

JUDICIAL CONTRIBUTION IN STRENGTHENING CORPORATE SOCIAL RESPONSIBILITY FOR ENVIRONMENTAL JUSTICE IN INDIA: AN OVERVIEW

Dr. Shital S. Barhate

Assistant Professor, Manikchand Pahade Law College, Aurangabad, Maharashtra, India

Abstract: India has strong system of judiciary from Magistrate of First Class to Supreme Court. The Indian Judicial System is one of the oldest legal systems in the world today. The decisions of the Supreme Court are binding on all the courts of India. The Supreme Court of India is the highest judiciary body, responsible to ensure justice to all. The Supreme Court under Article 142 of the Constitution has the constitutional mandate to pass such order as may be necessary for doing complete justice in any case before it.

In Indian democracy, the Supreme Court plays important role of safeguarding the fundamental rights of citizens which includes right of healthy environment. Healthy environment is need of everyone who lives on earth. It impacts our life in Several Ways. India has a history of having a compassionate attitude towards environment. But with the passage of time the ethical values towards society have degraded as a result of which judiciary intervened so as to protect the environment. Supreme Court of India and Various High Courts, while deciding the cases before them in a way highlighted the need to have a strong sense of corporate social responsibility in protecting the environment. In this paper an attempt is made to highlight the role of Judiciary in strengthening the concept of CSR for environmental Justice.

Corporate Social Responsibility (CSR): Concept: Corporate social responsibility (CSR) refers to business practices involving initiatives that benefit society. Business Dictionary defines CSR as "A company's sense of responsibility towards the community and environment (both ecological and social) in which it operates. Companies express this citizenship, through their waste and pollution reduction processes, by contributing educational and social programs and by earning adequate returns on the employed resources." Corporate social responsibility, often abbreviated "CSR," is corporation's initiatives to assess and take responsibility for the company's effects on environmental and social wellbeing². CSR may also be referred to as "corporate citizenship, corporate conscience or responsible behaviour³

Constitutional Commitments towards Environment Protection: Indian Constitution is the basic law of land wherein it confers several rights to the citizens as well as imposes obligations on the citizens in the form of duties. The concept of environment protection is one of those only. Though right to environment is not have direct mention in the fundamental rights chapter the Supreme Court and the various High Courts of the country have given a wider interpretation to the word "life" in the Article 21 of the Constitution which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 21 guarantees the fundamental right to life –a life of dignity to be lived in a proper environment, free of danger of disease and infection. Right to live in a healthy environment as a part of Art. 21 of the Constitution was first recognized in the case of *Rural Litigation and Entitlement Kendra vs. State of U.P.*⁴.

Further, Art. 48-A imposes a duty upon state that it shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Again, a new provision Article 51-A in the form of "Fundamental Duties" was also incorporated by the 42nd Amendment which shoulders duty upon every citizen of India to protect and improve the natural environment including forests,

lakes, rivers and wildlife and to have compassion for living creatures⁵. The above two provision impose two-fold responsibilities. On the one hand, it gives directive to the State for protection and improvement of environment, and on the other hand it casts/imposes a duty on every citizen to help in the preservation of natural environment.

Legal mandate of CSR under Companies Act, 2013: India's new Companies Act, 2013 (Companies Act) has introduced new provision is Corporate Social Responsibility (CSR): Section 135 of the Companies Act provides that, 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 director⁶.

Schedule VII to the Companies Act provides for the activities which may be included by companies in their Corporate Social Responsibility Policies Activities.⁷

CSR Norms: CSR norms provide that the Board of every eligible company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy⁸.

It is also provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities⁹.

Further, if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.¹⁰

It is requires by the rules that every qualifying company should constitute a CSR Committee,¹¹ the Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR.¹²

Supreme Court on Environmental Protection: In *Municipal Council, Ratlam v Vardichand*¹³ filed a case for removing unhygienic conditions amounting to public nuisance, as Article 47 makes it paramount principle of governance that steps are taken for the improvement of the public health as amongst its primary responsibility. The court observed: "The officer in charge and even the elected representatives will have to face the penalty of law if what the constitution and follow up legislation direct them to do are defied or denied wrongfully."

Again in *T. Dhamodar Rao v Special Officer, Municipal Corporation of Hyderabad*,¹⁴ the Andhra Pradesh High Court referred also to Art.51 A (g) and 48 A and prevented the conversion of open space to a residential complex. The court noted that the protection of environment is the duty of the citizens as well as the obligation of the state.

Further in *M. C. Mehta v Union of India*,¹⁵ the Supreme Court formulated the doctrine of absolute liability for the harm caused by the hazardous and inherently dangerous industry by interpreting the scope of the power under article 32 to issue directions and orders, ' whichever may be appropriate' in 'appropriate proceedings'. According to the court this power could be utilised for forging new remedies, and fashioning new strategies.

Supreme Court of India accepted the letter written to the court as a writ petition. This case was pronounced by the court as the "first case of its kind in the country involving the issues relating to environment and ecological balance."¹⁶

In *Vijay Singh Punia v State of Rajasthan*¹⁷, Court imposed 15 percent of the turnover of the dyeing and printing industries as damages for causing water pollution. *Indian Council for Enviro- legal Action v*

*Union of India*¹⁸ tells the tragic story of village Rajasthan. Its loving environment became highly polluted by the sludge that was left out even after the rouge industries licensed to produce 'H' acid. The Supreme Court directed the central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment Protection Act expressly empowers the central government (or to delegate, as the case may be) to 'take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. Scientific uncertainty may sometimes be a mirage. Polluter's often try to hide themselves behind the need of scientific certainty. Precautionary principle does not book this hide and seek the policy of the polluters and the potential polluters. The 'polluter pays' principle and the precautionary principle were accepted as a part of legal system in the and the Vellore Citizen's Forums Case. In *Mohd Hazi Rafeeq v State of Uttaranchal*,¹⁹ the Uttaranchal High Court referred to Article 48 A and 51 A (g) in order to stress the duty of the state to preserve and protect forest even at the cost of business interest of the petitioner. It has been made an obligatory duty of the occupier to disclose the information include health hazards and the measures to overcome such hazards in manufacturing, transportation, storage, and other processes to the workers, chief inspectors, local authority and the general public in the vicinity. Such information shall include characteristics of wastes and the manner of their disposal. It is also the duty of the occupier to draw up an "on site emergency plan" and detailed "disaster controlled measures" and to make them known to the workers and the nearby dwellers.

Conclusion and Suggestions: Thus we can easily make out that, in India, Corporate Social Responsibility got legislative mandate in the year 2013; our Indian Judiciary through its various decisions, from earlier times gave a strong base to this corporate Social Responsibility by compelling various corporate industries and companies to perform their social responsibility as well as responsibility to protect the environment.

References:

1. <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> Visited on 21-2-2017
2. <http://www.investopedia.com/terms/c/corp-social-responsibility.asp>.
3. Donna J. Wood, Corporate Social Performance Revisited, *The Academy of Management Review* Vol. 16, No. 4 (Oct., 1991), taken from, http://www.jstor.org/stable/258977?seq=1#page_scan_tab_contents
4. AIR 1988 SC 2187.
5. Art. 51-A (g) of the Constitution of India.
6. Sec.135 (1)
7. Eradicating extreme hunger and poverty; promotion of education; promoting gender equality and empowering women; reducing child mortality and improving maternal health; combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; ensuring environmental sustainability; employment enhancing vocational skills; social business projects; contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and such other matters as may be prescribed.
8. Section 135 (5)
9. Proviso to Section 135 (5)
10. *Ibid*
11. Rule 5 of CSR rules 2014.
12. *Ibid* Rule 8
13. AIR 1980 SC 1622
14. AIR 1987, AP 171.
15. AIR 1987 SC 1086
16. *Supra* note 4.
17. AIR 2004 Raj 1
18. AIR 1996 1446
19. 2006, AIR (Utt) 18