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CORPORATE SOCIAL RESPONSIBILITY AND ENVIRONMENTAL PROTECTION: SPECIAL REFERENCE TO WATER POLLUTION IN INDIA: A JUDICIAL PERSPECTIVE

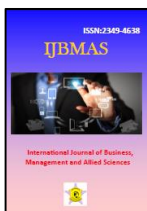
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ABSTRACT

As per the new Companies Act - 2013, all profit making companies with a sizable business will have to spend every year at least 2 percent of three year average profit on Corporate Social Responsibility works such as Environment, Skill Development, Drinking Water, Education, Health, Sanitation etc. Right to wholesome environment is a fundamental right protected under Article - 21 of the constitution of India. In India environmental law has seen considerable development in the last three decades. Most of the principles under which environmental law works in India come within this period. The development of the laws in this area has seen a considerable share of initiative by the Indian Judiciary Particularly the higher Judiciary consisting of the Supreme Court of India and the High Court of the States. The role of the administration, although a critical factor in the success of any environmental management programme, has seen its share of problems of scale and definition. CSR plays an instrumental role in helping their organization achieve its goals of becoming a socially and environmentally responsible firm one which reduces its negative and enhances its positive impacts on society and the environment. The aim of this article is to analyze the role of Indian Judiciary in fixing Corporate Social Responsibility (CSR) in facilitating environmental protection towards water pollution in India. The paper also encompasses case studies to assess Corporate Social Environmental Responsibility in Practice.

Keywords:CSR, Pollution, Environment, Legal Provision.

INTRODUCTION

The core idea of any business is to earn profit. But if we look into the details of how a business makes so much profit we will know that apart from the hardwork, management skills, new technologies and alike a business is able to sustain in this competitive environment because of immense support it gets from the society. As the business get so much from the society it becomes their moral responsibility to also give back to the society. This is so called Social Responsibility. This evolution has gradually led business to return the displaced social orientation. Many firms are assuming increased responsibility for both social and environmental well being. Corporate response to environmental and social issues is progressing through three stage of evolution: Profit maximization management, trust ship management and quality of life management. The business depends on society for its existence, sustenance and encouragement. Though profit making is one of the main objectives businesses, but it has to satisfy its various stakeholders, employees, consumers, government, community and shareholders. Over the past few decades, a growing number of companies have recognized the business benefits of Corporate Social Responsibility policies and practices. The triple bottom line approach to Corporate Social Responsibility emphasize the company's commitment to operating in economically, socially and environmentally sustainable manner. Social Responsibility implies the acceptance of a moral imperative to recognize the duties and obligations arising from a company's relationship with customers, suppliers, employers, share holders and society at large beyond consideration of profit. It refers to business decision making to the ethical values, compliance with the legal requirements and respect for people and communities and environment. Irrespective of whether a company is polluting or non polluting. Protection of environment should be the concern of every social responsibility organization. Each company must take steps to make sustainable use of resources, establish a healthy and safe working environment, maintain ecological balance, take proactive steps to minimize waste generation and preserve environment.

The Bhopal Gas tragedy provided the much needed jolt to the Government of India, judiciary and the corporations; as it brought to the fore the fact that a huge amount of work on Corporate Environmental and Social Responsibilities in India was the need of the hour. In the light of the background, the present paper deals with the evolution of reforms in governance in respect of Corporate Environmental Responsibilities and Corporate Social Responsibilities in India and Legislative.

Objectives of the Study:

- To study the Companies Act, 2013.
- To study the concept of CSR and CER as per the Companies Act, 2013 and importance of CSR towards CER.
- To study Legislative Enactments towards the Environmental (Protection) Act 1986.
- To study Legislative Enactments to ward the water (Prevention and Control of Pollution) Act, 1974.
- To offer suggestion based on the study.

Significance of the Study:

The study highlights the concepts of CSR activities towards CER of companies. This study will be a reference for Corporate Social Responsibility and Corporate Environmental Responsibility towards Water Pollution in India.

Limitations of the Study:

- The study covers only CSR activities towards Environment.

- The area of study is restricted on water pollution in India.
- The area of study is restricted to India.

Research Methodology:

Present study is based on secondary literature. For developing this conceptual paper the researcher has used secondary literature. An extensive study of articles, law books, Environmental books, and web sources has been made.

The Companies Act – 2013, Corporate Social Responsibility (CSR).

In August, 2013, Indian Parliament enacted a new law, companies Act, 2013, that has attempted to make CSR provision for certain companies. In terms of Section 135 of the new legislation, a new 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 any financial year, will be required to constitute a Corporate Social Responsibility Committee of the Board Consisting of three or more directors, with at least one independent director. The composition of the committee has to be disclosed in Board report. It further provides that 2% of average net profits of the previous three years will have to spent on CSR activities with disclosure to share holders about the CSR Policy along with reasons on failure of implementation, if so, the CSR committee shall formulate a CSR policy, indicating the activities to be undertaken by the Company as specified in Schedule VII. As per the Section 135 (5), the Company shall also give preference to the local area and surrounding areas where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. Schedule VII enlists activities which may be included by Companies in their Corporate Social responsibility policies and the list alia, provides for activities relating to ensuring environmental sustainability as well. The Act does not make 2% spending on CSR mandatory and also make no effort to define CSR. The only obligation is to earmark the funds, form a committee, formulate a CSR policy and spend the cash, in Case of non-spending of the earmarked cash, only an explanation is required in the annual report. A through perusal of these self regulatory measures evidences the fact that they are all voluntary and not obligatory in nature. The Corporate are free to decide their actual plan of action, if any. Even, in the companies Act, 2013 non-compliance with the provision directing spending of 2% of said profits amount merely to an explanation in the Annual Report and no more.

Concept of Corporate Social Responsibility (CSR) and Corporate Environmental Responsibility (CER)

Corporate Social Responsibility (CSR) and Corporate Environmental Responsibility (CER) are not two divergent concepts. In common parlance, corporate environmental responsibility is understood as a part and parcel of the broader concept of Corporate Social Responsibility. Environmental aspect of CSR is the duty of the Corporate to cover the environmental effects of the Company's Products operations and facilities, remove waste and emissions: increase the productivity and efficiency of its resources; and decrease practices that may adversely affect the enjoyment of resources by future generations. CSR entails the simultaneous fulfillment of a company's economic, legal, ethical and philanthropic responsibilities. First two are general and the same for every company, these are prescribed ways of how companies should work, while the other two refer to voluntarism and are not prescribed as obligatory for the company. It is possible to say that first two are required minimums, while ethics and philanthropy are responsibilities which are expected. This is known as Carroll's pyramid of Corporate Social Responsibility which had a major influence on accepting and spreading of Corporate Social Responsibility.



Figure - 1 - Carroll's CSR Pyramid.

Analysis and Finding

Carroll's model of Social Responsibility.

Economic: The firm being an economic entity, its primary responsibility is to satisfy economic needs of the society and generation of surplus for rewarding the investors and future expansion and diversification.

Legal: The laws of the land and international laws of trade and commerce has to be followed and complied with.

Ethical: Ethical responsibilities are norms which the society expects the business to observe like, not restoring to hoarding and other malpractices.

Philanthropic Responsibilities: Philanthropic Responsibilities refer to the voluntary contribution of the business to the social cause like involvement in Community Development or other social projects pertaining to environment, health and awareness of the masses.

Classification of Social Responsibility:

Responsibility towards itself: Every Corporate must work towards growth, expansion and stability and thus earns profit.

Responsibility towards employees: Timely payment, good environment, encouraging them to take part in managerial decisions.

Responsibility towards Shareholders: The company must make efforts to provide a reasonable return on their investment.

Responsibility towards State: The company out of profit available, the state is entitled to a certain share as per the income tax laws, utmost transparency has to be expected regarding the profit and loss account and the balance sheet.

Responsibility towards Consumers: The company should maintain ethical business, treat customers with loyalty.

Responsibility towards Environment: The company should protect environment from various pollutions and encourage for eco-friendly products. The company is also expected to be good corporate citizen which is patent in its philanthropic acts of contributing financial and human resources to improve the quality of life of the community.



Figure - 2: Classification of Social Responsibility:

From the above analysis it becomes clear that Corporate Environmental Responsibilities as part and parcel of the broader concept of Corporate Social Responsibility. Never the less, Corporate Environmental Responsibilities can be defined as the duty of the Corporation to mitigate its impacts on the natural environment.

Corporate Environmental Responsibility (CER):

Environmental concern and sustainable development is a key pillar of the corporate social responsibility. Environmental and ecological issues have been an important topic of discussion for the past thirty years in the business world – the longest time of the three dimensions Corporate Social Responsibility. The knowledge and issues within the dimensions have progressed across a landscape of changing business realities. Environmental aspects put in place in the 1970s with the first real understanding of the environmental impacts of business.

- (a) **Environmental Impact:** Corporate activity may have many types of effects on the Environment. Usually environmental impact refers to the negative effects occurring in the surrounding natural environment due to business operations. Such impacts may include overuse of natural, non-renewable resources of energy, pollution wastage, degeneration of biodiversity, climate change, deforestation etc. Since many business – related environmental problem transcend national boundaries, most companies are thus acts in global environment.
- (b) **Measuring Environmental Impact:** Environmental impacts can be measured in several ways through environmentally extended input output tables, materials input per service unit (MIPS) calculations, ecological foot print and life cycle assessment, to name a few. Ecological footprint measures the amount of nature’s resources consumed in a given year and compares it to the resources available in the world. Life Cycle assessment (LCA or eco-balance) is used to assess the environmental performance of a product from raw materials in the beginning of the production process all the ways to disposal at the end of use. The MIPS value is calculated by dividing the amount of material the product or service causes to move e.g. the amount of earth moved in mining, not just the metal used – during its entire life – span by the amount of benefits and value its brings.
- (c) **Environmental Management:** To truly commit to its environmental responsibilities a company should change its traditional modes operation towards a more environmentally oriented one.

The environmentally more responsible perspective could include such issues as an emphasis on increased resource productivity, cleaner production and active dialogue with the company's stakeholders. Many business have found that establish in environmental management system is the best basic for good environmental performance. Quality, health and safety issues can also be integrated into the same management system.

- (d) **Environmental Responsibility:** Several individual companies have found that improving environmental performance may also have beneficial effects on the company itself. Using less material and streamlining processes to create less waste may lower the costs of operation significantly. Moreover, the close review of operations, which is needed to improve the environmental performance, may reveal other improvement points, such as risks and material loss. A responsible public image may also attract more customers. State Governments can fulfill their role in helping business to identify market opportunities and undertake win-win investments, the action program also set out a number of other measures aimed at business: establishment of a compliance assistance program to help business understand the environmental requirements of the European Community: development of national, but harmonized, company environmental performance reward schemes that identify and reward good performers and encourage voluntary commitments and agreements.

Legislative Enactments towards the Environmental Protection Act, 1986.

The Government of India enacted Environmental Protection Act, 1986 under the Article 253 of the Constitution of India in the after math of the Bhopal Gas tragedy. The Purpose of the Act is to implement the decision of the United Nations conference on Human Environment, 1972 with regard to the protection and improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property. It is an umbrella legislation providing a frame work for Central Government to Co-ordinate Activities of various central and state authorities established under previous law, viz, water Act and Air Act. It is also an enabling law which provides the essential legislative policy on environmental protection and empowers the executive to frame necessary rules and regulations.

Section - 3(1):- of the Act gives power to the Centre to take all such measures which are considered to be necessary or expedient by it in order to protect and improve the quality of the environment and further to prevent, control and abate environmental pollution.

Section - 3(2):- of the Act, the Central Government is authorized to regulate industrial locations; set standards for the quality of the environment and control of emissions and effluent discharge; prescribe procedures for management of hazardous substances; establish safe guards for the prevention of accidents; and to collect and disseminate information regarding environmental pollution.

Section - 6: Provides that the Central Government may make rules, in respect of all or any of the matters referred to in Section - 3.

Section - 25: Provides power to the Central Government to make rules, for carrying out the purposes of this Act.

The Government of India enacted several rules towards Environmental Protection such as:

- The water (prevention and control of Pollution) Act, 1974.
- The Wild Life (Protection) Act, 1972
- The Forest (Conservation) Act, 1980
- The Air (Prevention and Control of Pollution) Act, 1981
- Manufacture, Storage and Import of Hazardous Chemical Rules, 1989

- Hazardous Wastes (Management and Handling) Rules, 1989
- Rules for the manufacture, use, import, export and storage of Hazardous Micro Organism, Genetically Engineered Organism or cells, 1989.
- The Public Liability Insurance Act, 1991
- The National Environment Tribunal Act, 1995
- The National Environment Appellate Authority Act, 1997
- Environment (Sitting for Industrial Projects) Act, 1999
- Municipal Solid Wastes (Management and Handling) Rules, 2000
- The Biological Diversity Act, 2002
- Hazardous Wastes (Management, Handling and Trans-boundary Movement) Rules, 2008

The Water (Prevention and Control of Pollution) Act, 1974.

Information: Section 20(3) of the Act provides that a State Board may give directions requiring any person in charge of any establishment where any industry, operation or process, or treatment and disposal system is carried on to furnish to it information regarding the construction, installation or operation of such establishment, or any disposal system, or any extension or addition to such establishment, or any disposal system, or any extension or addition to such establishment other prescribed particulars.

Section 31 provides that if accident or other unforeseen act or event occurs at any place where any industry, operation or process, or any treatment and disposal system or any extension or addition there to is being carried on as a result of which any poisonous, noxious or polluting matter is being discharged, or is likely to be discharged into a stream or well or sewer or on land and as a result of such discharge, the water in any stream or well is being polluted, or is likely to be polluted, then the person in charge of such place shall immediately intimate the occurrence of such accident, act or event to the state Board and such other prescribed authorities or agencies.

Inspection and Investigation:

Section - 23 vests the power of entry to and inspection of any place on any person empowered by a State Board, with such considered necessary assistance, for several purpose.

Taking Samples:

Section - 21 provides that a State Board or any officer empowered by it in this behalf shall have power to take samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well, for the purpose of analysis.

Section - 24 prohibits entry of any poisonous, noxious or polluting matter into any stream, well sewer or on land for disposal determined in accordance with such standards as laid down by the State Board.

Criminal Liability of Corporate Entities towards Water Pollution Act - 1974.

The criminal liability of Corporate entities can be discussed under two major heads i.e. offences by Companies and offences by Government Departments.

Offences by Companies:

Section-47 Provides for criminal liability in case of offences committed by Companies. Section 47 (1) Provides that at the time of commission of the offence, every person who was-

- (a) in charge of and
- (b) responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 42(2) Provides that where an offence under this Act has been committed by a company and it is proved that the offence.

- (a) has been committed with the consent or connivance of or
- (b) is attributable to any neglect on the part of any director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 47 also provides for an exception to criminal liability. It provides that if the accused person shall not be liable to any punishment if he proves that:

- (a) the offence was committed without his knowledge, or
- (b) he exercised all due allegiance to prevent the commission such offence.

Offences by Government Departments:

Section - 48 provides for criminal liability in case of offences committed by Government Departments. It provides that the Head of the Department shall be liable to be proceeded against and punished accordingly. Similar to the exception provision to section 47, a provision to section 48 also provides for an exception to criminal liability of the Head of the Department on similar grounds.

Case Laws Regarding Criminal Liability of Corporate Entities:

In *K.K. Nandi vs Amitabha Banerjee*, "K.K. Nandi was the manager of a company carrying on the business of manufacturing brewer in the District of Hooghly and was responsible for the day to day work of the factory. An inspection of the factory led to the discovery that the company had systematically neglected and refused to take any measures for treatment of the effluent containing poisonous and noxious properties which it was continuously discharging into the Hooghly river. Under the provisions of the water (prevention and control of pollution) Act, 1974 any person discharging any sewage or trade effluent into a stream or well is required to obtain consent of the State Board prior to its discharging of sewage or trade effluent into a stream or well. As the company had not done so in the present matter, they were liable for prosecution under Sections 25 and 26 of the said act. K.K. Nandi had filed this application for quashing the proceedings against him on the grounds that there was no prima facts case whatsoever against him and it had not been enumerated as to how he had violated the said provisions.

It was held that manager is liable under Section 47 of the said Act it is the manager who is in charge of and responsible for the conduct of the business of the company which makes him prima facie liable.

Mahmud Ali vs. State of Bihar and anr.

In *Mahmud Ali vs. State of Bihar and anr.*, "the Bihar State Water Pollution Control and Prevention Board had instituted a complain it against M/s M.A. Paper and Card Board Factory (P) Ltd, for offences punishable under Section 41 & 44 of the Water (Prevention and Control of Pollution) Act, 1974. The primary charge against the accused company was that it was discharging vast masses of polluted water and other trade effluents from its paper factory in river 'Daha' without the consent of the Board and was causing great and grave environment problems to the society at large and to the inhabitants of the surrounding environment. Mahmud Ali was the Managing Director in charge of and

responsible to the Company for the conduct of the business both at the time of commission of the offence and at the time of his deposition and was held equally responsible and liable under Section 47 of the Act.

The Petitioner had filed this present petition for quashing the issue of process against him on the ground that the complaint had not expressly incorporated within it the words that the petitioner was in charge and /pr responsible to the company for the conduct of the business of the company and that no specific allegation had been leveled that the offence was committed either with the connivance or consent of the petitioner or was attributable to any neglect on his part.

It was held that under Section 319 of the Cr. P.C. 1973 a criminal court can add a person against whom evidence comes forth during the trial showing his involvement in the offence, not being the accused before it and as an accused and try him along with those that are being tried.

Uttar Pradesh Pollution Control Board Vs. Modi Distillery and Ors.

In Uttar Pradesh Pollution Control Board vs. Modi Distillery and ors, Modi distillery, an industrial unit of M/s Modi Industries Ltd, was manufacturing Industrial alcohol and discharging its highly noxious and polluted trade effluents into the river through a local drain. Instead of prosecuting M/s Modi Industries Ltd, the Pollution Control Board impleaded the industrial unit Modi distillery and the Chairman, Vice Chairman, Managing director and members of the Board of Directors of the company as respondents. The Single Judge of the High Court quashed the proceedings on the ground that there could be no vicarious liability imputed on the Chairman, Vice-Chairman, managing Director and other members of the Board of Directors of the company under Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 unless there was a prosecution of the Company. However, the Supreme Court held that a reading of the provisions contained in Section - 47 of the water (Prevention and Control of Pollution) Act, 1974 makes it clear that the officials of the Company who own the respondent industrial unit could be prosecuted since they are in charge of and responsible to the company for the business of the unit. Therefore, they could be deemed to be guilty of the offence with which they were charged.

N.A. Palkhivala and anr. Vs. Madhya Pradesh Pradushan Niwaran:

In n.A. Palkhivala and anr. Vs. Madhya Pradesh Pradushan Niwaran, it was held that the duties and responsibilities of the Chairman and deputy Chairman bear no resemblance to that of the manager and hence, in the Chairman and Deputy Chairman of the company cannot be prosecuted for offences committed by the company by virtue of office held by them as they are not the persons directly in charge of and responsible to the company for the complainant to specifically allege facts from which it could be reasonably inferred that the Chairman and Dy. Chairman of the Company were directly in charges of and responsible for the conduct of the business of the company to hold them liable.

Haryana State Board Vs. Jai Bharat Woollen Finishing works:

In Haryana State Board Vs. Jai Bharat Woollen Finishing Works, the Haryana State Board for prevention and Control of Water Pollution, through its Assistant Environmental Engineer, filled a complaint under Section 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974, against the partnership concern known as Jai Bharat Woollen Finishing Works, its manager, Subhash Chandra, and partner, Phoola Devi. The accused were tried by the Sub-Divisional Judicial Magistrate, Panipat and were acquitted and consequently , the Board had preferred this appeal against the acquittal.

The Court held that Section 47 of the Water Act relating to offences by Companies which includes a partnership firm, lays down that, where an offence under the Act is committed by any company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Since, Phoola Devi was a sleeping partner, her acquittal was upheld.

Uttar Pradesh Pollution Control Board Vs. Mohan Meakins Ltd.

In Uttar Pradesh Pollution Control Board vs. Mohan Meakins Ltd, the matter was related to the discharge of trade effluents by an industrial unit in river Gomathi, and the directors of that company were accused of an offence under Section 43 of the Water (Prevention and Control of Pollution) Act, 1974. The counsel for the directors submitted that they should be discharged on the ground that a long time has lapsed. The Supreme Court held that lapse of a long period of time cannot be reason enough to absolve the directors from trial.

Suggestions and Conclusion:-

The World Environment Day on June 5th, 1990 was celebrated on the theme of emphasis on future generations. Nearly one million children die every year in India due to diarrhea. Every third person who dies in the country is a child below the age of five. These belong to the poorest sections of the society. The World Health Organisation has estimated that 80 percent of the diseases in developing countries are linked to water. Water Pollution is one of the most serious environmental problems. Water Pollution is caused by a variety of human activities such as Industrial, Agricultural and Domestic. Reducing the pollution of our rivers, lakes, streams and off shores waters is important for reversing generation of neglect. We have made visible and encouraging progress by operating new sewage disposal projects. Sewage plant construction improves the quality of ten billion of water a day – Some of 20 percent of all of our fresh water resources. Pollution of the rivers, streams, and lakes must be ended as quickly as possible as a prerequisite for our good future and our good health. We can stop water pollution if we are prepared to pay the price. The water requirement should be minimized by altering the techniques involved. Recycling of water treatment should be practiced to the maximum extent possible. The quantity of waste water discharge should be minimized.

India has a great and old tradition of CSR but the concept of CER is yet to grasp an independent ground of its own despite having become an integral part of the CSR policies of the Corporate. Indian Environmental Statutes are more often observed in breach than in practice. Environmental law enforcement is highly specialized area of implementation, but it is marred with shortcomings like lack or inadequacy of skill, less than satisfactory infrastructural facilities, Jurisdictional conflicts and lack of coordination, among different agencies of implementation. Ability of the more resourceful industries in hiding their violations and non compliance and in exerting undue pressure on the enforcement agencies has also contributed to the inefficiency of the enforcement system. Right to pollution free environment could be achieved by realizing common but differentiated responsibility at every strata of the society.

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