

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 4

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Environment Corporate Social Responsibility and Human Rights in India: An Overview from Legal Perspective

MRS. POONAM KUMARI¹

ABSTRACT

Environment social responsibility is the responsibility assigned to the companies to take care of the environment while carrying out their business activities. Looking into the environmental crisis, especially due to pollution in the present time and the pressure of sustainability goals, it has become mandatory for all the companies involved in several types of business activities to ensure the use of the environment in a constructive manner. In this context, the issue of human rights is also included as now environment, and its causes are related to human health and sustainable use for future generations. This paper looks into the Constitutional guarantee of environmental rights as human rights and the responsibilities of companies towards the environment through various laws in India.

Keywords: Human rights, environment, business, corporate social responsibility.

I. INTRODUCTION

Corporate social responsibility has been bestowed upon the companies to include social welfare responsibilities in their profits and fulfil their obligation toward social causes. It was in April 2014 when India became the first country in the world to legally mandate corporate social responsibility, and now it is mandatory for companies as per law to contribute towards CSR.² Now, the approach of corporate social responsibility has been extended to the business activities of companies to be environment friendly and fulfilling their obligation towards an environmentally sustainable place to live and earn a livelihood. Presently many companies, including multinationals, are also contributing to environment-friendly business activities in India. Though it may have been introduced recently in the legal framework, this concept was always recognised in India as, in the words of Mahatma Gandhi, “business entrepreneurs are trustees and not the owner of social wealth, and they have to spend a part of it for a social cause.” Besides this, there are several incidents where big businessmen have donated their earnings in the name of social cause. In the present time, the concern over sustainable

¹ Author is a Assistant Professor & Ph.D. Scholar in Law at Central University of South Bihar Gaya, Bihar, India.

² Section 135 of the Companies Act, 2013

development has increased, and now more focus is on the protection environment in association with business houses and companies. The Constitutional mandates in India also indicate an inclusive growth where environment and environmental rights must be protected. The jurisprudence regarding the new horizon of the environment has been propagated by the Indian judiciary, and now it has been included in corporate social responsibility also.

II. HUMAN RIGHTS INVOLVED IN ENVIRONMENT CORPORATE SOCIAL RESPONSIBILITY

All human beings depend on the environment in which they live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the right to life, health, food, water and sanitation. Recently, the recognition of the link between human rights and the environment has increased significantly.³ Human rights are very much related to the corporate social responsibility of the corporate along with environmental concerns. The sense of responsibility towards the environment was not originally present in the constitution, but it was 42nd Amendment Act, 1976, which incorporated Articles 48A and 51A(g) to protect and improve the environment. Not only this, many new dimensions of environmental protection as a fundamental right evolved through the interpretation made by the judiciary in India. Right to clear air,⁴ water⁵ and environment are some rights which emerged from Article 21, and now they have got the status of human rights as well as fundamental rights. With the new development in Companies Act 2013, CSR has become a mandatory provision for companies, and its compliance is also mandatory in nature. Presently many companies and corporate houses are involved in such businesses, which are directly affecting the human rights concerns of employees and people around them. The protection of human rights related to the environment in CSR is a new concept where CSR philosophy has been extended beyond the social responsibilities to the environment, sustainability and the growing menace of climate change. In the present context, the issue of sustainability is a serious matter of concern, and it is expanding in collaboration with CSR. In World Summit on Sustainable Development in Johannesburg in 2000, the United Nations developed Millennium Development Goals with implications for CSR, environmental and health issues. In the same pattern in India also, CSR has got legal status, and here the companies believe in sustainable development by ensuring that their activities will be carried on in harmony with the environment. The CSR towards sustainable development is a commitment

³ According to the Office of the High Commissioner for Human Rights.

⁴ Subhash Kumar v. State of Bihar AIR 1991 SC 420

⁵ Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664

made by the company to its stakeholder to do business in an environmentally sustainable manner which is transparent and ethical. The companies in India are also taking up Sustainable Development Goals in their business actions. As per data provided by the various companies for the year 2020-21, it is very much evident that companies in India are allocating budgets for sustainability programmes. Companies like Godrej Consumer Products Limited spent Rs.34.08 crore, Infosys Limited spent Rs.325.32 crore, Wipro Limited spent Rs. 251 crores, Tata Chemicals Limited spent Rs. 21 crores, ITC Limited, created a green forestry area of 30,439 acres of land through its Social Forestry program, and it also collected about 70,900 MT solid wastes under WOW program. The company spent Rs. 353.46 crores on CSR and largely towards sustainable development programmes. Like these, many companies are spending an enormous amount on CSR initiatives for sustainable development programmes and environmental protection.

The company's obligation towards CSR is absolute, and they must believe in sustainable development by ensuring their activities are in harmony with the environment. The companies must work in direction of excellence in environmental performance, and towards this objective, they shall: (a) adopt appropriate operational practices and suitable technologies to monitor, control and minimise the impact of their activities on the environment; and (b) physical resources and environmental contribution: these activities are directed towards alleviation and prevention of environmental pollution and conservation of natural resources and the disposal of solid waste in the particular area.⁶ Such initiatives of companies are in line with the fulfilment of the obligation of India toward human rights protection and environmental causes. The inherent spirit of the Indian Constitution for the protection of human rights through legal instruments also gets fulfilled with these initiatives.

III. LEGISLATIVE FRAMEWORK TO PROTECT THE ENVIRONMENT THROUGH CSR

The legislative framework in India for CSR is enshrined under the Companies Act, 2013. Section 135 of the Act, Companies (Corporate Social Responsibility) Rules 2014 and Schedule VII prescribes mandatory legal obligation on companies to fulfil their CSR. Provision for CSR is the same for a private and public company, and it is, Section 135(1): Every company having a net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more or net profit of rupees five crores or more during any financial year shall constitute a Corporate Social Responsibility Committee of Board consisting of three or more directors, out

⁶ The Companies Act, 2013 requires that every company must make its CSR initiatives in public domain.

of which at least one director shall be an independent director.⁷ The Committee will be responsible for making policy for implementing CSR initiatives like; eradicating extreme hunger and poverty, promoting education promoting gender equality and empowering women and ensuring environmental sustainability etc.⁸ There are many other legislations in India about environmental protection from industrial and trade-related hazardous activities. The significant laws in this relation are the Environment Protection Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Forest Conservation Act, 1980 etc. The Ministry of Environment, Forest & Climate Change, and Government of India is the nodal agency of the Central Government for overseeing the implementation of environmental laws and policies in cases of establishment of new factories or units in forest areas. The Principle of Sustainable Development is the guiding force behind this monitoring by the central government. The govt. has launched various programs in the country to secure a clean environment which is a part of Article 21. Naming a few programs includes; Namami Gange (Clean Ganga) and Swachh Bharat Abhiyan (Clean India Mission), to which many corporations are also contributing as a part of CSR.⁹

Besides the Companies Act, 2013 of India and other environmental protection laws, there are several international norms which advocate for the recognition and protection of CSR norms towards the protection of the environment and human rights of the individuals. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy¹⁰ advocates for the promotion and encouragement of social and economic progress with the contribution of enterprises. The OECD Guidelines for Multinational Enterprises set standards for responsible business conduct across various human rights issues like labour rights and environmental rights. They have developed a complaint mechanism also through which an individual who feels negatively impacted by irresponsible business conduct could be addressed.¹¹

IV. JUDICIAL APPROACH TOWARDS ENVIRONMENT PROTECTION BY CSR

In this regards most of the pollution comes from the industrial activities of companies or corporations. It is a well-known fact that tanneries, acid factories, tie and dye factories, distilleries, hotels, thermal power stations etc., are contributing a lot to environmental pollution. Prior to the corporate social responsibility provision in the Companies Act, there were several

⁷ The Companies Act, 2013

⁸ Schedule VII of the Companies Act, 2013

⁹ National Action Plan on Business and Human Rights, Zero Draft, Ministry of Corporate Affairs, Government of India, 2018

¹⁰ Adopted by the Governing Body of the ILO at its 204th Session, Geneva, 1977

¹¹ Illias Bantekas, "Corporate Social Responsibility in International Law" 22:309 Boston University International Law Journal 334 (2004)

judicial pronouncements made by the Indian judiciary reminding the trade and industry sector to work towards the well-being of the environment also.¹² The Constitution of India guarantees freedom of trade and commerce to all its citizens.¹³ Many of the times, these businesses/trades are carried away in such a manner that they severely affect the vegetation cover, animals, aquatic life and human health. But like any other fundamental rights, this right of trade and commerce is not absolute and can be restricted on the reasonable ground for hampering the environment. The judiciary has taken a very firm stand on such activities carried on the name of trade and business and playing with the lives of people. In *M.C. Mehta v. Kamal Nath*¹⁴, the apex court clarified that if a hotel is discharging untreated effluent into the river Beas, it is disturbing the aquatic life and causing water pollution and cannot be permitted to operate. Any disturbance of the basic environment elements, namely, air, water and soil, which are basic for life would be hazardous to life¹⁵. Again in the case of *Abhilash Textiles v. Rajkot Municipal Corporation*¹⁶, the Gujarat High Court stated that “the company cannot be allowed to reap profit at the cost of public health. This is the mandate of law.” “No one has a right to carry on business so as to cause a nuisance to society. One cannot carry on the business in a manner by which the business activity becomes a health hazard to the entire society”. Once again, the Gujarat High Court, in the case of *D.S.Rana v. Ahmedabad Municipal Corporation*¹⁷, made remarks that “a reasonable restriction may take the form of total prohibition of the trade activity in a particular area on the ground that is it likely to be injurious to the health of its residents or cause nuisance”.

One of the popular cases in this regard is *M.C. Mehta & Another v. Union of India*,¹⁸ which dealt with the horrors of a gas leak from Shriram Food and Fertilizers Factory, Kirti Nagar, Delhi. This incident revived the fear of horrors of the infamous Bhopal Gas leak tragedy. The Supreme Court introduced the concept of absolute liability and held companies or any enterprise engaged in inherently hazardous activities liable to compensate every person affected by the accident. In the case of *Mohd. Hazi Rafeeq v. the State of Uttaranchal*¹⁹, the Uttaranchal High Court explored the scope of environmental impact assessment and asked the state govt. to identify a new location for Integrated Estate at Haridwar and the Growth Centre at Kotdwar as they were very near to Rajaji National Park and but also fall in the Rajaji Corbett

¹² Environmental Law, S.C. Shastri 61(Eastern Book Company, Lucknow ,2015)

¹³ Article 19(1)(g) to practice any profession, to carry on any occupation, trade and business

¹⁴ AIR 2000 SC 1997

¹⁵ P. Leelakrishnan, Environmental Law in India 50(Lexis Nexis, New Delhi 5th edn., 2019)

¹⁶ AIR 1988 Guj 57

¹⁷ AIR 2000 Guj 45

¹⁸ AIR 1987 SC 965

¹⁹ W.P. 1082 Of 2005

Elephant Corridor.

In recent times the National Green Tribunal²⁰ has done significant work toward the legal implication of environmental protection. The tribunal has looked into various kinds of issues, and some are relevant, like in the case of *Samir Mehta v. Union of India*²¹ where, due to an oil spill from a sinking ship named M.V. Rak, a thick film of oil was deposited on the surface of the sea and caused large scale damage to the marine life. The Green Tribunal, in this case upholds the principle of polluter pays and asked the company responsible for this to pay a compensation of Rs. 100 crore. There are several other cases also where the Green Tribunal has worked towards the protection of the human rights of the citizens from the trade-related activities of companies.

V. CONCLUSION

The understanding of environmental protection and the role of CSR is gaining momentum now. The idea behind CSR was to bring a more responsible and accountable business culture toward social causes in India. Environment protection concern is also one of the principles adopted for CSR in India, which reflects the objective of the legislature towards a sound environment to work and live on. The human rights obligation was fulfilled by many companies themselves even before the introduction of new Companies Act, 2013. But as we know that the extension of human rights has been expanded to environment protection also and with the judicial interpretations and upgradation of the Companies Act, now it has gained a statutory status. In the present time, the environment protection has become a very necessary matter of concern because it is associated with our future generations. That is why it becomes very necessary that companies also conduct their business activities in environment friendly manner. As the environment rights are associated with human rights such obligations are fruitful for every strata of the society and also the burden of welfare state could be shared by the companies also in term of human rights protection and environment protection.

²⁰ National Green Tribunal has been established in 2010 under the National Green Tribunal Act 2010, for effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith.

²¹ Original application no.24 of 2011 and (M.A no.129 of 2012, M.A Nos. 557 & 737 of 2016)