CHAPTER VI

6. CONCLUSION AND RECOMMENDATIONS

Industrialization and growth must not be compromised with deprivation or deterioration of social, environmental, ethical and economic aspects. This thesis undermines the importance of corporate social Responsibility and its increasing need in the Indian Industry context. Therefore the researcher finds that unless there is force of law to CSR industrial establishment will be reluctant to spread towards the cause of CSR activities.

In the previous chapters, the need for regulating CSR in India has been established. Although this is met with staunch opposition where experts from varied fields, have unflatteringly compared it to increase in corporate cost and competitive disadvantage, it is important to remember that if forbidden, it indirectly encourages clandestine growth of some practices which do not think about the society at large. Therefore it is prudent to regulate it by way of an amendment in company law as well as balancing the interests of the various stake holders of responsibility towards planet. Conclusion and suggestions of the study are given in the following paragraphs.

6.1 CHAPTERWISE SUMMARY

The first chapter deals with research guidelines which help into the better understanding of the subsequent chapters. It contains the introduction and the framework of the study i.e. need for the study, review of literature, objectives of the study, research question, methodology, scope and limitations of the study.

The second chapter analyses and evaluates the role of CSR in Bhopal Gas Tragedy a Chemical Disaster. This chapter also discuss about various legislative as well as judicial responses related to Bhopal Gas Tragedy and how CSR should be tool to mitigate such mass disaster.

Though a few big Indian companies practice corporate citizenship yet the degree to which it is done is very passive amongst the corporate India. The government and the association of industries must device policies and regulations for companies to strictly comply with and report. There must be a fundamental change in the corporate culture to enable businesses take ethical, social and environmental consideration in decision making.
The Dow Chemical’s should have been more responsive towards corporate accountability, human rights and the environment. Apart from the company, the Government should also have a clear cut policy regarding a proactive Disaster Management Plan in order to prevent recurrence of such incidents. Strong community participation along with well-structured disaster management plan is essential in order to deal with disasters. Dow being financially sound should have been more responsible towards socio, economic and environmental issues.

Consequent to the mishap, there was a gradual and remarkable shift from the ‘Two P’s Balance’: People – CSR and Profit – Business earnings” to the ‘Three P’s Balance’: Planet – Environment Protection, People and Profit.”

The uncompromising need for disaster planning in an industrial society is perhaps one of the important lessons to be learnt from the Bhopal tragedy. However, even after the worst chemical tragedy, forty two major industrial disasters have taken place since then taking a toll of over two hundred fifty persons in India and exposure to hazardous materials and wastes. However, following the disaster of 3rd December, 1984, there is a lesson to be learned. It is that corporate responsibility to "do the right thing" must not be subverted or denied by recourse to legal subtleties such as “it’s not our responsibility.” However, it remains that “the business of business is business”. If we are dreaming of becoming a developed nation the biggest issue of public safety and our disaster management will be certainly a crucial parameter in achieving our goals. Because, “Business cannot succeed in societies that fail.”

In India CSR has gained lot of importance among companies because of its long term benefits. A company should take a balanced view of the components of CSR and implement the strategies in coherent with the vision, mission and value of the company.

Third Chapter of the research is on Corporate Social Responsibility of the Pharmaceutical Industries with Reference to the Thalidomide Tragedy.

Chapter three talks about CSR of the Pharmaceutical Industries, finding says that CSR should be viewed as a process and not as a destination. Although CSR has grown at a rapid pace over the last few decades, it still faces challenges in proper implementation.

---

270 Sandeep Lahiri Anand “Bhopal Gas Disaster and Dow Chemical’s: Need for CSR” SSRN
Some business still believe that CSR would deviate their attention from economic activities but many companies have experiences that it doesn’t lessen the profits rather it increases the long-term profits of a company by reputation and image building of a company enhancing its most valuable asset i.e. “Goodwill”. Pharmaceutical Industries must have an efficient system for ‘Risk Communication’. Communicating environmental risk is central to the successful management of environmental hazards

Recommendations suggested are as follows:

a) To mandate CSR through legislative enactments (as in Indonesia) from the government’s side.

b) To rationalize and harmonize the economic, compliance, ethical, and sustainability dimensions of corporate responsibility and sustainability in the context of stakeholder requirements.

c) Integrating eco-design and other sustainability requirements into product and service offerings.

d) To manage the sustainability performance, optimization process to continually increase stakeholder satisfaction.

e) To promote and encourage whistleblowers to ensure a check on business operations.

f) To manage non-financial risk, particularly to brand, reputation, performance and instability as an integral part of corporate sustainability management.

g) To promote and regularise welfare practices for the greater good of the society.

h) To control the perils of uncontrolled development, satisfy the needs of the present generation and at the same time ensuring that the resources for future generations are not jeopardized.

What is needed is a joint effort by the government and civil society i.e. People, NGO’s, NPO’s etc to make CSR a success. The need is for awareness and encouragement of corporate sustainability and corporate philanthropy from NGO’s and civil society to ensure that business operations are sustainable. It is expected from business houses to realise that money and profit is the primary but not the ultimate aim of a business rather it is service and welfare of the society.
Chapter Four - Analyzing Corporate Social Responsibility and Liability of Nuclear Power Corporation of India in Nuclear Mishaps

It was observed that in India NPCIL has followed various efforts to mitigate nuclear disaster. But there are certain recommendations which NPCIL or other nuclear corporations can integrate in their CSR efforts.

Such as in -

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 how a project can be undertaken in a way that properly protects and improves the environment.

Construction and Preliminary steps

- Generic Design Assessment’ or GDA as followed in USA can be incorporated. 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.

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.
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.

It we talks about CSR and liability of nuclear corporations, 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”

Chapter Five: - Corporate Social Responsibility: An International Perspective

It is observed that the Indian legal system currently faced with challenges of legalizing “CSR”. The pending companies bill do not make all the business activities in and or related to the field of natural resources to implement CSR, but it fixes certain monetary limit. Further by looking into legislations of other countries like the U.S.A, U.K, Indonesia Israel, Germany and Canada. It is observed that legislative action is likely the most direct and least problematic manner of addressing the issue of CSR. Statutory safeguards present within these legislative provisions clearly define the rights and responsibilities of all Corporations. Such provision serves the policy goals of achieving maximum responsiveness to the concerns of citizens and prevents the unreasonable, illogical and unintended consequences.

It appears that CSR is beginning to become part of the everyday business discourse. The history of its formation, which was accompanied by massive media coverage, the joining of world leaders and the willingness of global organizations to join the system for whatever reason have resulted in significant accomplishments within a relatively short period of time. This led to the institutionalization of relevant procedures, from
international and intra-national audit and measurement systems, to board of director decisions declaring CSR to be part of the organization's strategy and to the creation of organizational processes that advance CSR activity. Today, CSR activity focuses on adoption of CSR in organizations and on increasing public awareness. A general goal is that the media hype around CSR will gradually reduce, not because the perceived importance of CSR is reduced but because CSR will become part of routine business to the extent that it will be normative in many organizations.

If we recall some of the tragedies and disaster that took place in world, the question comes that whether we has stopped and closed down of corporations. After Bhopal Gas Tragedy we had not stopped the pesticide plants in world? The failure of reservoir Dam in China in 1975, did not closed down the dams in the world? Thousands of people die due to accident on Road, can we close down the road? It is not possible? The answer to such questions can be the ways to mitigate such disaster and Tragedy via various Economical, Social and Legislative reforms through CSR.

It is seen from the above chapter wise summary that the mechanisms regulating CSR in India have failed to deliver the very object of responsibility, may it be the question of balancing the interests and rights of the society, the CSR to be voluntary does not give an idea that nothing is binding, since many of the norms at national and International level functions effectively to implement and interprets CSR. On the other hand if CSR is mandatory then in that case the norms can be implemented but via some monitoring mechanism.

Hence the research question one i.e. whether the existing CSR norms are adequate to deal with mass tort committed by Drugs, Chemicals and Nuclear reactor Corporations? are inadequate. Further Research Question Two - How can Drugs, Chemical and Nuclear Corporations integrate their CSR efforts to mitigate Mass Torts are given in the following recommendations and Suggestions.
6.2 RECOMMENDATIONS AND SUGGESTIONS

The study forwards the following pragmatic suggestions and recommendations for the considerations of policy makers, in the direction of regulating CSR in India to mitigate Mass Torts:

6.2.1 Mandatory Nature of CSR

Mandatory nature of CSR will play an important role for institutionalizing CSR in India.

Firstly, if CSR is mandatory; the implementation of CSR will not depend upon the willingness of corporations. It will strengthen its position as a legal compulsion. The amendment suggested under The Company Law Bill\(^\text{272}\) should include at the corporations conducting business activities in and or related to the field of natural recourses.

Secondly, the implementation of CSR via Law will help at least to promote a degree of awareness among other corporations and in all sectors. It will also encourage the society to observe and monitor the corporate behavior towards CSR and its mechanism.

Thirdly, the mandatory nature of CSR will confirm that the corporation will not have any free ride towards the society. It will be a complement, not a replacement, to other remedial mechanism.

Fourthly, Mandatory form of CSR may not be accepted by many countries, but it can become a precedent for other countries if India takes such institutionalizing steps CSR in the form of legal obligation.

\(^{272}\) (1) Corporate Social Responsibility (CSR):

49. In response to the Committee’s overwhelming concerns on the extent of Corporate Social Responsibility (CSR) being undertaken by corporates and the need for a comprehensive CSR policy, the Ministry of Corporate Affairs have agreed that the Bill may now include provisions to mandate that every company having [(net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more)] or [a net profit of Rs. 5 crore or more during a year] shall be required to formulate a CSR Policy to ensure that every year at least 2% of its average net profits during the three immediately preceding financial years shall be spent on CSR activities as may be approved and specified by the company. The directors shall be required to make suitable disclosures in this regard in their report to members.

50. In case any such company does not have adequate profits or is not in a position to spend prescribed amount on CSR activities, the directors would be required to give suitable disclosure/ reasons in their report to the members.
A. Background of The Companies Bill

The much awaited Companies Bill that had been in the pipelines for several years in India is on its final path. The Companies Bill 2012, (hereinafter referred to as the “Bill”) was finally passed on 18 December 2012 by the Lok Sabha. The bill was initially referred to the parliamentary standing committee on finance that was chaired by Mr. Y. Sinha.273 The committee after rigorous routine submitted its final report on June, 2012. There were few changes suggested, these recommendations were clearly reflected in the new bill of 2012. The Bill has certainly transfigured a lot of aspects of governance inter alia auditing policies, status of directors etc and has apparently improved the scenario. All in all it is an attempt to amplify the degree of transparency in the corporation. One such significant alteration is the introduction of a mandatory corporate social responsibility (“CSR”) investment of 2% provided in Section 135. The same has been discussed henceforth.

B. Viability Test

A brief perusal of the subsequent sections would clarify how the model proposed by the new companies’ bill is viable and can be materialized.

Clause 135 of the bill requires that every company-

- having net worth of Rs. 500 crores or more;
- or turnover of Rs. 1000 crores or more;
- or a net profit of Rs. 5 crores or more274; during any financial year has to adhere to the prescribed norm. However, the companies who do not have the aforementioned financial status can still be regularized by the voluntary guidelines on CSR, 2011.

The companies falling in the above mentioned category have to mandatorily constitute a CSR committee.


274 Clause 135of the Bill: (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director
Composition of the Committee: Minimum three directors out of which at least one director shall be independent director.\textsuperscript{275}

Responsibility: Formulate and recommend the CSR policy and yearly activities to be undertaken by company as per Schedule VII. They are also required to make recommendations with regard to yearly expenditure to be incurred on the activities as above. They also have a key role in regulating & close monitoring of the CSR activities that the companies undertakes from time to time.\textsuperscript{276}

Function of Board of Company: Board of company shall disclose the composition of the CSR Committee. The Approval of recommend CSR policy and Yearly activities by CSR Committee and disclose contents of policy/activities in its report as well on website. They would also ensure that the activities are undertaken by the company as included in CSR Policy. Further they are also duty bound to ensure that company spends in every financial year at least 2% of the average net profits of preceding three financial year as per CSR policy. If fails to spend/less spend such amount , specify the reason for not spending in its report under sec 134 (3), (o).\textsuperscript{277}

\textbf{C. Analysis of the Relevant Provision of the Bill}

In terms of the revision made to Clause 135 of the Companies Bill, 2011, the words ‘must make every endeavour’ has been replaced by the word ‘shall’, thus making CSR a mandatory legal requirement, despite not establishing penalties for non-compliance except for a disclosure for noncompliance in the board of directors' report. The researcher is of the opinion that though this amendment has been made in an apt direction, lack of sanction in non compliance can be a major hindrance in materializing the model proposed by the aforementioned clause. A strict penalty can be imposed on the players those who fail to comply with the basic threshold. However, the penalty can be regulated meaning thereby non compliance of CSR would not per se attract penalty, the company can be given an opportunity to explain the reason for non adherence of the norm. In case any such company does not have adequate profits or is not in a position to spend prescribed amount on CSR activities, the directors would be required to give suitable disclosure/ reasons in their report to the members.

\textsuperscript{275} Ibid
\textsuperscript{276} Clause 135 (3) of the Bill
\textsuperscript{277} Clause 135 (4)
The provision can act as a tool for companies to enhance their Reputation and Brand building. The companies who were initially not involved in such activities now have to mandatorily undertake such activities. For a layman who is unacquainted with laws, it’s indeed an image changing view. This in turn harmonizes the relationship of a corporation with employees, costumers, investors, Govt. & Community. It also enhances conflict and risk management. One of the best feathers that the bill can boast of is the non exhaustive nature of schedule VII. There are specified activities of CSR in new company bill with liberty to do activities other than mentioned in Schedule VII.

There are certain anomalies in the bill that cannot be ignored. For instance there is no proper explanation in new bill about CSR functioning. The critique have also pointed out that there has been a overzealous use of generalisation. The framers forgot that 'No size fits all' and therefore the provisions must be liberalized. However, this argument seems more of a falsification; as expenditure of mere 2% of the income cannot be as troublesome as it is argued by some. This bill is a way to move ahead from philanthropy to a more strategic CSR.

It is also to be noted that the bill has future potential vulnerabilities associated with it. CSR might very soon be subjected to RTI. Demand of greater discloser can essentially diminish the privacy of a company. Also, the amendment to the afore discussed clause will open the floodgates of litigation. Legal action by regulators would become an unavoidable scenario.

The aim is to protect the interests of employees and the general public at large while encouraging firms to undertake social welfare voluntarily instead of imposing that through 'inspector raj'. Adherence to the provision can categorically make India an attractive and safe investment destination,

6.2.2 Whistleblower Act: - The Government should implement Whistleblower policies to check corruption and business operations of the corporations. The act will encourage and promote Whistleblower to inform about the business operation that can help to mitigate Mass Torts.

Guiding principles of Act
a. The present Whistleblower bill encompasses only those who are working for the government of India or its agencies; the bill should also include state government employees
b. The Whistleblower bill has neither provisions to encourage whistleblowing nor deals with corporate whistleblowers; it does not extend its jurisdiction to the private sector, even after the fraud at Satyam.

c. The extent of the bill should include police force, customs, anti corruption commission and all ministers and departments.

d. The move would provide immunity to informers from civil or criminal charges.

6.2.3 Guiding principles related to Jurisdiction issues, in case of Mass Torts

It is because of globalization, liberalization and privatization policy implemented in India, we have seen the huge MNC’s started flooding in India. It is well settled that the consequences of global environmental change cannot be addressed via national jurisdiction. Implementation of any international convention and laws in national system is meager. Whenever any question of liability arises as happened in case of Bhopal Gas Tragedy jurisdiction was a main issue. If we talk about implementation of CSR in India which is Voluntary, and then in that case there will be a problem of enforcement and uniform standards. Developing countries do not follow the voluntary rules strictly because they want the MNC’s to start their business and develop the nation. Hence there is a need to have common International Laws relating to global commerce. A binding dispute settlement mechanism can help to resolve the cases relating to liability of the corporations like Corporate Dispute settlement Court at International Level.

A contentious issue raised in the available literature on CSR is how to quantify the threshold for ‘adequate’ responsibility of a corporation. Since, there lies no uniform international standard the task becomes even more cynical.

What can Pharmaceutical industries, or a nuclear corporation etc. can undertake in order to mitigate social vulnerability remains a question. It is true that non conductance of CSR generates a negative publicity which proves to be an occupational hazard. The aforesaid industries too have been often dragged in the unending controversy.

It is indeed a fact that no advanced approach has been adopted so far in order to mitigate dangers especially in cases of mass torts by these industries.
6.2.4 **Eligibility of the Corporations to contribute towards CSR:**
   a. All the corporations have responsibility towards society, there should be certain bifurcation related to profit earning of company in three years or turnover of the company.
   b. The entire corporation related to the fields of natural resources should be included with the paraphery of CSR contribution.
   c. Every corporation should be obliged to implement corporate social and environmental responsibility and sanction can be imposed for failure to comply with such an obligation.

6.2.5 **The Global Reporting Initiative:** - GRI’s Sustainability Reporting Framework enables all companies and organizations to measure and report their sustainability performance. By reporting transparently and with accountability, organizations can increase the trust that stakeholders have in them, and in the global economy. GRI produces a comprehensive Sustainability Reporting Framework that is widely used around the world, to enable greater organizational transparency. The GRI Guidelines now rank among the most widely recognized Corporate Social Responsibility (CSR) instruments among large European companies.

6.2.6 **PLANNING & RISK ASSESMENT**

Risk assessment is one key that can mitigate future dangers and future threat. The industries must get their research and development team up on their toe to quantify the risk that can be generated from their companies for this, adequacy of data becomes important. The superiority and robustness of risk estimation is vitally dependent on the sufficiency of the data on which it is based. The lack of data or doubts about its accuracy and validity are major obstacles to improving risk assessment. Post data collection, there are gaps in knowledge, and a limited number of knowledgeable experts in risk assessment techniques and especially in the use of more sophisticated quantitative risk assessment techniques. Applying all permutations and combinations of disaster that is possible; the industries must have a prior planning and sketch prepared for every anticipated disaster.
If the corporation is introducing any new technology, it should carry out proper risk assessment. If it has negative impact on society after assessment then the corporation must avoid such technology. Risk can be assessed by probability of occurrence or likelihood of occurrence with hazardous effects.

6.2.7 RISK COMMUNICATION

Pharmaceutical Industries must have an efficient system for ‘Risk Communication’. Communicating environmental risk is central to the successful management of environmental hazards. The field of risk communication is rapidly evolving due to a better understanding of the importance of effective communication in the maintenance of a healthy environment, and due to social and technological changes that affect how risk is communicated and understood.

6.2.8 RISK FREE INFRASTRUCTURE

Improper storage of chemicals, Improper maintenance of safety/warning equipment, Lack of safety training to the personnel, Shortage of firefighting equipment are some of the many in list that the industries can effectively improve. This would act in two ways first improve the basic infrastructure of the industry and secondly it would help mitigate any mass tort related to the environment. The residues of such corporations are highly toxic or radioactive in nature. There lies a responsibility of the industries to handle them with care so that they don’t leave the premise and cause peril in the vicinity.

6.2.9 GENERIC MEDICINES ESPECIALLY POST DISASTERS

Disasters usually have a devastating economic effect on the society wherein the victims are left financially retarded. The pharmaceutical industries (those involved in medicinal drugs) can take a step ahead and promote organic medicines (generic medicines), the cost of the same is very less. This would ensure health security in the society at large that is affected brutally by the mishaps.

6.2.10 EXTENSIVE INSURANCE COVERAGE

Currently the organisations are providing only life insurance policies. However, a lot more can be done in this regard. The surplus amount that is left in the employee’s benefit fund must be utilized for extensive insurance coverage that
ensures quality education, health care etc, of not only the workmen but also the dependants of the workmen. If in case the workmen meets with a fatal death (considering the quantum of danger that surrounds such organisations), the family is not left out to suffer.

6.2.11 PROMOTING DISCLOSURE OF INFORMATION AND ENSURING TRANSPARENCY OF OPERATIONS

The working environment in which work is carried out in the aforesaid industries requires a lot of transparency. The nature of the chemicals and inputs that are used contribute to the fact that not only the government but general public at large must know what exactly has been used in the plants and what can be the consequences of leakage. People in vicinity must be acquainted with the first aid and appropriate primary medical modes in case they come in contact to the residues.

6.2.12 CORPORATE GOVERNANCE

The aforesaid industries must ensure sound corporate governance in order to increase management transparency, strengthen risk management systems and internal controls, and disclose pertinent information to stakeholders. Company’s corporate governance issues are broad in nature whether mandatory and softer. CSR is one of the aspects of this governance.

6.2.13 ADHERENCE TO KYOTO PROTOCOL

Kyoto protocol is one of the strongest tool that have been created at an international level to combat pollution. This is the finest act in the international law against transboundary and territorial pollution. According to this it’s a mandate on every industry to prepare a detailed report of Emission intensities calculated over a particular year (generally annual), achievements with regard to the Kyoto protocol must be reported on, supply and demand side measures must also be elaborated on to maintain regulation.

6.3 MISCELLANEOUS

i. A detailed report on guidelines governing post retirement benefits, exception clauses, percentage of contractors, benefits to sub contractors, The poor
information about labour practices towards employees of contractors and sub-contractors, especially with regard to health, safety and training, ratio of basic salary by gender, employment category etc, must be maintained.

ii. Routine governmental inspection of its plants and systematic revilement of plant safety incidents must be a sine qua non.

iii. Crisis management plan must be adequately made and circulated. The repair and restoration works the employees had to carry out must be based on some appropriate mechanism and not a trial and error mechanism.

iv. Close monitoring of CSR by the responsible person for operation of corporation can help implementation of policies and its impact.

v. The corporation must learn from each other in their role of being a good corporation citizen. Corporations can exchange information, implementing procedure and experts.

vi. The company should have a written policy on CSR, which can also be included in their vision and mission and in the public domain.

vii. Corporations must decide that what precautions are required in case of disaster. It should ensure that employees are properly informed, trained and supervised. Corporation must also ensure that such control measures are used and maintained.

viii. A safety audit can be conducted by the corporations with the object of minimizing loss. An audit team should consist of appropriately qualified personnel’s.

6.4 SCOPE FOR FURTHER RESEARCH

As the methodology used by the researcher is doctrinal, the sources for study are books, journals, newspapers and e-sources. The hypothesis of the present research can be tested way of an empirical research by collecting data from various stakeholders and drugs, nuclear and chemical corporations which gives a further scope to research on the present topic.