Chapter IV

ANALYZING CORPORATE SOCIAL RESPONSIBILITY AND LIABILITY OF NUCLEAR POWER CORPORATION OF INDIA IN NUCLEAR MISHAPS

As in the previous chapter, the role of Pharmaceutical Industries with reference CSR have been determined and analyzed, it is pertinent to note the various stands taken by countries to implement CSR via International conventions can help to mitigate mass torts committed by Drugs Corporations. In this chapter the role of nuclear corporations will be determined with certain examples and case studies.

4. INTRODUCTION

It is an acknowledged reality that a business cannot thrive in vacuity. It extracts from the society and civilization for its opulence, so it categorically has a responsibility towards all the environmental fragments that encircles it, like the humans, society, community, country and the globe.

The Conventional rule of market says that the prime objective of Business is to do Business; i.e. profit maximization at any cost. Before the last decade the world of business flourished around the globe with only a single responsibility on their shoulder-“responsibility” make money and increase shareholder value. In other words, corporate financial responsibility has been the sole bottom line driving force. However, with the break of the next decade the companies started flirting with a new concept, a movement defining broader corporate responsibilities– for the environment, for domestic communities, for working conditions, and for ethical practices–has gathered momentum and taken hold. This new driving force is known as corporate social responsibility (CSR).

The term CSR has not been defined in a proper manner covering all its dimensions however there have been several sincere attempts for the same. Few defined it as ‘An

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obligation, beyond that required by the law and economics, for a firm to pursue long term goals that are good for society'; others called it a mode to attain equilibrium between the economic profit and societal obligations. The term "corporate social responsibility" came into existence in the late 1960s and early 1970s when several multinational corporations coined the term ‘stakeholder’, pointing those on whom an organization's conduct have an impact.148

Due to earthquake in the Japan the liability of nuclear damage is once again in focus. The concern of general public is regarding establishment of nuclear power plant, consequences of nuclear radiation and its effects on nature. Hence there is a need by the concern governments to take remedial steps which can mitigate nuclear disaster.

In India there is protest for the establishment of Nuclear Power plants example – Jaitapur plants in Ratnagiri District (Maharashtra). The nuclear deals with U S in the year 2008. Agreement with U S without applying it to Nuclear Corporation Approval and Non Proliferation Enforcement Act.

4.1 INDUSTRIAL DISASTER IN OTHER INDUSTRIES

The Chernobyl disaster is widely considered to have been the worst Nuclear Power plant accident in history, and the other being the Fukushima Daiichi in 2011. On Saturday, 26 April 1986 disaster began during a systems test at reactor number four of the chernobyl Nuclear Power Plant Ukraine. An explosion and fire released large quantities of radioactive contamination into the atmosphere, which spread over much of Western USSR and Europe. Damage caused by the Chernobyl disaster is estimated at some $235 billion. However, the overall amount of money that Belarus and the international community invested into the recovery amounts to just 8 per cent of the total damage.

The Three Mile Island accident the accident took place on 28th march 1979 at the Three Mile Island unit 2 Nuclear power plant near Middletown Pennsylvania as equipment malfunctions, design related problems and worker errors led to the partial meltdown of the core of the reactor. The estimate that was brought out projected a cost of US $ 1.034 Billion and the clean up should have been completed by 1986, but it took 14 years for the total cleanup and 2.23 million gallons of water had been processed only to get it rid

off the radioactive substance. Thus we see how long it takes to overcome the effects of a nuclear disaster and the cost which is incurred by the damage caused thereby\textsuperscript{149}.

4.1.1 NEED FOR NUCLEAR POWER PLANT

“India has to go for nuclear power generation in a big way using thorium-based reactors. Thorium, a nonfissile material, is available in abundance in our country.”

\textit{– A P J Abdul Kalam, 2007}

Electricity has been part of our lives. It has brought many things that surely have made many wonders and life would seem so hard without it. The use of electrical power categorized such as \textit{residential sector} includes private households and apartment buildings where energy is consumed primarily for space heating, water heating, air conditioning, lighting, refrigeration, cooking, and clothes drying and other appliances. The \textit{commercial sector} includes nonmanufacturing business establishments such as hotels, motels, restaurants, street and highway lighting, wholesale businesses, retail stores, health, social, religious and educational institutions, and government. The \textit{industrial sector} includes manufacturing, construction, mining, agriculture, fishing, and forestry establishments. And the last \textit{transportation sector} which includes railroads and railways where electricity is used for traction, including urban public transportation\textsuperscript{150}.

4.1.2 WHY SOME COUNTRIES ARE PHASING OUT NUCLEAR POWER PLANTS

New nuclear plants are expensive and can cost up to three times more to build than fossil-fueled plants. They are large, take longer to build than fossil fuel plants, and face regulatory hurdles that are often seen as a financial risk. These high construction costs are a greater disadvantage in deregulated markets that value rapid returns on investment. This contrasts with regulated markets, where returns were more assured. Particularly in Western Europe and North America, recent investments have therefore steered away from nuclear power and most often toward natural gas. Whether nuclear

\textsuperscript{149}BalasahebPandhare, “Nuclear Damage and civil liability: A critique in the light of compensatory jurisprudence” Nirma University Law Journal, Vol 1, Issue 1, July 2011, Page 64.
\textsuperscript{150}Available at \url{http://npcil.nic.in/pdf/news_24apr2012_01.pdf} browsed on 6th December 2012 at 9.00 am.
power’s low and stable long-term operating costs outweigh its high construction costs depends on how fast a country’s electricity demand is growing.\textsuperscript{151}

4.1.3 HISTORY OF NUCLEAR ACCIDENTS IN INDIA

A nuclear accident creates havoc in the mind of the people in India. They are worried about the safety standards which are poor in India and the measures to mitigate such accidents.

- In April 2010 radioactive accident took place in Delhi, by improper disposal of Gamma – ray device at Delhi University. One died and 8 were hospitalized.
- Fifty five employees consume radioactive material from drinking water cooler in Kaiga Generating Station in November 2009.
- In April 2003 accident took place in Narora Atomic Power Plant were six tones leak of heavy water reactor II.
- In January 2003, incident took place in the Kalpakkam Atomic Reprocessing Plant in Tamil Naidu by failure of valve which results into release of high level wastes.
- In May 2002 accident took place in Rajasthan Atomic Power Station, results into leak of titrated water.
- In November 2001, once again accident took place in Narora Atomic Power Station (U P), results into leak of 1.4 tones of heavy water.
- In April 2000, there was leak of seven toones of heavy water fro moderate system at N A P S unit II.
- In March 1999, accident took place in Madras Atomic Power Station, at Kalakakkam, Tamil Naiduduring the test, Resulting into release of fourteen tones of heavy water.
- In February 1994, due to the leak of helium gas, at RAPS, the plant was shut down for almost three years.
- In March 1993, due to the breakdown of blades of turbine in NAPS unit I, causing fire including the shutdown of the secondary cooling system.
- In May 1992, a radioactive release of 12 curies took place at Tarapur Atomic Power Station.
- In January 1992, four tones of heavy water split at RAPS.

\textsuperscript{151} Available at http://npcil.nic.in/pdf/news_24apr2012_01.pdf browsed on 6th December 2012 at 9.00 am.
IN December 1991, accident took place in Bhabha Atomic Research Centre in Trombay, Maharashtra, resulting into severe soil contamination.

In March 1991 heavy water leak took place in M A P S and it took almost four day to clean the same.

4.1.4 CONSTITUTIONAL POSITION IN INDIA

India being the welfare state envisages for socio, economic and political justice for the citizens. It is guardian of the people and also has to take care in case of hazardous which takes place due to the activities of the state. Constitution of India governs the relation between private individual and state. There are certain fundamental rights which are available to the people to enforce against the state action. The Supreme Court of India started giving the liberal interpretation to Article 21\textsuperscript{152} of the constitution of India. In Bhagalpur Blinding Case\textsuperscript{153} the question was arose before the supreme court that whether the court can award compensation to one who may have unduly suffered detention or bodily harms at the hands of the state and whether the victim can move a writ petition for this purpose rather than take recourse to an ordinary civil suit. Bhagwati Justice ordered the state to meet the expenses of housing these men in a blind home in Delhi. From this judgment of the court the journey of compensatory jurisprudence started. Even thereafter in in Rudal Shah V. State of Bihar\textsuperscript{154} the Supreme Court in Writ petition U/A 32\textsuperscript{155} awarded Rs. 35,000/- as compensation against the state of Bihar to the petitioner because he was kept in jail for 14 years after he had acquitted by the criminal court. Not only in the criminal justice system but also in some other domains the compensatory jurisprudence had marked its significance. Like quality of life\textsuperscript{156}

\textsuperscript{152} No person shall be deprived of his life or personal liberty except according to procedure established by law.

\textsuperscript{153} Anil Yadav v State of Bihar 1982 (2) SCC 195 (Khatri V State of Bihar AIR 1981 SC 928)

\textsuperscript{154} Rudual Shah v. State of Bihar AIR 1983 SC 1086

\textsuperscript{155} Article 32, (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Livelihood\textsuperscript{157}, Slum Dwellers\textsuperscript{158} Hawkers\textsuperscript{159} Medical Care\textsuperscript{160} Education\textsuperscript{161} Sexual Harassment\textsuperscript{162} Environment\textsuperscript{163} etc.

Apart from fundamental rights there are certain directives which are given by the constitution to the state as a guiding line and spirit for framing the governmental policies. Though these directives principles are not enforceable but are very basic for the governance of the country (Article 37\textsuperscript{164}). There are also certain other Article’s in Directive Principles of State Policy which imposes a positive duty on the state to raise the level of nutrition\textsuperscript{165}. Similarly Article 48 A which imposes duty on the state to protect and improve the environment and safeguard forest and wildlife\textsuperscript{166}.There are also certain fundamental duties on the citizens\textsuperscript{167}.

After considering Fundamental Rights, Directive principles of state policy and fundamental duties we can conclude that constitution of India gives great importance to

\textsuperscript{157} Olga Tellis V. Bombay Municipal corporation AIR 1986 SC 180
\textsuperscript{158} Ahmedabad Municiple Corporation v. Nawab Khan Gulab Khan AIR 1997 SC 152
\textsuperscript{159} Sodan Singh v. New Delhi Municiple Corporation AIR 1989 SC 1988
\textsuperscript{160} Permanand Khatara v. Union of India AIR 1989 SC 2039
\textsuperscript{164} The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making law.
\textsuperscript{165} Article 47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
\textsuperscript{166} 48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country
\textsuperscript{167} 51A. It shall be the duty of every citizen of India—
(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) to uphold and protect the sovereignty, unity and integrity of India;
(d) to defend the country and render national service when called upon to do so;
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
(f) to value and preserve the rich heritage of our composite culture;
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) to safeguard public property and to abjure violence;
(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
*(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.]
environment and human life. It also imposes duty upon the state to protect human life and environment.

4.1.5 ENVIRONMENT PROTECTION ACT 1986

In order to implement the decisions taken in the Stockholm conference in 1972 the Environment Protection Act 1986\(^{168}\) was introduced in India. The Act defines environment as “Environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property; and section 2 e\(^{169}\) talks about hazardous substance. The Act seeks to prevent any damage being caused to the environment, especially by hazardous substances, and has widened the scope of the term environment. (Refer Annexure D)

4.1.6 ATOMIC ENERGY ACT 1962

The atomic energy Act and the rules, as of now, permit only the Central Government to do certain acts relating to the use of radioactive substances and their production and the production of atomic energy. It would be relevant here to quote section 3\(^{170}\) of the Act

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\(^{168}\) An Act to provide for the protection and improvement of environment and for matters connected therewith:-

WHEREAS decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

AND WHEREAS it is considered necessary further to implement the decisions aforesaid insofar as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

\(^{169}\) “Hazardous substance” means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment;

\(^{170}\) 3. General Powers of the Central Government

Subject to the provisions of this Act, the Central Government shall have power -

(a) to produce, develop, use and dispose of atomic energy and carry out research into any matters connected therewith;

(b) to manufacture or otherwise produce, buy or otherwise acquire, store and transport any prescribed or radioactive substance and any articles which in its opinion are, or are likely to be required for or in connection with the production, development or use of atomic energy or such research as aforesaid and to dispose of any articles manufactured or otherwise produced, brought or otherwise acquired by it;

(c) to declare as "restricted information" any information not so far published or otherwise made public relating to -

(i) the location, quality and quantity of prescribed substances and transactions for their acquisition, whether by purchase or otherwise, or disposal, whether by sale or otherwise;

(ii) the processing of prescribed substances and the extraction or production of fissile materials from them;
confers powers on the central government in relation with the atomic energy. Hence it can be seen that the Act and the Rules in clear terms lay down that only the central Government has the power to use radioactive substances in industries for the purposes of mining or power generation. Private companies have been intentionally excluded by the legislature. We can understand that this had been done because of two reasons. Firstly, placing a sensitive substance like radioactive substance in the hands of private persons could lead to dangerous consequences if such persons are negligent. Secondly, for security reasons it is important that the government, who is directly responsible to the people of the country, should bear the responsibility of protecting the radioactive substance from falling into wrong hands and should take appropriate measures for the generation of atomic power. Also information which may sometimes be vital for country’s defense should not be leaked to private parties and hence this legislation was in interest of the country and its people171.

After considering the rules it is clear that in India the central Government only has the power to use radioactive substance in industries like mining or power generation. The reason of not allowing private players to do business with radioactive substance is like its use and dangerous consequences if they are negligent. Also for security, which is important for the nation? Government cannot disclose certain secrets to the private players and information which is very vital. (Refer Annexure E)

(iii) the theory, design, construction and operation of plants for the treatment and production of any of the prescribed substances and for the separation of isotopes;
(iv) the theory, design, construction and operation of nuclear reactors;
(v) research and technological work on materials and processes involved in or derived from items (i) to (iv);
(d) to declare as “prohibited area” any area or premises where work including research, design or development is carried on in respect of the production, treatment, use, application or disposal of atomic energy or of any prescribed substance;
(e) to provide for control over radioactive substances or radiation generating plant in order to -
   (i) prevent radiation hazards;
   (ii) secure public safety and safety of persons handling radioactive substances or radiation generating plant; and
   (iii) ensure safe disposal of radioactive wastes;
(f) to provide for the production and supply of electricity from atomic energy and for taking measures conducive to such production and supply and for all matters incidental thereto; and
(g) to do all such things (including the erection of buildings and execution of works and the working of minerals) as the Central Government considers necessary or expedient for the exercise of the foregoing powers.

4.1.7 THE CIVIL LIABILITY FOR NUCLEAR DAMAGE ACT 2010

An Act provides for civil liability for nuclear damage and prompt compensation to the victims of a nuclear incident through a no-fault liability regime channeling liability to the operator, appointment of Claims Commissioner, establishment of Nuclear Damage Claims Commission and for matters connected therewith or incidental thereto\textsuperscript{172}. (Refer Annexure F)

4.1.8 JUDICIAL APPROACH TOWARDS CSR

The Indian judiciary has been constantly pondering upon the fact that corporate should be socially responsible towards the community in which it operates. The following citations are witness to the above fact\textsuperscript{173}:

In National textile workers’ union vs. P.R. Ramkrishnan and Others the honorable Supreme Court by majority observed that

The traditional view that the company is the property of the shareholders is now an exploded myth. The ownership of the concern was identified with those who brought in capital. That was the outcome of the property-minded capitalistic society in which the concept of company originated. But this view can no longer be regarded as valid in the light of the changing socio-economic concepts and values. Today social scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep rooted affiliations with the rest of the community in which it functions. It is true that the shareholders bring capital, but capital is not enough. It is only one of the factors which contribute to the production of national wealth. There is another equally, if not more, important factor of production and that is labour. Then there are the financial institutions and depositors, who provide the additional finance required for production and lastly, there are the consumers and the rest of the members of the community who are vitally interested in the product manufactured in the concern. Then how can it be said that capital, which is only one of the factors of production, should be regarded as owner having an exclusive dominion over the concern, as if the concern belongs to it? A

\textsuperscript{172} Available at http://lawmin.nic.in/ld/regionallanguages/THE%20CIVIL%20LIABILITY%20OF%20NUCLEAR%20DAMAGE%20ACT,2010.%20(38%20OF%202010).pdf browsed on 01 January, 2011 at 1.00 AM

\textsuperscript{173} Conference paper “Emerging Issues of Corporate Social Responsibility” November 2011. SLS, NOIDA
company, according to the new socio-economic thinking, is a social institution having duties and responsibilities towards the community in which it functions.

The Supreme Court pointed out as far back as 1950 in *Chiranjeeetlal v. Union of India*:

We should bear in mind that a corporation, which is engaged in production of commodities vitally essential to the community, has a social character of its own and it must not be regarded as the concern primarily or only of those who invest their money in it.

In *Saraswat co-operative bank vs. P.G. Koranne and ors.*, the honourable Bombay high court held that “states including India have assumed the role of welfare states and as part of their welfare programme have brought about socio-economic reforms by enacting appropriate legislations. It is now well-recognized that a company or a corporation does not exist purely for the sake of its shareholders or merely to earn profit for them. It is recognized and accepted that it exists not only for the sake of its shareholders but also for the sake of its employees to whom it provides livelihood and for the sake of the consumers for whom it produces goods.”

### 4.2 INTERNATIONAL PROSPECTIVE ON NUCLEAR LIABILITY

#### 4.2.1 Paris Convention on Nuclear Third Party Liability -

The talks about the adequate compensation provided to the public for damage resulting from a nuclear accident and to ensure the growth of the industry not to be hindered due to burden of liability. The Paris convention limited the liability of the operator and the limitation period was also kept low as possible. The nucleus in this convention is the liability irrespective of the establishment of the fault. The convention kept the maximum liability of the nuclear installation. Operator at SDR 15 million and minimum at SDR 5 Million (Article 7) most of the nations have criticized the low level of liability. According to Article 10 it is mandatory for the operator to have insurance for the amount equal to that of their liability and Article 8 limitation period of 10 years. (*Refer Annexure G*)

#### 4.2.2 Vienna Convention on Civil Liability for Nuclear Damage 1963 –

The Vienna convention is in essence the predecessor of convention supplementary compensation. But it was amended by the protocol. Vienna convention on civil liability for nuclear Damage 1997 and the amended document provides that the installation state may limit
the liability if the operator limit that is 300 million SDR’S not less than that of 150 Million SDR’s. if the state is willing to pay the damages, but complete responsibility over the operator in case of nuclear damage or incident.

4.2.3 Convention on supplementary compensation 1997 - This convention has given important aspects regarding compensation. Article III of CSC Provides that the contracting party shall ensure availability of at least 300 million SDR’s or a greater amount prior to any nuclear incident. The CSC does not limit the liability of the operator. But in India the liability of the operator is limited up to rs. 500 crores. The CSS provides for absolute liability of the operator and also the installation state may provide for liability of the operator in case of damage is caused by a grave natural disaster of exceptional character. one Exception which the government of India is ignoring is the period of limitation, the CSC provides that it shall be 10 years, but installation state prescribes a long period. (Refer Annexure H)

The Nuclear Power Corporation in India or NPCIL is the body that governs nuclear power functioning in our country. It has failed to establish a clean image for itself. People have always stereotypically classified it as the black sheep in the society. What is not so well known about NPCIL is the work it does to improve conditions in the villages around its project sites. The report henceforth deals with the issues pertaining to the social responsibility of NPCIL, its liability and other associated issues.

4.3 NUCLEAR POWER CORPORATION OF INDIA: AN OVERVIEW

In India the ascendancy and operation of the nuclear power and its encapsulated are completely vested with a public sector enterprise named Nuclear Power Corporation of India Limited (herein after NPCIL)\textsuperscript{174}. The Foresaid Corporation is in the secretarial control of the Department of Atomic Energy (DAE) that is a sub organ of Government of India\textsuperscript{175}. The Company was catalogued as a Public Limited Company under the Companies Act, 1956 in September 1987 with the sole idea of effective operation of atomic power stations and executes the atomic power projects for cohort of electricity in pursuance of the schemes and programmes of the Government of India under the

\textsuperscript{175}Ibid
Atomic Energy Act, 1962\textsuperscript{176}. NPCIL has also equity input in BHAVINI, an association formed for implementation for Fast Breeder Reactors programme in the country\textsuperscript{177}.

NPCIL is accountable for design, edifice, commissioning and maneuver of nuclear power reactors. NPCIL is a MOU signing, yield making and dividend paying corporation with the chief echelon of credit rating (AAA rating by CRISIL and CARE). NPCIL is currently operating 20 nuclear power reactors with an established competence of 4780 MW. The reactor fleet comprises of two Boiling Water Reactors (BWRs) and eighteen Pressurised Heavy Water Reactors (PHWRs) and includes RAPS-1(100 MW) owned by DAE, Government of India\textsuperscript{178}.

Pre-project activities at the sites, accorded 'in principle' sanction by the Government in October, 2009 have been taken up belligerently so as to enable early launch of projects at these sites. NPCIL completed its units namely TAPS-3&4 and KGS-3 with gestation periods matching international level achievements in construction of nuclear power plants\textsuperscript{179}.

4.4 CORPORATE SOCIAL RESPONSIBILITY OF NUCLEAR POWER CORPORATION OF INDIA - OVERVIEW

Corporate Social Responsibility (CSR) is one such niche area of corporate behavior and governance that needs to be addressed and effectively implemented in the organisation. CSR is an effectual contrivance that synergizes the efforts of corporate and the social segment agencies towards sustainable escalation and development of social objectives at large. CSR is at heart a process of managing the costs and benefits of business activity to both internal (employees, shareholders, investors) and external (institution of public governance, community members, civil society groups, other enterprises) stakeholders.

\textsuperscript{176} Available at http://www.indiacatalog.com/web_directory/goi/1509.html browsed on 25th Dec 2012 at 11.59 AM
\textsuperscript{177}Brand Strategy (2007). "10 key things to know about CSR". London, pg.47., See Also, Supra note 2
As a general norm one must not forget that it is one’s fundamental duty to not only protect the environment but to adopt due diligence to keep away any mishap that is against the principle of pro bono publico\textsuperscript{180}.

Salmond is of the opinion that even corporations are juristic personalities and therefore owe a duty of care towards the society at large. Salmond’s view has now become rule of the land and has now been integrated in the legislations by mode of companies act.

The nuclear power that is generated in our country has no doubt created more prospects of wealth and prosperity. But one cannot ignore the different facet of it. The vulnerability involved and the risk involvement in the nuclear power generation creates a wide scope for the corporations to move towards the sphere of CSR.

It would be unfair of the social responsibility that has been undertaken by the NPCIL is not enlisted in the report. They have tremendously contributed to the society by undertaking various programs.

\textbf{4.4.1 BIODIVERSITY CONSERVATION}

Nuclear energy is a potential solution to electricity demand but also entails risks therefore NPCIL has voluntarily taken up Environment Stewardship Programme (ESP), besides fulfilling regulatory and statutory requirements\textsuperscript{181}. The programme focuses on the scientific study of bio-diversity, particularly avifauna, within and around Exclusion Zones (EZs) of Indian nuclear power plants for the conservation & improvement of habitat in association with the Bombay Natural History Society (BNHS). NPCIL has published a coffee table book “Our Flying Guests” on the birds found within and around all the Indian nuclear power plants\textsuperscript{182}.

NPCIL is planning to invest 2 per cent from net profit for nuclear power plants clean green initiative towards CSR (corporate social responsibility). NPCIL to appoint a board of director for green lobby to look after environmental safety of nuclear power plants.

The significance of sustainable development has not been ignored by NPCIL as is usually portrayed. Constant efforts have been put up from them in order to spread awareness about environmental protection and habitat conservation.

\textsuperscript{180} Ibid 2
\textsuperscript{181} official website of Nuclear power corporation of India, http://www.npcil.nic.in/, last visited on 27 September 2012
\textsuperscript{182} Available at http://www.npcil.nic.in/main/aboutus.aspx browsed on 25th December 2012 at 12.03 PM
4.4.2 SOCIAL WELFARE PROGRAMME

NPCIL has today gained a mammoth structure. Today, they provide employment to a large section of the society. This is an indirect mode of CSR that NPCIL is undertaking. However, they have not only restricted themselves to that and have gone to the horizons of direct contribution to the society. While expanding the nuclear energy has kept aim to contribute towards development of local community in the vicinity of the plants it has also taken many social welfare programmes in the past for the benefit of villagers. Recently Corporate Social Responsibility (CSR) has been included in a focused way and has been integrated with business plan of the company. Under CSR, NPCIL has identified the three areas namely Education, Health, Infrastructure. Various programmes like aids to schools, Scholarships/sponsorships to students, Construction of School buildings, Aaganwadis etc., under education; medical camps, mobile medical van, aids to Primary health centers, extension of hospitals, medical treatment and medicines (OPD services) for villagers etc. under health; drinking water facility, community hall, street lights, fishing facility, approach roads, bus stop sheds etc under infrastructures have been planned and implementation has been done.\textsuperscript{183}

NPCIL management is committed to contribute for improvement of the quality of life of local community and society at large. DPE (Department of Public Enterprises under Central Govt.) guidelines issued under which NPCIL has adopted a system of need identification, planning, implementation and evaluation of CSR activities. All concerned functional and unit heads have the responsibility to ensure effective implementation of the CSR activities / projects by taking the help of specialized agencies, trusts, NGOs etc. Responsibility for ensuring overall implementation of the CSR activities has been entrusted to the head of the Rehabilitation and Resettlement Executive Directorate reporting to Project Directorate and further to Chairman & Managing Director, NPCIL.\textsuperscript{184}

4.4.3 MEDICAL CAMP

Frequent medical camps in the vicinity are also organized considering the risk that exists because of the radioactive material. For example: A medical camp was organized by Kaiga Site under Corporate Social Responsibility scheme at Malavalli village of Yellapur Taluk of Uttara Kannada District on 27th May 2012. This medical camp was

\textsuperscript{183} Ibid
\textsuperscript{184} Ibid
organised in co-ordination with Mavinamane Gram Panchayat, Shri Ramalingeshwar Yuvaka Mandal, Village Forest Protection Committee and Shtree Shakti Committees. Approximately 300 villagers availed the facility of medical checkup and they were supplied with free medicines.

4.5 THE BLAME GAME

4.5.1 LIABILITY OF A CORPORATION

It’s an undisputed fact that Large-scale corporations are the crucial vigour on the orb. They are ubiquitous, in approximately every portion of our lives\textsuperscript{185}. Corresponding to this restrained and at times not so subtle ascendancy, corporations have turn out to be dangerous criminals as well. However, since there legal status remains a doubtful zone the nature of their behavior too is out of the ordinary.\textsuperscript{186}

The research would be incomplete if we fail to address the issues of liability that exists in matters pertaining to offences that the corporation can commit. Corporate criminality challenges or nags at our sense of reality. It is this characteristic that makes corporate crime a tricky issue. The maturity of corporate criminal liability has become a predicament which a growing number of prosecutors and courts have to deal with at the present time. In the common law world, following standing principles in tort law, English courts began sentencing corporations in the middle of the last century for statutory offenses. On the other hand, a large number of European continental law countries have not been able to or not been willing to incorporate the concept of corporate criminal liability into their legal systems. The fact that crime has shifted from almost solely individual perpetrators only 150 years ago, to white-collar crimes on an ever increasing scale has not yet been taken into account in many legal systems. At the same time, crime has also become increasingly international in nature.

4.5.2 APPARENT AUTHORITY AND EXTENT OF LIABILITY

A corporation’s liability can be extended to acts performed within the agent’s apparent authority\textsuperscript{187}. Apparent authority is defined as the authority that has not been expressly


\textsuperscript{186}Ibid

agreed but can be understood by a third party from the context of the agent’s acts. It is the authority which an outsider could reasonably assume that an agent would have judging from his position within the company, and the responsibility previously entrusted to him, and the circumstances surrounding his past conduct.  

4.5.3 VICARIOUS LIABILITY

The second ingredient of corporate criminal liability according to the premises of vicarious liability is that the act profits the company. The profit need not be actual, yet potential. As Hall points out, for this requirement, the corporation need not actually receive a benefit; the employee’s mere intention to bestow a benefit suffices.

This developed jurisprudence does not find a place in the Indian statues as they still make only the officials responsible for the act criminally liable and not the corporate itself. Instances of this are:

Sections. 45, 63, 68, 70(5), 203, etc of the Indian Companies Act wherein only the officials of the company are held liable and not the company itself; it is also reflected through the Takeover Code. The various sections of the IPC that direct compulsory imprisonment does not take a corporate into account since such a sanction cannot work against the corporation.

These are the major statutes in their respective field that are devoid of necessary legal aspects. On the other hand, law has also developed to an extent with regard to certain other statutes and their respective penal provisions wherein a fine has been imposed on the corporations when they are found to be guilty.

4.5.4 LIABILITY OF NPCIL

The discussion in the aforementioned paragraphs has set a parapet for determining the liability of NPCIL. It is a settled fact that NPCIL deals with substance that is inherently dangerous and its escape from the premises in any form can cause severe damage to
the society and environment at large. A brief discussion on few hypothetical situations would clarify the status qua of the liability of NPCIL.

Let us analyze what happens in cases of leakage of radioactive material. As a matter of fact, NPCIL has been very vigilant with this issue and therefore takes absolute care for all this. However, if by any chance there is a leakage detected and it causes irreparable damage to the flora and fauna; NPCIL would be liable to the extent of damage it has caused. Suits can be claimed for special damages too. Following the recent principle, NPCIL not only has to pay but also has to clean the vicinity that is affected by the leakage. If the harm was inflicted on human or society at large, NPCIL by default become the first party to the suit. Principle of Strict Liability is followed and adopted in such cases. Where even if NPCIL prove their due diligence and the extent of precautions they had taken, they would still be held liable.

In worst cases where there has been direct loss to life and property, NPCIL is bound to compensate the dependants of the deceased. NPCIL certainly cannot absolve from its liability in any form whatsoever. No wonder, Civil Nuclear liability Act has the tag of social welfare legislation.

4.6 CORPORATE SOCIAL RESPONSIBILITY AND PERSONAL RELATION

The world has never been as interconnected as today, every region and nation is dependent on other. Public relation has thrived in such environment. But at the same time it is very difficult to know about a lack of understanding of Corporate Social Responsibility, prospects of the roles of Corporations and Public Relation in the present increasing competitive economic and social environment.

The naturalist Henry Thoreau summed it up in a 19th Century essay:

"It is truly enough said that a corporation has no conscience; but a corporation of conscientious men is a corporation with a conscience."

It can be said that corporation are not moralistic by nature but it is pragmatic. The first duty that lies with the corporation is to manage its affairs properly and profitably. It has also duty to compensate employees and pay rewards to the investors. It is also duty to create safe working condition for the employees. A poorly managed corporation if fails to
deliver such obligation then such corporations cannot make up for inadequacies with good deed because management should never forget that the corporation is social and business entity. No corporation has a monopoly on virtue; no corporation has a monopoly on sin. The real measure for the socially responsible corporation is not organization itself to lead social change. The real measure is whether it has organized itself to anticipate and to respond opportunity to social change. But when we think about social change it is critical decision but public relation plays an important role. Today CSR is not only to support educational institution, health, cultural and other community activities, but beyond that\textsuperscript{191}.

Four principle roles for corporation in chief public relation officers are first is to serve the corporation as a sensor of social change, second role is that of corporate conscience, Third role of the chief public relation officer is to act as a communicator; Fourth role is to serve as corporate monitor It is his job to anticipate changes in the social environment and make see the corporation's response meets public expectation.

In the early 1920s, Edward L. Bernays, the architect of public relations as it is practiced today, defined public relations in this manner:

> “Public relations is the management function which tabulates public attitudes, defines the policies, procedures and interest of an organization followed by executing a program of action to earn public understanding and acceptance”

Bernays identifies two requirements on which the practice of public relations is based. The first is to influence the decision making process in a way that reconciles a client's or employer's objectives with public expectations; the second is to employ communications strategies and tactics to motivate audiences to a specific course of action. In short first, influence policy and second, effectively communicate to the target audiences.

Usually public relations professionals are not totally by-passed. "PR" is often enlisted after the strategy has been developed by others in the organization perceived to be more knowledgeable about business than we in public relations. Often regarded more as

\textsuperscript{191} Available at \url{http://www.wpp.com/wpp/marketing/publicrelations/corporations-social-responsibility-pr/} browsed on June 10, 2013 at 10 PM
communicators than policy advisers, we increasingly find ourselves serving as "arms and legs" rather than using our brain power. Perhaps the most important obligation for those of us in positions of high responsibility is to replace ourselves with talent at least equal to our own. If we can do that successfully, we will have fulfilled our responsibility and public relations will continue to have a major voice in the management function.192

4.7 POLLUTER PAYS PRINCIPLE: REGIME OF INTERNATIONAL LAW

"...If anyone intentionally spoils the water of another let him not only pay damages, but purify the stream or cistern which contains the water..." - Plato

Polluter Pays Principle has turn out to be an in style motto in recent times. 'If you make a mess, it's your duty to clean it up'- this is the focal origin of this jingle. It must be noted that in environmental law, the aforesaid principle does not consign to "fault." Instead, it brings about a very therapeutic advancement which is concerned with repairing ecological damage. It's a code in international environmental commandment where the polluting party pays for the damage done to the natural environment.193

Indigenously "The Polluter Pays" principle has been held to be a sound principle by this Court in Indian Council for Enviro - Legal Action v. Union of India194.

The Court observed, "...We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country..."195.

In this case the number of private companies operated as chemical companies and were producing perilous wastes in the soil, henceforth, defiling the hamlet area sited nearby, and they were also running without licenses, so an environmental NGO, filed writ petition under article 32 of the Indian Constitution, which sought from the court to compel SPCB and CPCB to recover costs of the remedial measures from the companies196.

192 Available at http://www.wpp.com/wpp/marketing/publicrelations/corporations-social-responsibility-pr/ browsed on June 10, 2013 at 10 PM
194 AIR 1996 SC 1446.
195 Ibid
196 Ibid
NPCIL though not for their personal benefit are somewhere down the lien using the plant for commercialization and therefore occurrence of any gaffe would entail objective liability on them in pursuance to the discussed principle.

4.8 ABSOLUTE LIABILITY: THE INDIAN PERSPECTIVE

The doctrine of absolute liability, that was laid down in the case of MC Mehta v. Union of India\textsuperscript{197}, where the leak or of oleum gas took lives of few people in the vicinity of the factory, settled that any emanation from the premises of a industrial unit or establishment betrothed in the manufacture or storage of such harmful substances would make the owner of such establishment absolutely liable for any damage arising out of such escape\textsuperscript{198}. Unlike the previous doctrine of strict liability which governed damage arising out of such incidents, this doctrine allowed no defenses whatsoever for such an incident and is similar to the "polluter pays" principle in environmental law in the US. Since the judgment, this principle has been encapsulated in the Public Liability Insurance Act, 1989. (Refer Annexure I)

The Court ruled that:

"...Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on..."\textsuperscript{199}.

The court also held that the polluting companies are:

"...absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas..."\textsuperscript{200}.

The "Polluter Pays" code as construed by the judiciary implies that the absolute legal responsibility for impairment to the milieu extends not only to recompense the victims of

\textsuperscript{197} [1987] 4 S.C.C. 463
\textsuperscript{198} Ibid
\textsuperscript{199} Ibid
\textsuperscript{200} Supra note 22, 23
contamination but also the cost of restoring the ecological squalor\textsuperscript{201}. Remediation of the dented environment is a component of the course of action of "Sustainable Development" and as such polluter is predisposed to compensate the cost to the individual victims as well as the expenditure of reversing the smashed bio network\textsuperscript{202}.

4.9 THE JAITAPUR PLANT CONTROVERSY: A CASE STUDY - OVERVIEW

The Jaitapur project that has been established Ratnagiri district of Maharashtra has been in the civic watch in recent months owing to a congregation of hullabaloo that enfolds the project\textsuperscript{203}. These debate arrays above the colossal dimension and magnitude of the scheme, the prospective impact of radio activity on the complete expanse the raw reactor technologies to be used with meticulous allusion to safety aspects, the international conditionality's that are obligatory on the nation for supply of nuclear fuel, the outlay of the venture and the ensuing expenditure of electrical energy generated from the project, the supposition of catastrophe liability by the Government of India, the pilot grant of environmental clearance to the project without sufficient public dissemination and in the pink debate, the interest of a public sector enterprise in an bustle that masquerades elongated term health and safekeeping menace to populace of India, the involvement of foreign political and commercial interests in the pursuit of this project and the lack of institutional accountability from various institutional levels within both central and state governments\textsuperscript{204}.

4.10 ROAD TO SECOND FUKOSHIMA DISASTER: A LEGITIMATE TREPIDATION

Despite the EPR being distinguished by the nuclear industry as the safest reactor in the globe, the only EPRs under construction reveal serious problems\textsuperscript{205}. The reactor design itself also has several alarming parallels to Fukushima nuclear power plant that continues to be a major disaster following the earthquake and subsequent tsunami of 11

\textsuperscript{203}Ibid
\textsuperscript{204}Ibid
March, 2011. Not only is Jaitapur to be built on the coastline, in a high-risk earthquake area, but it is using the similar light water reactor technology that vitally depends on active cooling for weeks even after the reactor is stopped. Its design has apparent weaknesses that make it vulnerable to the same problems that caused the Fukushima accident. And, as proposed, the project would be a whole fleet of very large reactors that could lead to multiple failures and radiation releases. Nuclear energy is not only the most controversial and hazardous form of energy generation, it is also one of the most expensive. To raise the many billions of euros needed to build even a single nuclear reactor, utility companies rely heavily on banks and other financial market players.

4.11 THE SOCIAL RESPONSIBILITY TAKEN UP BY NPCIL

4.11.1 Public Awareness

The Jaitapur site was accorded “In Principle” approval by the Government, initially, in October 2005. Subsequently, in October 2009, Government of India approved the full potential of this site to locate six reactors of 1650 MW. During the period 2005 to till date, NPCIL has organised several exhibitions, structured public awareness campaigns, held debates discussions and provided relevant information through local newspapers on Nuclear Power and Jaitapur plant in and around the Jaitapur site, in addition to the several meetings on the issues between NPCIL and all the stake holders, including the project-affected people. To name a few of these, exhibitions-cum-discussions and public addresses on the nuclear power/JNPP were organised in December, 2005 and February, 2006 in Village Mithgavane and Madban respectively. There was an active participation of villagers and their representatives, press and media and state officials in these events. These campaigns were followed by an organised visit of project-affected people, state officials, press and media, to NPCIL

4.11.2 Environment: A top priority

Contrary to general belief, nuclear power is a clean and environment-friendly source of energy. It does not emit any obnoxious gases like carbon dioxide, sulphur dioxide, etc.,

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206 Ibid
208 Ibid
which damage the environment\textsuperscript{209}. In fact, as far as nuclear power is concerned, the surrounding environment of nuclear power plants is maintained in its pristine form. Besides, development and maintenance of greenbelts, which attract a lot of birds and other forms of life, is unique to nuclear power plants. The environments around all the nuclear power stations in the country testify this fact\textsuperscript{210}.

4.11.3 A Well Planned expedition

Aspects related to seismicity are no casual matters. These are technically investigated at great lengths by experts, and only thereafter the regulatory body permits the setting up of a nuclear power plant. Your story fails to take cognisance of this fact. There is also a factual error in the story\textsuperscript{211}. It may please be noted that Jaitapur site is in Zone-III and not in Zone-IV. Actually, the JNPP site selection has been done keeping ample safety margins. The code set by Atomic Energy Regulatory Board (AERB) for site selection for setting up of nuclear power plant prescribes that there should not be any active geological fault within 5-km radius from the proposed site of a nuclear power plant (NPP). Extensive studies carried out by various government institutions/organisations, specializing these studies, have found no active geological fault up to 30-km radius from the proposed Jaitapur Nuclear Power Project site, thus validating that the site is not earthquake-prone. Further, the design for the proposed NPP units at Jaitapur also amply takes care of these concerns and qualifies for seismicity and corresponding frequency spectrum as per AERB regulations, in line with the current practice for all NPPs\textsuperscript{212}.

4.12 FLAWS IN THE CURRENT LEGAL STRATUM

The eminent jurist, and former Attorney General, Soli Sorabjee has explained the legal position and viability of this proposed legislation Any legislation that attempts to dilute the norms of ‘Polluter Pays’ and ‘Precautionary Principle’ and imposes a cap on liability is likely to be struck down as it would be in blatant defiance of the law laid down by the Supreme Court judgments. Has the nuclear liability bill disappointed us? Let us investigate.

\textsuperscript{210}Dutt , Bahar (March 17, 2011). “Jaitapur project may be scrapped: Ramesh”. New Delhi: CNN-IBN. Retrieved 17 March 2011.
\textsuperscript{211}Ibid
\textsuperscript{212}Ibid
I. According to Areva deficiency of precision and transparency on the much
deemed “Civil Liability for Nuclear Damage Act 2010” that was passed in
Indian senate in August 2010 is an impediment in firm up the foreign tie.
II. However it must not be ignored that This Civil Liability for Nuclear Damage
Act 2010 has a clause that deals with the legal binding of the culpable groups
in case of a nuclear accident.
III. It allows only the operator (NPCIL) to sue the manufacturers and suppliers213.
This provision somewhere impairs the general mass with the capacity to sue.
IV. Going by the strict construction of the code, no one can be directly held liable
or legally accountable.
V. The quantification of damage is an issue that has been brusquely neglected
in the Act.
VI. It leaves the determination of the occurrence and gravity of a nuclear
accident exclusively to the four claims commissions at four zones under
Atomic Energy Regulatory Board (AERB), which means a non-judicial
executive body, would determine the losses in contradiction to existing law214.
VII. The operator or the responsible persons in case of a nuclear accident will
undergo the trial under Nuclear Damage Claims Commissions and no civil
court is given the authority. The country will be divided into zones with each
zone having a Claims Commissioner215.

4.13 RECOMMENDATION TO BROADEN THE SCOPE OF CSR IN FUTURE

4.13.1 Environment

* Nuclear reactors and uranium enhancement conveniences must be carefully
decommissioned using faultless processes
* Having a Nuclear Decommissioning Authority (NDA) that can oversee the
decommissioning process at existing nuclear sites as followed in UK. They
can work closely with them, other regulators and site operators, to consider

213 Roy, Shubhajit (Dec 07, 2010). "Jaitapur n-reactors flagged off but liability concerns remain". New Delhi: Indian
214Madabhushi Sridhar, Limiting Liabilities and Extending Immunities: An Analysis of Civil Liability for Nuclear
215Madabhushi Sridhar, Limiting Liabilities and Extending Immunities: An Analysis of Civil Liability for Nuclear
how a project can be undertaken in a way that properly protects and improves the environment.

4.13.2 Construction and Preliminary steps

- Generic Design Assessment’ or GDA as followed in USA can be incoroporated. GDA has two stages: preliminary assessment and detailed assessment. This ensures faultlessness and reduces vulnerability
- Set limits and regulate the discharges and emissions of radioactive waste from nuclear power stations into the environment.

4.13.3 Separate funds for fulfillment of social obligation

- Separate funds can be maintained by the organization to hold medical camps in the vicinity of the plant to ensure fitness of the workers and their family members.
- Public awareness programs at a grand scale would enable the organisation to break its black sheep image.
- Schools and state funded educational organisations must be established so that the children of the workers get a better scope to broaden their intellect.

4.13.4 Employee’s Welfare

- The organisation must primarily take proper care of Employment standards, including general holidays, annual vacations, working hours, unjust dismissals, minimum wage, layoff procedures and severance pay of the workers.

4.14 CONCLUSION

The provisions of liability and limitation on the controversial Act 2010 are in contradiction with the precautionary principle and the polluter pays principles, which are internationally accepted norms. These norms were also upheld and made law by the Supreme Court in relation to fundamental constitutional rights. It is not proper for a body to involve in potentially harmful activities.
NPCIL must not make the lacuna in the legal framework and not adhere to basic philanthropic norms. The NPCIL must not forget that it absorbs a lot from the society. A corporation cannot exist in isolation and therefore it must not forget its responsibility towards the society and must come forward to address the key issues. Only then can one fearlessly and confidently assert, “Nuclear power is in safe hands”

After determining the various efforts taken by nuclear corporations, including NPCIL to integrate CSR efforts. In the following chapter the researcher has given an overview of the legal position of countries in relation to Corporate Social Responsibility.