability.

AI argued in the above mentioned documents that the TNCs are responsible in two main areas. The first is that companies must protect human rights within all of their areas of operation. This include not only direct employees but also contractors, suppliers, family members, local communities and other parties affected by the company's activities. The second is that companies have a responsibility to support human rights protection more generally through activities such as public statements supporting the protection of human rights, government lobbying, and the integration of human rights considerations into all decision-making processes.

230 Anne Lawemce, "The Drivers of Stakeholder Engagement: Reflections on the Case of Royal Dutch/Shell", Journal of Corporate Citizenship, No. 6, 71-84 at 76 (Summer, 2002).
AI has possibly the most comprehensive and progressive guidelines for regulating the activities of TNCs vis-à-vis human rights. They include: company policy on human rights; security arrangements; respecting the rights of the local community; freedom from discrimination; freedom from slavery; health and safety; freedom of association and the right of collective bargaining; fair working conditions; and credible and periodical mechanisms to monitor effectively all operations' compliance with codes of conduct and international human rights standards.\(^{237}\)

Similarly, Oxfam believes that it is representative of an increasingly strong view that even if there is no clear legal obligation, TNCs do have an ethical and moral duty to respect fundamental human rights in the countries in which they do business. And the overriding expectation is that companies will accept responsibility for the impact their activities have on the lives and environments - and act to ensure that the impact is positive, not negative. Oxfam strongly supports the various attempts by the UN, OECD and ILO to introduce internationally regulations on TNCs.\(^{238}\)

Oxfam share common ground with the corporate sector in different areas. It has played an active role, to name a few, with clothing retailers on labour standards and with oil companies - such as BP in Colombia - to improve the human rights situation and to seek to ensure that oil wealth benefits the poor. Oxfam with the 'five leading UK clothing retailers'\(^{239}\) developed codes of conduct on labour standards for the five main clothing retailers, with a focus on Bangladesh and the Dominican Republic. The aim of the Clothes Code Campaign\(^{240}\) was to firstly get clothing retailers in the UK to accept responsibilities for the labour conditions under which their garments are made. This has largely been achieved, with all of the top five recognising the issue. Further, Oxfam succeeded in developing and improving existing codes on labour rights with C&A, Next and Sears corporations.

\(^{239}\) Burton Group; Sears; Marks & Spencer; C & A; and Next. \(<http://www.citinv.it/associazioni/ CNMS / archivio/strategie/clothes_code.html>\) Accessed on October 08, 2013.
\(^{240}\) \(<http://www.citinv.it/associazioni/CNMS/archivio/strategie/clothes_code.html>\) Accessed on October 08, 2013.
To monitor the company codes effectively and independently, Oxfam involved itself in the development of the Ethical Trading Initiative (ETI). The ETI aims to develop and encourage the use of a widely endorsed set of standards, embodied in codes of conduct, with monitoring, verification and auditing methods which will enable companies to work together with other organizations outside the corporate sector to improve labour conditions around the world. It is a response to growing concern among consumers in the UK that the goods they buy should be produced in conditions that are safe and decent and which enable working people to maintain their dignity and a reasonable standard of living.

Oxfam engage with TNCs because it believe that the TNCs have the power to effect change through the creation of employment and economic opportunities and improving human rights, safeguarding the environment, tackling poverty, respecting labour rights and providing better working conditions.

Another international NGO, Human Rights Watch (HRW) has set up a special group on human rights and business that has issued numerous detailed reports on human rights violations by corporations. A report documents how a leading gold mining company, AngloGold Ashanti, developed links with a murderous armed group that committed was crimes in the Democratic Republic of Congo. Another report details the hazardous child labour involved in harvesting sugar cane, which is then purchased by the Coca-Cola Company. There are various other appalling accounts of businesses violating human rights.

For all the above mentioned success stories, the credit goes to big international NGOs. These NGOs are also as big as any TNC, because like TNCs they have offices all over the world and thousands of volunteers with million dollar budget. The researcher would like to highlight some of the famous successful movement of India against TNCs by small local organizations, which formed association to fight against issue based injustices. In all the following cases, the State government was favouring TNCs, but the community realised beforehand that how the activities of these TNCs are going to make a

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241 The ETI is a joint initiative of a number of NGOs and an extension of Oxfam's Clothes Campaign and similar initiatives carried out by other NGOs with supermarkets, shoe manufacturers and toy markets.
242 Supra note 238, at 281.
243 Id., 287.
245 Supra note 163, at 99.
negative impact on their right to live a healthy life which is the focal point of all the human rights.

In 1970s, when a number of international NGOs like HRW, AI, and Multinational Monitor were initiated campaigns to boycott ‘Nestle’ infant milk, because of Nestle’s unethical promotion of infant formula as a substitute for breastfeeding. In India, for over a decade there was a concerted campaign first to adopt a national code for the protection and support of breastfeeding - this happened in 1983 - and then to pressure the Central Government to enact the code into law. Organizations such as the Association for Consumers Action on Safety and Health (ACASH), the Voluntary Health Association of India (VHAI), the Coalition for Protection of Women & Children, and the Breastfeeding Promotion Network of India (BPNI) as well as many local consumer activists persistently lobbied Members of Parliament for such legislation. Finally, the Parliament of India passed the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (hereinafter ‘the Act’) which prohibits infant formula advertisements, free samples to mothers or health care workers, promotion in hospital and establishes guidelines for labelling on baby food packages.\(^{246}\)

Though technically responsible for enforcing the baby food law, in practice in the Indian government has failed to fulfil this responsibility. As a result, in September 1994 ACASH and BPNI through Dr Arun Gupta filed a criminal complaint in a New Delhi court against Nestle’s Indian Subsidiary, Nestle India Ltd., for what they allege are company violations of the baby food act’s advertising and package labelling restriction. Most unfortunate for the activists is that the court gave its verdict after 17 years of filling the case on 17 March 2012 and held the Nestle guilty for violating the provisions of Section 3, 6(1)(a), 6(1)(c) of the Act as alleged.\(^{247}\)

In 1992, in an effort to attract foreign exports, a component of its new economic policies, the government of India had given speedy permission to Cargill, the US’s largest TNC, to produce salt on 15,000 acres of land belonging to the Kandla Port Trust, Gujarat. The Kutch Small Scale Salt Manufacturers Association (KSSSMA) became immediately alarmed when its members learned about Cargill’s proposal in 1992. Worried about the impact Cargill would have on domestic producers’ business, the KSSSMA sought and

\(^{246}\) Supra note 190, at 39-41.

obtained a stay from the Gandhidham Civil court in February 1993 to prevent the Kandla Port Trust from handing over the 15000 acres of land.248

By early 1993, resistance to Cargill began to broaden. Support from Samajwadi Abhiyan - a nation-wide platform of socialists which campaigns to protect India’s economic and political sovereignty - strengthened the struggle against Cargill. This group help initiate a mass movement with the launching of second salt satyagrah. Beginning on 19 May 1993, hundreds of social activists, politicians and trade union leaders braved a scorching sun to march to Kandla Port and register their anger at the Government’s action. The Abhiyan had decided that this would be a ‘do or die’ action, and thousands of people had agreed to converge on Kandla, including 25,000 farmers from Karnataka who had been involved the struggle against Cargill seeds. Cargill was not expecting such a charged atmosphere, and given the prospective scenario, was left with little alternative. It decided to abandon its salt project.249

In the mid-1980s, the US based chemical giant DuPont formed a joint venture with the Indian firm Thapar Ltd. to build a manufacturing factory for nylon 6,6, a synthetic cord used in tyres in a remote village in the state of Goa. One of Goa’s oldest voluntary organisations, Nirmal Vishwa, publicly raised the issue of the nylon plant’s dangers in 1988. Over the next two years, primarily environmental groups voiced objections to the plant, and these warnings began to arouse concern among local communities near the prospective site.250

The Goa State government’s refusal to heed the demand helped galvanise public opposition in several important ways: they encouraged three governing councils of villages near the plant site to meet and pass resolutions against the project; they prompted a cooperative of 800 area farmers also to pass such a resolution; they fuelled the formation of a village-level, grassroots group, the Anti-Nylon 6,6 Citizens’ Action Committee, which became a key source of information dissemination and protest; and they led to a 1991 meeting in Ponda, a city near the site, of a coalition of environmental groups, trade unions, cultural associations, and citizens who issued the ‘Ponda Declaration’ reaffirming their firm rejection of DuPont’s nylon factory.251

248 Supra note 190, at 30-31.
249 Id., at 32.
250 Id., at 34.
251 Id., at 35.
In January 1995, police arrested several leaders of Anti-Nylon 6,6 Citizens Action Committee during protests, which were later released. Several days later, during a people’s blockade of the road leading to the facility, police opened fire without warning on the crowd, killing one protestor and wounding others. The police shootings marked a turning point in the struggle against the nylon plant. By February 1995, DuPont had begun negotiation to shift the nylon plant out of Goa, and in June DuPont announced that it had chosen another state, Tamil Nadu, as the new site. Having successfully rejected unwelcome investment in one of the longest clashes between citizens and a TNC in India’s history, Goan activists have sent their information and other anti-nylon material to concerned groups in Tamil Nadu.252

Another example of successful campaign by number of NGOs and local community is power project of Enron. The US based Enron Corporation had proposed a 2015 megawatt (MW) gas-fired, combined-cycle power project in 1992 in the wake of liberalisation of energy policies by the Central Government. To enter India, Enron used a joint venture, Dabhol Power Company (DPC), which is a 100 percent foreign owned private limited liability company incorporated in India by Enron253, Bechtel254, and General Electric255. The three partners controlled DPC through a chain of companies based in Mauritius.256

The first protest against the project began in June 1992, when Enron and Maharashtra State Electricity Board (MSEB) made a preliminary agreement. Environmental groups, namely the Bombay Environment Action Group and the Society for Clean Environment were amongst the first to point out clauses that (a) the project authorities carried out no environmental impact assessment, and (b) Enron paid US$20 million as ‘Education Gifts’ in other words bribes to clear the project, in the deal. With the help of a consumer protection group, the Mumbai Gharak Panchayat, a case was filed demanding scrutiny of the then secret Power Purchase Agreement and Fuel Purchase Agreement documents.257

252 Id., at 37.
253 Enron is a major global natural gas company and is also involved in oil production.
254 The Bechtel Group, Inc. is an engineering and construction firm with interests in power generation, oil, gas, and financial services.
255 General Electric is engaged in a variety of activities including the manufacture of aircraft engines and turbines.
256 Supra note 190, at 43.
257 Ibid.
Simultaneously, the local population began to learn about the Enron project and its ecologically harmful effects such as water pollution and land degradation. In the three administrative units to be most affected by the project (Guhagar, Dapoli, and Chipuln), people set up a coalition, the Parisar Vachava Sangharsha Samiti, to protect their environment. Although the movement against Enron remained very localised, at the same time it became highly politicised and publicised at the national and international levels. The opposition won the assembly election as it made ‘cancellation of the Enron project its main poll promise’ during the election campaign in early 1995. On 3rd August 1995, the newly formed government of the state of Maharashtra cancelled the notorious Enron project.258

Plachimada can be cited as the latest example of corporate aggression over natural resources and the consequent denial of the rights of the people. It has also been portrayed as the fight against a TNC by a small section of the local population in order to protect basic human rights, such as right to drinking water and the right to livelihood. What happened in Plachimada is often raised in discussions about the state’s actual record (as opposed to the position that the state ought to take) in the fight for basic human rights.259

The Hindustan Coca Cola Company set up a plant in this district in the year 2000. The plant occupies an area of around 34 acres of land. This land had been classified ‘arable’ by the Government of India. Quite naturally, the site of the plant is surrounded by a number of water reservoirs and canals built for irrigation. Plachimada village of Perumatty panchayat in Chittoor taluk is a small hamlet in Palakkad district. Almost 80 per cent of the population depends upon agriculture for their livelihood. Hence, it is most likely that, the location of an industrial plant, which consumes water heavily, in a socially and economically backward, in a region that is agricultural but drought prone would result in serious adverse implications to the life and the environment.260

The people of Plachimada started to suffer adversities within six months after the Company started its activities. It was reported that the salinity and hardness of the water had risen. Apart from the increase in salinity and hardness, the water from some open wells and shallow bore wells nearby was alleged to have an extremely unpleasant strong bitter taste. The people who used this brackish, bitter water complained of a variety of

258 Id., at 44-45.
259 Supra note 194, at 1.
260 Id., at 2.
illnesses such as a burning sensation in the skin of the face; greasy, sticky hair; stomach disorders and skin deformities. It was also reported that a few wells in the nearby area had become dry due to the over extraction of groundwater by the Company. The insufficiency of water had also resulted in the decline of agricultural production. Consequently the local economy and life in the area was alleged to have been ruined.261

The local people started their agitation against the Company within a year of the setting up of the Company’s plant. Mylamma, a tribal woman, had organised the local community against the Company. Later, several NGOs262 and other sections of the mainstream society joined the agitation. Due to this hue and cry the Perumatty Grama Panchayat passed a resolution on 7 April 2003 refusing to renew the license given to the Company. This was the beginning of the legal battle. The matter came before the High Court of Kerala on two occasions and is now pending before the Supreme Court of India.263

The deterioration of groundwater in quality and quantity and the consequential public health problems and the destruction of the agricultural economy are the main problems identified in Plachimada. The activity of the Coca Cola company has caused or contributed a great deal to these problems. The people living in the vicinity of the Company have been suffering these problems for the last few years. The availability of good quality water for drinking purposes and agriculture has been affected dangerously due to the activity of the Company. Apart from that, the Company had also polluted the agricultural lands by depositing the hazardous wastes. All these points to the gross violation of the basic human rights, that is, the right to life, right to livelihood and the violation of the pollution control laws.264

261 Ibid.
262 Some of them are: Adivasi Samkrashana Sangham (Adivasi Protection Front); Adivasi Struggle Committee; All India Coordinating Forum of Adivasis; All India Peoples Resistance Forum of Karnataka; All India Students Association; Coca Cola Virudha Samara Samithy (Anti Coca Cola Struggle Committee); Dalit Liberation Party of Tamil Nadu; Jaayachandran (Tamil Nadu Green Movement); Janakeeya Cheruthunilpu Vedi (local All India Peoples Resistance Forum); Jananeethi; Kerala Shastra Sahitya Parishad (Kerala People’s Science Movement); National Alliance of Peoples Movement; National Front for Tribal Self Rule; Palanimalai Adivasikal Viduthalai Iyakkam of Tamil Nadu; Peoples’ Union for Civil Liberties of Kerala; Peoples’ Union for Civil Liberties of Tamil Nadu; Philip Morris Carbon Plant activists; Telangana Jana Sabha of Andra Pradesh; Vyavasayikal Thozhilalar Munnetra Sangam of Tamil Nadu. For details see: Eva Wramner, Fighting Cocacolonisation in Plachimada: Water, soft drinks and a tragedy of the commons in an Indian village, (Spring Term 2004).
263 Supra note 194, at 2.
264 Ibid.
Overall, it can be noted that NGOs have played a vital and irreplaceable role in enforcing human rights as against TNCs. They have often played the role of international watchdogs. They have raised publicity and have thereby compelled TNCs to change their behaviour regarding human rights. Nestle, Shell, McDonalds, Coca-Cola, Nike and Citigroup are among numerous prominent corporations that have suffered the wrath of high profile negative campaigns. As far as India is concern, after the infamous case of Coca-Cola Corporations or Plachimada case the quote of Claude Alvares which he gave in 1995 still seems appropriate that “The recent events are sign of hope that the people of this country have begun to resist the takeover of their resources by multinational corporations, even if they have to die while doing so.”