

Governance of Corporate Environmental and Social Responsibilities in India: Sketching the Contour of Legislative Evolution and Reforms

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Abstract

The present paper makes a modest attempt to analyse the legislative evolution and the reforms in governance in respect of corporate environmental and social responsibilities in India in the aftermath of the Bhopal tragedy. It consists of detailed description of the Legislative and Judicial Developments after Bhopal, a comprehensive study of the environmental regulations for corporations, and of self-regulatory measures adopted by the corporate entities. The paper also encompasses case studies to assess Corporate Social and Environmental Responsibility in practice.

1. Introduction

All economies depend on the abilities of business to manufacture produce, provide services and carry out other economic activities. In pursuance of this, they generate employment and several other benefits. Despite the numerous benefits, they also contribute to damaging the environment by contaminating and depleting natural resources. Globalization, besides offering opportunities for economic development, has also resulted in a number of concerns in the social and environmental realms. In the wake of these concerns, several attempts are being made in the field of corporate social and environmental responsibility to induce the companies to behave in a socially responsible manner by abiding to laws, rules and regulations, self-regulation and other voluntary initiatives.

India has an illustrious history of corporate social responsibility which must be considered before going ahead with the paper. This illustrious legacy can be divided into four phases. The first phase (1850-1914) witnessed a shift to philanthropy from charity for purely religious purposes. This included the setting up of trusts and institutions like schools, colleges, hospitals,

orphanages, widows' homes, art galleries and museums. The older forms of charity such as the building and maintenance of temples, pilgrim rest houses and water tanks nevertheless, continued (Sood&Arora, 2006: 5). The second phase (1914-1960) was shaped the theory of trusteeship given by Mahatma Gandhi's which asserts the right of the capitalist to accumulate wealth and to use it to for the benefit of the society. Large contributions were made to reform programmes like empowering women, abolishing untouchability and developing rural areas (Ibid: 6). The third phase (1960-1980) was shaped by India's socialist policy warranting equitable distribution of wealth and eliminating its concentration which resulted in the decline of corporate philanthropy and increase of corporate malpractices owing to the unwillingness of the corporates to follow such principles (Ibid: 9). However, increasing unemployment and decreasing social welfare measures by the Government threatens not only the profitability but the very survival of companies, that led the corporate's to support community development through philanthropic activities (Ibid: 10). During the fourth and the current phase (1980 until date) the attitude of the corporates has shifted from that of charity and traditional philanthropy to direct engagement in development concerns and supporting disadvantaged groups. It is comprises of both traditional philanthropic engagement and sustainable business strategy (Ibid: 11).

Although the philanthropic approach is still widespread, the Indian attitude to corporate social responsibility shows a slight shift from traditional philanthropy to sustainable business. Nevertheless, the Indian corporate Social Responsibility agenda is dominated by community development activities which although considered to be important by the corporates is criticised by several stakeholders. The criticism focuses on the

aspects that a company's community development approach lacks transparency and specific standards and must be compared to violations of social and environmental standards within companies.

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 above background, the present paper deals with the evolution of reforms in governance in respect of corporate environmental and social responsibilities in India, legislative and otherwise.

2. Concept of Corporate Social and Environmental Responsibility

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. A perusal of the some of the definitions of CSR will make the same evident.

The European Council defines CSR as a concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders on a voluntary basis.¹ CSR is a concept wherein companies voluntarily incorporate social and environmental concerns into their business operations as well as the interaction with their stakeholders. The idea of being a socially responsible company means a lot more than simply complying with the law while investing in the environment and human resources (Chahoud, 2007). 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 (Mazurkiewicz, 2004).

CSR entails the simultaneous fulfilment of a company's economic, legal, ethical, and philanthropic responsibilities. In other words, a company should strive to make profit, obey the law, be ethical, and be a good corporate citizen (Carroll, 1991: 43). The pyramid of corporate social responsibility is depicted in the



Figure 1: Pyramid of Corporate Social Responsibility

[Source: Carroll, 1991: 43]

figure 1.

The pyramid depicts the four components of CSR, beginning with the main functions of every company i.e. economic performance. Apart from carrying on economic activities, the company is also expected to obey the law which codifies acceptable and unacceptable behaviour in the society. In addition, the company also needs to be ethical i.e., it is obliged to do what is right, just, and fair, to avoid or minimize harm to stakeholders (consumers, employees, environment, and others). Lastly, the company is also expected to be a 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.

From the above definitions it becomes more than clear that CER is understood as a part and parcel of the broader concept of CSR. Nevertheless, CER can be defined as the duty of the corporation to mitigate its impacts on the natural environment (Salem, 2011: 183).

3. Legislative Enactments and Judicial Developments after the Bhopal Tragedy

3.1 The Environment (Protection) Act, 1986

The Government of India enacted the Environment (Protection) Act, 1986 (hereinafter EP Act) under Article 253 of the Constitution of India in the aftermath of the Bhopal gas tragedy. The purpose of the Act is to implement the decisions of the United Nations Conference on the 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 framework for Central Government to co-ordinate activities of various central and state authorities established under previous laws 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. The Central Government is authorized to regulate industrial locations; set standards for the quality of the environment and control of emissions and effluent discharges; prescribe procedures for management of hazardous substances; establish safeguards for the prevention of accidents; and to collect and disseminate information regarding environmental pollution (Section 3(2)).

Under Sections 6 and 25 broad rule-making powers have been conferred on the Central Government. Section 6 provides that the Central Government may make rules, in respect of all or any of the matters referred to in Section 3 and Section 25 provides power to the Central Government to make rules, for carrying out the purposes of this Act.

In the later part of the paper, several rules that have been framed by the Central Government in exercise of its rule-making powers shall be discussed in details with respect to corporate environmental and social responsibilities.

3.2 Doctrine of Absolute Liability

Absolute liability doctrine for the harm caused by an industry engaged in hazardous and inherently dangerous activities, free from the exceptions to the strict liability rule, was evolved in **M.C. Mehta vs. Union of India**,ⁱⁱ popularly known as the oleum gas leakage case. In **Indian Council of Enviro-Legal Action vs. Union of India**,ⁱⁱⁱ the Supreme Court reiterated the principle of absolute liability laid down in the M.C. Mehta case. The Court explained that if the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to compensate the loss caused to the other due to his activity regardless of whether he had taken reasonable care while carrying out the activity. The Court also gave the rationale behind the absolute liability principle which is that it is the industry alone which has the resources to discover and guard against hazards in comparison to the victim. In addition, the aggrieved may also face difficulty in establishing the absence of reasonable care or foreseeability of the industry.

3.3 The Public Liability Insurance Act, 1991

This Act was enacted by the Parliament in the aftermath of the Methyl isocyanate (MIC) gas leakage from the Union Carbide Corporation at Bhopal and oleum gas leakage from the Shriram Food and Fertilizer Industry at Delhi. This benevolent act was passed as it was observed that providing relief to victims of accident involving hazardous substances was a lengthy and lethargic process.

The Act provides for public liability insurance in order to provide immediate relief to the persons affected by accident occurring while handling any hazardous substance and for other connected and incidental matters. Section 2(d) of the Act defines 'hazardous substance' as any substance or preparation defined as hazardous substance under the EP Act, 1986 and exceeding such quantity specified by the Central Government. Section 2(e) of the EP Act, 1986 defines 'hazardous substance' as any substance or preparation which by reason of chemical or physio-chemical properties, or handling is liable to cause harm to human beings and other living creatures, plants and micro-organism.

Section 3(1) of the Act provides for liability to give relief in certain cases on principle of no fault. It provides that the owner shall be liable to give specified relief^{iv} when death or injury to any person (other than a workman) or damage to any property has resulted from an accident. Section 3(2) further provides that in any claim for relief, the claimant shall not be required to plead and establish that the death, injury or damage was due to any wrongful act, neglect or default of any person. The amount of relief is provided in the Schedule attached to the Act.

The Collector of the District has been empowered to invite applications for relief in case of occurrence of an accident (Section 5). Any aggrieved person, legal representative or duly authorised agent can claim for relief if he has suffered injury, death or damage due to an accident involving hazardous substances (Section 6). A claim for relief shall be disposed of expeditiously, within 3 months (Section 7(7)).

3.4 The National Environment Tribunal Act, 1995

This Act aimed at providing for strict liability for damages resulting from any accident while handling any hazardous substance. It also provided for the establishment of a National Environment Tribunal to expeditiously and effectively dispose cases resulting from such accident in order to give relief and compensation for damages to persons, property and environment and for other connected matters. Nevertheless, the Act failed to see the light of the day.

3.5 The National Environment Appellate Authority Act, 1997

This Act was enacted to provide for the establishment of a National Environment Appellate Authority (hereinafter NEAA) for the purposes of hearing appeals in matters relating to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the EP Act, 1986 and for other connected matters.

3.6 The National Green Tribunal Act, 2010

The National Environment Tribunal Act, 1995 and The National Environment Appellate Authority (NEAA) Act, 1997 stand repealed with the enactment of the National Green Tribunal Act, 2010.^v NEAA has been abolished and its functions have been vested in the National Green Tribunal (NGT) and pending appeals have also been transferred to NGT.^{vi}

The NGT was established for the following:

- a. expeditious and effective disposal of cases pertaining to environmental protection and conservation of forests and other natural resources
- b. enforcement of any legal right pertaining to environment
- c. providing relief and compensation for damages to persons and property and
- d. for other connected matters.

The Green Tribunal consists of the Chairperson, full time Judicial Members (not less than 10 and maximum 20) and full time Expert Members (also not less than

10 and more than 20). The Chairperson has been given the freedom on inviting any expert, from outside, to assist the Tribunal in any particular case (Section 4). The Chairperson is appointed by the Central Government in consultation with the Chief Justice of India. Judicial and expert members are appointed on recommendations by the Selection Committee (Section 6). The Tribunal shall have jurisdiction on all civil cases where a substantial question relating to environment is involved arising out of the implementation of the enactments specified in Schedule I appended to the Act.^{vii}

However, the NGT Act suffers from certain lacunae. To begin with, several significant laws, *viz.* the Wildlife (Protection) Act, 1972 and the Scheduled Tribes (Recognition of Forest Rights) Act, 2005 have not been brought under the ambit of the Act. Further, the term “substantial question” has also not been satisfactorily defined. Moreover, the Tribunal has benches only at five locations^{viii} thereby significantly reducing the access to justice, as civil courts would not deal with such cases anymore.

4. Environmental Regulations for Corporate Entities

In pursuance of the EP Act, 1986 several rules were framed dealing with various environment related aspects which are also concerned with corporate entities. A detailed discussion of such rules has been done hereafter.

4.1 Environmental Clearance

4.1.1 Environmental Impact Assessment

The environmental impact assessment began in India in the years 1976-77 when the Planning Commission asked the then Department of Science and Technology to examine the river-valley projects from an environmental perspective which was subsequently extended to the projects requiring approval of the Public Investment Board. However, these were only administrative decisions and were lacking in legislative support. Subsequently, the EP Act, 1986 was enacted and pursuant to Section 3(1) and 3(2)(v) of the Act read with Rule 5 of the Environment (Protection) Rules, 1986, environmental impact assessment became a statutory provision as contained in a notification^{ix} issued on 27th

January 1994 and subsequently amended on 4th May 1994, 10th April 1997 and 27th January 2000 thereby making environmental impact assessment statutory for 30 activities.^x This is the principal legislation which governs environmental impact assessment.

Owing to the fact that every human activity has an effect on the corresponding environment, it is essential to harmonise developmental activities with environmental concerns. Environmental Impact Assessment (EIA) is one of the tools available to ensure that the development options under consideration are sustainable. The objective of EIA is to detect the potential environmental problems likely to arise out of a proposed development project and to settle those problems in the planning and design stage itself thereby preventing future liabilities as well as expensive alterations in project design.

4.1.2 Environment (Siting for Industrial Projects) Rules, 1999

Environment (Siting for Industrial Projects) Rules, 1999 (1999 Rules) have been issued by the Central Government in exercise of the powers conferred on it by Section 3(2)(v) of the EP Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986. These rules mainly provide for three things:

- a. precautionary measures to be taken for site selecting
- b. areas to be avoided for siting of industries
- c. aspects of environmental protection which need to be incorporated during the implementation of the industrial development projects.

Rule 2 prohibits the setting up of certain industries^{xi} in the following areas:

- a. the entire area within the municipal limits of all Municipal Corporations, Municipal Councils and Nagar Panchayats and a 25 km belt around the cities having population of more than 1 million
- b. 7 km belt around the periphery of wetlands^{xii}
- c. 25 km belt around the periphery of National Parks, Sanctuaries and core zones of biosphere reserves
- d. 0.5 km wide strip on either side of national highways and rail lines.

Rule 4 prohibits the establishment of new units of

industries^{xiii} to be set up within 7 km periphery of the important archaeological monuments.^{xiv} Rule 2, nevertheless allows the establishment of new units in 7 km to 25 km belt around the periphery of the wetlands, however, with certain conditions that such allowance shall be given only after careful assessment of their adverse ecological and environmental impacts. Rule 3 imposes certain restrictions on the establishment of new units and expansion or modernization of existing units of the industries^{xv} in the Taj Trapezium.^{xvi} It lays down that they shall be regulated as per the guidelines laid down by the Central Pollution Control Board (CPCB).^{xvii}

4.1.3 *The Wild Life (Protection) Act, 1972*

Section 12 provides for grant of permit for special purposes. It lays down that the Chief Wild Life Warden may grant a permit to any person to hunt any wild animal specified in such permit, for the purpose of scientific research and derivation, collection or preparation of snake-venom for the manufacture of life-saving drugs, inter alia. Such permit shall be given by an order in writing stating the reasons there for and on payment of prescribed fee. However, proviso to the section further provides that such permit shall not be granted in respect of any wild animal specified in Schedule I, except with the prior permission of the Central Government, and in respect of any other wild animal, except with the prior permission of the State Government.

Chapter III-A of the Act has specified provisions to protect specified plants of sanctuaries, national parks, forests or such other notified area. Section 17D (1) prohibits dealing in specified plants without licence. It provides that any person shall not commence or carry on business or occupation as a dealer in a specified plant or its part or derivate without a licence granted by the Chief Wild Life Warden or any other officer authorised by the State Government. Moreover, every licence granted shall also specify the premises in which and the conditions under which the licensee shall carry on his business (Section 17D (1)).

4.1.4 *The Forest (Conservation) Act, 1980*

Section 2 provides that any State Government or other authority shall not make any order directing certain acts, without the prior approval of the Central Government. The acts are as follows:

- i. de-reserving any reserved forest or any portion thereof
- ii. use of any forest land or any portion thereof for any non-forest purpose
- iii. assignment of any forest land or any portion thereof by way of lease or otherwise to any private person, authority, corporation, agency or any other organisation not owned, managed or controlled by Government
- iv. clearing of trees which have grown naturally in forest land or portion there from from such land or portion, for the purpose of using it for re-afforestation.

The term 'non-forest purposes' has been defined in Section 2 as breaking up or cleaning of any forest land or its portion for

- a. the cultivation of tea, coffee, spices, rubber, palms, oil-bearing, plants, horticultural crops or medicinal plants or
- b. any purpose other than afforestation.

Section 2 further clarifies that non- forest purposes do not include any work relating or ancillary to conservation, development and management of forests and wildlife viz.

- a. the establishment of check-posts, fire lines, wireless communications and
- b. the construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

However, the State Governments chose to apply the vaguely defined term only to 'reserve forests' thereby effectively de-reserving other protected forests and allocating them for commercial or industrial use which led to large scale felling of trees.

Case study: Godavarman case and Chinnappa case

In T.N. Godavarman Thirumulkpad vs. Union of India

& Ors.,^{xviii} the meaning of 'forest' under Section 2(i) of the Forest Conservation Act, 1980 was interpreted. The Court held that forest must be understood according to its dictionary meaning which covers all statutorily recognised forests designated as reserved, protected or otherwise and the term 'forest land' as including any area recorded as forest in the Government record irrespective of its ownership. In short, forests are to be understood irrespective of the ownership or classification thereof. The Court ordered all non-forestry activities, such as saw mills and mining operations, which had not received explicit approval from the central government to cease operating immediately. Another significant aspect of the order was that the felling of trees in all forests was to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government.

The Act has undoubtedly helped in the prevention of degradation of forests due to the broad definition given by the Supreme Court to the term 'forest'. However, the Act fails to provide for a blanket ban on diversion of forest land for non-forest purposes. Moreover, the discretionary powers given to the Central Government provides scope for diverting forest land for non-forest purposes, that too, for reasons which may not completely valid.

4.1.5 The Biological Diversity Act, 2002

Section 3 provides that no person shall obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio survey and bio utilization without previous approval of the National Biodiversity Authority.

The persons who shall be required to take the approval of the National Biodiversity Authority include a body corporate, association or organization either not incorporated or registered in India; or incorporated or registered in India having any non-Indian participation in its share capital or management (Section 3(2)). Section 7 provides that a body corporate, association or organization which is registered in India, shall not obtain any biological resource for commercial utilization, or bio survey and bio utilization for commercial utilization

without giving prior intimation to the State Biodiversity Board concerned.

4.2 Disclosure of Information

There exist three categories of environmental disclosure viz. involuntary disclosure, voluntary disclosure and mandatory disclosure (Brophy, 1999: 178). Involuntary disclosure is the disclosure of information of a company's environmental activities without its prior permission as well as against its will. Voluntary disclosure is the disclosure of information of a company's environmental activities voluntarily by the company itself. Mandatory disclosure is the disclosure of information of a company's environmental activities as per the requirements of law.

In pursuance of the provisions of the EP Act, 1986, several rules have been issued by the Central Government which, inter alia, contain provisions relating to disclosure of information by corporations which can be classified under three heads, viz. information regarding industrial operations, accidents, and mitigation measures. It must be noted at this juncture that all the Rules mentioned hereinafter do not contain provisions requiring all the kinds of information mentioned above.

4.2.1 Bio- Medical Waste (Management and Handling) Rules, 1998

These rules were notified by the Central Government for the management and handling of bio-medical waste in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986. These rules apply to all persons who generate, receive, collect, transport, store, treat, dispose, or handle bio-medical waste in any form.

Rule 4 imposes a duty on every occupier of an institution generating bio-medical waste to take all steps to ensure that such waste is handled without any adverse effect to human health and the environment. Institution includes are hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank by whatever name it may be called.

Information regarding industrial operations

Rule 10 provides for submission of an Annual Report by every occupier to the prescribed authority by 31 January every year containing information about the categories and quantities of bio-medical wastes handled during the preceding year.

Information regarding accidents

Rule 12 lays down that when any accident occurs at any institution or facility or any other site where bio-medical waste is handled or during transportation of such waste, it shall be reported to the prescribed authority by the authorised person (occupier/ operator who possesses the necessary capacity to handle bio-medical waste in accordance with these rules and authorised as such by the prescribed authority).

4.2.2 Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996

The Central Government notified Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 (hereinafter Chemical Accidents Rules, 1996) for the management and handling of bio-medical waste in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986.

Information regarding mitigation measures

The Rules provide for the setting up of Crisis Group at the Central, State, and District levels to deal with major chemical accidents and to provide expert guidance for handling chemical accidents at the apex, State and District respectively.^{xix} The Chemical Accidents Rules, 1996 also provide for the Local Crisis Group (Rule 8) shall be the body in the industrial pocket to deal with chemical accidents and coordinate efforts in planning, preparedness and mitigation of a chemical accident (Rule 10). Rule 3(1) provides for the setting up of a Crisis Alert System by the Central Government.^{xx} Rule 13 provides that the Central Crisis Group and the State Crisis Group shall provide information to the public on request regarding chemical accident prevention, preparedness and mitigation in the country and the State respectively. It further provides that the Local Crisis Group shall also provide information to the public

on request regarding possible chemical accident at a site in the industrial pocket and related information (Rule 13(3)).

4.2.3 Manufacture, Storage and Import of Hazardous Chemical Rules, 1989

The Central Government notified these rules for the manufacture, storage and import of hazardous chemicals in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986.

Information regarding industrial operations

Rule 15(2) provides that the occupier shall take appropriate steps to inform persons about an industrial activity, before that activity is commenced and in the case of an existing industrial activity within 90 days of coming into operation of these rules.

Information regarding accidents

Rule 5 provides that where a major accident occurs on a site or in a pipe line, the occupier shall notify the concerned authority within 48 hours of that accident, and furnish thereafter to the concerned authority a report relating to the accidents in installments.

Information regarding mitigation measures

Rule 4 imposes general responsibility on an occupier who has control of an industrial activity to provide evidence to show that he has done the following:

- a. identified the major accident hazards; and
- b. taken adequate steps to
 - i. prevent such major accidents and to limit their consequences to persons and the environment;
 - ii. provide to the persons working on the site with the information, training and equipment including anti-dotes necessary to ensure their safety.

Rule 13 provides for an on-site emergency plan^{xxi} to be prepared by an occupier and kept up-to-date detailing how major accidents will be dealt with on the site on which the industrial activity is carried on. The plan shall also include the name of the person who is responsible for safety on the site and the names of those who are authorized to take action in case of an emergency. The occupier shall further ensure that the emergency plan

takes into account any modification made in the industrial activity and also that every person on the site who is affected by the plan is informed of its relevant provisions. The occupier shall prepare the emergency plan before the commencement of a new industrial activity, or within 90 days of commencement of these rules in case of an existing industrial activity. In addition, the occupier shall ensure that a mock drill of the on-site emergency plan is conducted every six months, a detailed report of which shall be made available to the concerned Authority immediately.

Rule 15 provides that the occupier shall take appropriate steps to inform all persons outside the site who are likely to be in an area which may be potentially affected by a major accident. The information shall include the nature of the major accident hazard, the safety measures and the do's and don'ts which should be adopted in the event of a major accident. Such information may be given either directly or through District Emergency Authority.

Rule 14 provides for preparation of an adequate off-site emergency plan by the concerned authority (identified in Column 2 of Schedule V) and kept up-to-date detailing how emergencies relating to a possible major accident on that site will be dealt with. The concerned authority shall also consult the occupier, and such other necessary persons in preparing that plan.

The concerned authority may require the occupier to provide him with such information relating to the industrial activity under his control as the concerned authority may require, including the nature, extent and likely effects off-site of possible major accidents to prepare the emergency plan. Rule 14(2) provides that the authority concerned shall also provide the occupier with any information from the off-site emergency plan which relates to his duties under rule 13. The concerned authority shall prepare the emergency plan before the commencement of a new industrial activity, or within 6 months of operation of these rules in case of an existing industrial activity.

4.2.4 Hazardous Wastes (Management and Handling) Rules, 1989

The Central Government notified these rules for the management and handling of hazardous wastes in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986.

Rule 4 provides for the responsibility of the occupier while handling wastes. It entails that the occupier generating hazardous wastes (listed in column 2 of the Schedule) in quantities equal to or exceeding the given limits (listed in column 2 of the Schedule) shall take all practical steps to ensure proper handling and disposal of such wastes without any adverse effects. The occupier shall be further responsible, either himself or through the operator of a facility, for proper collection, reception, treatment, storage and disposal of these wastes. He shall also give such information to the operator of a facility, as may be specified by the SPCB.

Information regarding industrial operations

Rule 9 provides that the occupier generating hazardous waste and operator of a facility for collection, reception, treatment, transport, storage and disposal of hazardous waste shall maintain records of such operations and send annual returns to the State Pollution Control Board.

Information regarding accidents

Rule 10 provides that the occupier or operator of a facility shall immediately report an accident which occurs at the facility or on a hazardous waste site or during transportation of hazardous wastes to the State Pollution Control Board.

4.2.5 Rules for the Manufacture, Use, Import, Export, and Storage of Hazardous Micro-organisms, Genetically Engineered Organisms or Cells, 1989

The Central Government notified these rules in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986 for the protection of the environment, nature and health, in connection with the application of gene technology and micro-organisms.

Information regarding accidents

Rule 16 imposes responsibility to notify any accidents or interruption of operations that may result in discharges of genetically engineered organisms or cells, harmful to the nature, environment or health or involving any danger thereto to the state medical officer and District Level Committee/State Biotechnology Co-ordination Committee. The rule imposes this responsibility on the persons who are responsible for conditions or arrangements under Rules 7 to 11.

4.2.6 Hazardous Wastes (Management, Handling and Trans-boundary Movement) Rules, 2008

The Central Government notified these rules for the management and handling of hazardous wastes in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986.

Information regarding accidents

Rule 24 provides for immediate reporting of accident which occurs at the facility or on a hazardous waste site or during transportation of the hazardous waste by the occupier or operator of the facility or the transporter to the State Pollution Control Board.

Information regarding mitigation measures

Rule 4(5) provides that while handling hazardous wastes, the occupier shall take all adequate steps to contain contaminants and prevent accidents and limit their consequences on human beings and the environment. It further lays down that the occupier shall provide necessary training, equipment and the information to persons working on the site to ensure their safety.

4.2.7 Batteries (Management and Handling) Rules, 2001

The Central Government notified Batteries (Management and Handling) Rules, 2001 for the management and handling of batteries in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986. These rules are applicable on every manufacturer, importer, re-conditioner, assembler, dealer, recycler, auctioneer, consumer and bulk consumer involved in manufacture, processing, sale, purchase and use of batteries or its

components (Rule 2).

Information regarding industrial operations

It is the responsibility of a manufacturer, importer, assembler and re-conditioner to file a half-yearly return of their sales and buy-back to the State Board by 30th June and 31st December every year (Rule 4(iii)). A dealer also has the responsibility of filing half-yearly returns of the sale of new batteries and buy-back of old batteries to the manufacturer by 31st May and 30th November every year (Rule 7(iv)). A recycler has to submit annual returns to the State Board (Rule 8(iii)) and to make all the records available for inspection to the State Board (Rule 8(iv)). A bulk consumer and an auctioneer also have the responsibility of filing half-yearly returns to the State Board (Rule 10(2)(ii) and Rule 11(ii)).

Information regarding mitigation measures

The rules have imposed the responsibility on manufacturer, importer, assembler, re-conditioner and recycler to create public awareness through advertisements, publications, posters or by other means with regard to the following (Rule 4(viii) and Rule 8(vi)):

- a. hazards of lead
- b. responsibility of consumers to return their used batteries only to the dealers or designated collection centres and
- c. addresses of dealers and designated collection centres.

4.2.8 Municipal Solid Wastes (Management and Handling) Rules, 2000

The Central Government notified these rules to regulate the management and handling of the municipal solid wastes in exercise of the powers conferred on it by Sections 6, 8 and 25 of the EP Act, 1986.

Information regarding industrial operations

Rule 4 imposes a responsibility on the municipal authority to furnish its annual report, with a copy to the State Board or the Committee, to

- a. the Secretary-in-charge of the Department of Urban Development of the concerned State or as the case may be of the Union territory, in case of a metropolitan

city; or

- b. the District Magistrate or the Deputy Commissioner concerned in case of all other towns and cities.

Information regarding accidents

Rule 9 provides that when an accident occurs at any municipal solid wastes collection, segregation, storage, processing, treatment and disposal facility or landfill site or during the transportation of such wastes, the municipal authority shall forthwith report the accident to the Secretary in-charge of the Urban Development Department in metropolitan cities, and to District Collector or Deputy Commissioner in all other cases.

4.3 Assistance to Authorities

It is essential for the corporate entities to provide assistance to the authorities with respect to giving information about industrial operations, assisting during inspection and investigation and taking of samples, filing returns and providing co-operation. These are provided for in the legislations which have been discussed hereinafter:

4.3.1 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 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 thereto 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 purposes.

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.

4.3.2 The Air (Prevention and Control of Pollution) Act, 1981

Information

Section 23(1) provides that when the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur as a result of an accident or other unforeseen act or event, the person in charge of the premises from where such emission occurs or is apprehended to occur shall immediately inform the State Board and such prescribed authorities or agencies about the same.

Section 25 provides that the State Board or any officer so empowered may call for any information (including information regarding the types of air pollutants emitted into the atmosphere and the level of the emission of such air pollutants) from the occupier or any other person carrying on any industry or operating any control equipment or industrial plant.

Inspection and Investigation

Section 25 also provides the State Board or such officer with the right to inspect the premises of any industry, or from where control equipment or industrial plant is being carried on or operated for the purpose of verifying the correctness of the information given by the occupier or any other person carrying on any industry or operating any control equipment or industrial plant.

Section 24 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 purposes.

Co-operation

Section 24(2) further makes it binding on every person operating any control equipment or any industrial plant in an air pollution control area to render all assistance to the person empowered by the State Board for carrying out his functions, failing to do which without any reasonable cause or excuse shall make him guilty of an offence under this Act.

Taking samples

Section 26 provides that a State Board or any officer so empowered shall have power to take samples of air or emission from any chimney, flue or duct or any other outlet in such manner as may be prescribed, for the purpose of analysis.

4.3.3 The Environment (Protection) Act, 1986*Information*

Section 9(1) provides that where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall immediately intimate the fact of such occurrence or apprehension of such occurrence to the prescribed authorities or agencies.

Inspection and Investigation

Section 10(1) vests the power of entry to and inspection of any place on any person empowered by the Central Government, with such considered necessary assistance, for several purposes.

Co-operation

Section 10(2) further makes it binding on every person operating any hazardous substance to render all assistance to the person empowered by the Central Government for carrying out his functions, failing to do which without any reasonable cause or excuse shall make him guilty of an offence under this Act.

Taking samples

Section 11 provides that the Central Government or any officer so empowered shall have power to take samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed, for the purpose of analysis.

Returns

Section 20 provides that the Central Government may require any person, officer, State Government or other authority to furnish to it or any prescribed authority or officer any reports, returns, statistics, accounts and other information which they will be bound to do.

Inspection is a key function of State Pollution Control Boards (hereinafter SPCB). The frequency of on-site visits to verify compliance is determined by the pollution potential (red/orange/green) and size (based on the value of capital investment) of the industry. The Central Pollution Control Board (hereinafter CPCB) guidance on the frequency of regular inspections is presented in Table 1. However, individual states have different interpretations of the guidance viz. red category facilities are supposed to be inspected once a month in Gujarat, once every three months in Orissa, and once every two years in West Bengal.^{xvii} In addition to inspections for evaluating compliance, SPCBs conduct inspections in response to complaints and sometimes as part of the consent renewal process.

There are no standard inspection and sampling procedures prescribed either in the Water Act, Air Act

Table 1: Minimum Frequency of Inspections: CPCB Guidelines^{xxiii}

Size of Industry	Category of Pollution Potential	Inspection Frequency
Large and medium sized	Red	Once every 3 months
	Orange	Once a year
	Green	Once in 2 years
Small scale (capital investment of less than Rs. 10000)	Red	Once a year
	Orange	Once in 3 years
	Green	Once in 5 years

or EP Act, or the rules. The CPCB and SPCBs also have not issued uniform guidelines. Resultantly, Boards develop and apply their own methods, which is an inefficient way to use limited agency resources viz. deficiency of the sampling procedure is quoted as one of the main reasons why courts often rule against the government.

Since there are very few SPCB inspectors who have to visit a number of facilities, they are under tremendous pressure to complete inspections as soon as possible which limits their effectiveness and results in poor detection of violations.

4.4 Conforming To Standards

The mode of controlling pollution by the setting of standards is a debatable issue. In India, the standards have been challenged for being too relaxed, too strict, or just irrelevant. The Ministry of Environment and Forests has stipulated standards for general waste water discharge and emission which limit the volumes and concentration of the emissions and effluents released into the atmosphere. There are specific standards for certain industries and they are generally more strict for the new plants in comparison to the existing ones. The corporate entities also have the responsibility to adhere and conform to standards prescribed under various legislations. The relevant provisions have been discussed hereinafter:

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

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.

4.4.2 The Air (Prevention And Control of Pollution) Act, 1981

Section 22 provides that persons operating any industrial plant, in any air pollution control area shall not discharge or cause or permit the discharge of the emission of any air pollutant exceeding the standard laid down by State Board.

4.4.3 The Environment (Protection) Act, 1986

Section 7 provides that persons carrying on any industry, operation or process shall not emit or permit the discharge or emission of any environmental pollutants in excess of prescribed standards. The Central Government has framed the Environment (Protection) Rules, 1986 (hereinafter EP Rules) to implement this mandate. The standards are set out in the schedules appended to the Rules. The standards can be broadly classified into three, viz (Divan & Rosencranz, 2001: 68): Source standards require the polluter to restrict at source the emission and discharge of environmental pollutants. Product standards fix the pollution norms for new manufactured products. Ambient standards set maximum pollutants loads in the air and guide regulators on the environmental quality that ought to be maintained for healthy living.

Source standards

Schedule I lays down industry specific standards for effluent discharge and emissions for 89 designated industries. Every industrial unit must comply with the norms within a year of their publication (Rule 3(3)) or such shorter period that may be ordered by the Pollution Control Board (Rule 3(4)). The Central Government may specify a period beyond a year for compliance for any specific industry (Rule 3(4) (b)). The industrial units which are not covered under Schedule I must comply with the general standards for discharge of environmental pollutants prescribed in Schedule VI (Rule 3(3A)). The general standards are also known as minimum national standards because they represent the least amount of parameters to be met by every industry until specific standards are notified under Schedule I. The Pollution Control Boards are empowered to specify stricter standards than the ones published where necessary (Rules 3(2) and 3A).

Product standards

Part E (A) of Schedule VI prescribes noise standards and Schedule IV emission standards for automobiles at the manufacturing stage. Domestic appliances such as air conditioners, refrigerators, air coolers and construction equipment such as concrete mixers, cranes, saws are required to meet prescribed noise standards (Part E (B) of Schedule VI).

Ambient standards

Schedules III and VII prescribe national ambient air quality standards in respect of noise and other air pollutants. The levels of ambient air quality have been fixed after providing an adequate margin of safety to protect public health, vegetation and property ((Divan & Rosencranz, 2001: 69).

Section 8 of the EP Act, 1986 provides that persons handling hazardous substances shall do so in accordance with prescribed procedure after complying with prescribed safeguards.

State Pollution Control Board (SPCB) are vested with the primary enforcement powers in the states, while the Central Pollution Control Board (CPCB) performs the same for union territories. The CPCB's role is to provide

technical assistance and guidance to the SPCBs as well as to coordinate activities among the states. Further, the CPCB exercises general oversight and may temporarily assume SPCB functions, in case of failure of a State Board to comply with a CPCB direction.. An issue of coordination between SPCBs and other state-level government agencies entrusted with some environment-related responsibilities, including departments of transport (with respect to mobile source pollution), of urban development (municipal waste), of industries (siting of industrial facilities), etc. SPCBs also receive administrative directions as well as funding from their respective state governments. This results in the formation of a dual chain of command which leads to problems owing to the fact that the CPCB's proposed actions are not effectively implemented at times due to state government's indifference or inaction .

A brief glance of the pollution control laws brings to light the fact that the cost of compliance is significantly higher than the cost of defiance thereby rendering the penalties prescribed under the Acts ineffective. For example, the penal provisions for violation of the Water Act are imprisonment for a term which may extend to three months, or with a fine which may extend to Rs. 10000 or with both, and in case violation continues an additional fine of up to Rs. 5000 for every such violation. Penal provisions alone cannot discourage violations of environmental laws, it has to be supported by incentives for better compliance.

5. Self-Regulation Measures By Corporate Entities

5.1 Environmental Management System (EMS)

The British Standards Institute defines an Environmental Management System as "the organizational structure, responsibilities, practices, procedures, processes and resources for determining and implementing environmental policy" (Netherwood, 1999: 36). Environmental Management System (EMS) is a framework that helps a company achieve its environmental goals through consistent control of its operations. However, the EMS itself does not dictate a level of environmental performance that must be achieved. EMS is a set of processes and practices that enable an organization to reduce its environmental

impacts and increase its operating efficiency.

The environmental management system is based on the following four principles (Starkey, 1999: 87-88):

- An organization should have a purpose
- It should have commitment towards taking appropriate actions for the realisation of the purpose
- It should have the capability of performing the actions required for the fulfilment of the purpose
- It should continuously keep learning to perform better and improve its management system.

The basic stages of the Environmental Management System of an organization are as under (Netherwood, 1999: 36-37):

- a policy statement which indicates commitment to the improvement of the environment and protection and conservation of the natural resources
- plans and programmes to implement the policy within and outside the organization
- integration of these plans into the daily activities and culture of the organization
- audit and review of the environmental management



Figure 2: Environmental Management System [Source: Netherwood, 1999:39]

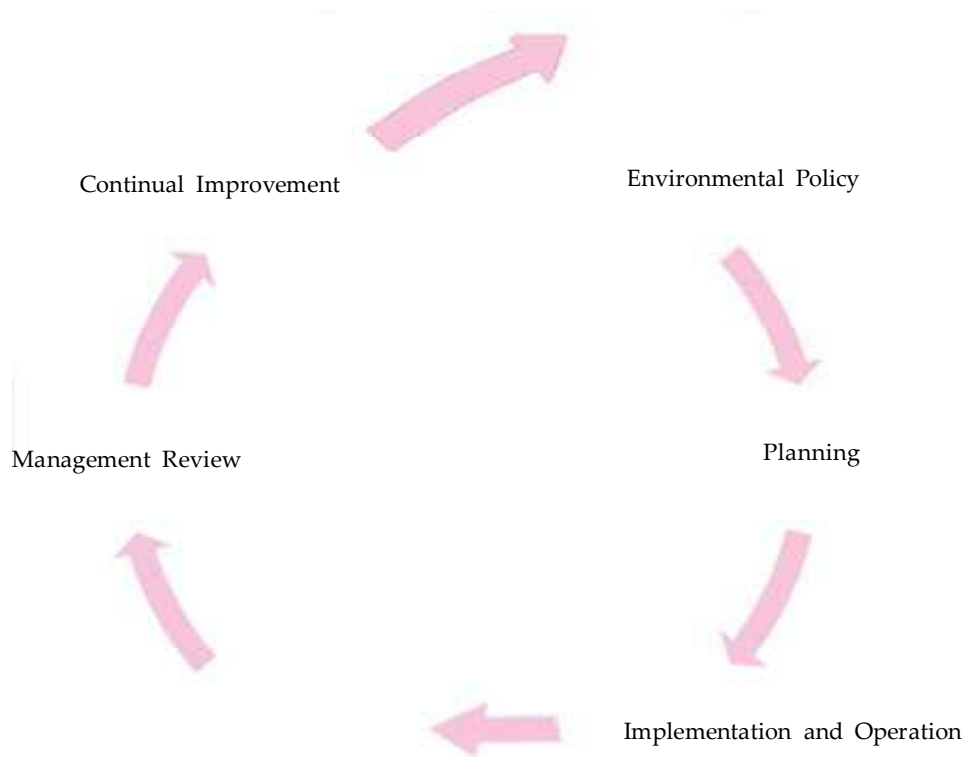


Figure 3: EMS Model as per ISO 14000 [Source: Goetsch& Davis, 2001: 103]

performance of the organization

- provision of education and training to increase understanding of environmental issues within the organization
- publication of information regarding the environmental performance of the organization.

The basic stages of the Environmental Management System can be better depicted graphically (figure 2).

EMS Model as per ISO 14000

ISO 14000 does not suggest an environmental management system as it is difficult to design a single structure which fits all organizations. ISO 14001 and 14004 specify the fundamental requirements of an EMS from which the organization can translate into an EMS structure. ISO 14000 EMS model is shown in the figure 3.

5.2 International Organization for Standardization (ISO)

ISO launched its environmental management system standard, ISO 14000 in 1996,. The standard provides tools for companies and organizations to help them identify as well as control their environmental impact. ISO 14000 is based on a set of principles which are as follows (Starkey, 1999: 90):

Principle 1- An organization should define its policy and ensure commitment to EMS.

Principle 2- An organization should formulate a plan to fulfil its environmental policy.

Principle 3- An organization should develop the capabilities and support mechanisms to achieve its environmental policy, objectives and targets.

Principle 4- An organization should measure, monitor and evaluate its environmental performance.

Principle 5- An organization should review and continually improve its EMS with an objective of improving its overall environmental performance.

5.2.1 Objectives of ISO

The fundamental objective of ISO 14000 is to assist organizations in preventing environmental impacts of the organizations' activities, products, or services. Organizations adhering to ISO 14000 can be assured that their environmental performance meets and will continually meet its legal and policy requirements. ISO 14000 does not establish environmental goals or impose absolute environmental performance requirements; these are for the organization and the respective regulatory agencies to determine (Goetsch & Davis, 2001: 7).

ISO 14000 environmental management standards exist to help the organization to do the following:

- Comply with applicable laws, regulations and other environmentally oriented requirements and
- Minimize the negative effect of their operations on the environment
- Continuously strive to improve in the above mentioned fields.

The ISO 14000 family addresses several aspects of environmental management. It provides practical tools for companies and organizations seeking to identify and control their environmental impact as well as to constantly improve their environmental performance. ISO 14001: 2004 and ISO 14004:2004 particularly focus on environmental management systems (EMS).

ISO 14001: 2004

ISO 14001 : 2004 sets out the criteria for an environmental management system. It does not state requirements for environmental performance, but provides a framework that a company or organization can follow to set up an effective EMS. ISO 14001: 2004 provides specific requirements for an EMS to enable an organization to develop and implement a policy which take into account legal and other requirements to which the organization subscribes in addition to information about significant environmental aspects. It applies to those environmental

aspects which the organization identifies as those which it can influence and control. It does not state specific environmental performance criteria though. It can be used by any organization regardless of its activity or sector. The extent of the application will depend on factors such as the environmental policy of the organization, the nature of its activities, products and services and the location where and the conditions in which it functions.

The benefits of using ISO 14001:2004 include reduced cost of waste management, savings in consumption of energy and materials, lower distribution costs, improved corporate image among regulators, customers and the public.^{xxiv}

ISO 14004:2004

ISO 14004:2004 provides guidance on the establishment, implementation, maintenance and improvement of an environmental management system and its coordination with other management systems. The guidelines in ISO 14004:2004 are applicable to any organization, regardless of its size, type, location or level of maturity.^{xxv}

ISO 26000:2010

ISO 26000 provides guidance with regard to how businesses and organizations can operate in a socially responsible way i.e. act in an ethical and transparent manner which contributes to the welfare of society. It helps clarify the concept of social responsibility and shares best practices relating to social responsibility thereby helping companies to give effect to principles. It is applicable on all types of organizations regardless of their activity, size or location.^{xxvi} As ISO 26000:2010 provides guidance rather than requirements; it is not used for certification purposes.^{xxvii}

ISO 26000 addresses seven core subjects of social responsibility of which environment is one including prevention of pollution, sustainable resource use, climate change mitigation and adaptation, protection of the environment, biodiversity and restoration of natural habitats.^{xxviii}

5.3 Corporate Social Responsibility Voluntary Guidelines, 2009^{xxix}

The Ministry of Corporate Affairs issued the Corporate Social Responsibility Voluntary Guidelines, 2009 were issued by in order to guide business entities strategic planning and to provide a roadmap for their CSR initiatives. The Guidelines list several core elements, of which Respect for Environment is one. Respect for Environment entails companies should do the following:

- a. take measures to check and prevent pollution
- b. recycle, manage and reduce waste
- c. manage natural resources in a sustainable manner
- d. ensure optimal use of resources like land and water
- e. proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.

5.4 Guidelines on Corporate Social Responsibility for Central Public Sector Enterprises, 2007^{xxx}

The Guidelines provide several parameters for selection of projects for CSR initiatives of Central Public Sector Enterprises (CPSEs) out of which the ones mentioned below indicate environmental considerations, viz.

- a. CSR activities may be related to United Nations Global Compact Programme on Environment.
- b. CSR projects may be closely linked with the principles of Sustainable Development, based on the immediate and long-term social and environmental consequences of their activities.
- c. Every CPSE should shoulder responsibility for restoring or compensating for any ecological damage that is taking place as a result of its operations.

The Guidelines go on to say that activities related to sustainable development will form a significant element of the total initiatives of CSR and such activities should come under the 3 UN Global Compact Principles pertaining to the Environment in pursuance of which companies should:

- a. Support a precautionary approach to environmental challenges;

- b. Undertake initiatives to promote greater environmental responsibility;
- c. Encourage the development and diffusion of environment friendly technologies.

The Guidelines also urge the Companies to consider the Environmental Management System as per ISO 14001.

5.5 National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business, 2011^{xxxi}

A refined version of the Corporate Social Responsibility Voluntary Guidelines 2009 was released by the Ministry of Corporate Affairs in December 2009. Due consideration has been given to significant inputs received from diverse stakeholder groups from all over the country in the preparation of these guidelines, based on which appropriate changes have been made in the Guidelines of 2009. These Guidelines provide the basic requirements for responsible functioning of businesses.

Principle 6 lays down that business should respect, protect, and make efforts to restore the environment. The principle recognizes environmental responsibility as a prerequisite for sustainable economic growth and well-being of the society. It emphasizes that environmental issues are interconnected at the local, regional and global levels and therefore, businesses should address issues such as global warming, biodiversity conservation and climate change in a comprehensive and systematic manner. It further encourages businesses to be accountable for direct and indirect environmental impacts of their operations, products and services and to constantly strive to make them environment friendly. In addition, it urges businesses to follow the precautionary principle and not go ahead with a particular action if it is unsure of its adverse impacts. The Core Elements of this Principle entails the businesses to take several environment friendly actions.

5.6 Reserve Bank of India Circular on Corporate Social Responsibility, Sustainable Development and Non-Financial Reporting-Role of Banks, 2007^{xxxii}

The Circular sought to spread awareness about Corporate Social Responsibility (CSR), Sustainable Development (SD) and Non-Financial Reporting (NFR) among banks. It says that banks need to integrate the concepts of Corporate Social Responsibility (CSR) and Sustainability with their business strategy which can be done through:

1. *Commitment to Sustainability*

Commitment to sustainability entail that banks must expand the scope of their activities from that of profit maximization to that of promoting social and environmental sustainability.

2. *Commitment to 'Do No Harm'*

Commitment to 'do no harm' entail that banks should prevent and minimize the environmentally and socially detrimental impacts of their operations.

3. *Commitment to Responsibility*

Commitment to responsibility entail that banks should bear full responsibility for the environmental and social bearings of their transactions.

4. *Commitment to Accountability*

Commitment to accountability entail that banks must be accountable to their stakeholders, especially those that are affected by the activities and side effects of companies they finance.

5.7 The Companies Act, 2013

Section 135 provides 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 any financial year shall constitute a Corporate Social Responsibility Committee of the Board. It shall consist of three or more directors, including at least one independent director (Section 135(1)). The Board of every company shall ensure that the company spends at least 2% of the average net profits of the company made

during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy in every financial year (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 (Proviso to Section 135(5)).

Schedule VII enlists activities which may be included by companies in their Corporate Social Responsibility Policies and the list, inter alia, provides for activities relating to ensuring environmental sustainability as well. The Act does not make 2% spending on CSR mandatory and also makes 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 thorough perusal of these self-regulatory measures evidences the fact that they are all voluntary and not obligatory in nature. The corporates 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 amounts merely to an explanation in the Annual Report and no more.

6. Criminal Liability of Corporate Entities

The criminal liability of corporate entities can be discussed under two major heads i.e. offences by companies and offences by government departments.

6.1 Offences by Companies

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

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 accord-

ingly.

In addition, Section 47(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 of the company, such 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.

A proviso to 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 diligence to prevent the commission of such offence.

6.1.2 The Air (Prevention and Control of Pollution) Act, 1981

Section 40 provides for criminal liability in case of offences committed by companies. Section 40 is similar to Section 47 under the Water Act Section.

6.1.3 The Environment (Protection) Act, 1986

Section 16 provides for criminal liability in case of offences committed by companies. Section 16 is also similar to Section 48 under the Water Act.

6.2 Offences by Government Departments

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

Section 48 provides for criminal liability in case of offences committed by Government Departments. It provides that the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Similar to the exception proviso to Section 47, a proviso to Section 48 also provides for an exception to criminal

liability of the Head of the Department on similar grounds.

6.2.2 The Air (Prevention and Control of Pollution) Act, 1981

Section 41 is similar to Section 48 under the Water Act in as much as it also holds the Head of Department to be guilty and liable to be prosecuted and punished and also provides for an exception to his criminal liability.

In addition to this, Section 41(2) provides that where an offence has been proved to be committed with the consent or connivance of, or is attributable to any neglect on the part of any other officer, he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6.2.3 The Environment (Protection) Act, 1986

Section 17 is similar to Section 41 of the Air Act in as much as it also holds the Head of Department to be guilty and liable to be prosecuted and punished and providing for an exception to his criminal liability and also in as much as it holds any other officer guilty and liable to be prosecuted and punished if in offence is proved against him.

6.3 Case Laws Regarding Criminal Liability of Corporate Entities

6.3.1 Uttar Pradesh Pollution Control Board vs. Mohan Meakins Ltd.

In *Uttar Pradesh Pollution Control Board vs. Mohan Meakins Ltd.*,^{xxiii} 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.

6.3.2 Uttar Pradesh Pollution Control Board vs. Modi Distillery and ors.

In *Uttar Pradesh Pollution Control Board vs. Modi*

Distillery and ors.,^{xxxiv} Modidistillery, 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 that unit. Therefore, they could be deemed to be guilty of the offence with which they were charged.

6.3.3 K.K. Nandi vs. Amitabha Banerjee

In K.K. Nandi vs. Amitabha Banerjee,^{xxxv} 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 facie 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.

6.3.4 Mahmud Ali vs. State Of Bihar and anr.

In Mahmud Ali vs. State Of Bihar and anr.,^{xxxvi} the Bihar State Water Pollution Control and Prevention Board had instituted a complaint against M/s. M. A. Paper and Card Board Factory (P) Ltd., for offences punishable under Sections 41 and 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 environmental 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/or responsible to the Company for the conduct of the business of the Company and that no specific allegation had been levelled 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.

6.3.5 Haryana State Board vs. Jai Bharat Woollen Finishing Works

In *Haryana State Board vs. Jai Bharat Woollen Finishing Works*,^{xxxvii} the Haryana State Board for Prevention and Control of Water Pollution, through its Assistant Environmental Engineer, filed a complaint under Sections 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, SubhashChander, 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.

6.3.6 N.A. Palkhivala and anr. vs. Madhya Pradesh Pradushan Niwaran

In *N.A. Palkhivala and anr. vs. Madhya Pradesh Pradushan Niwaran*,^{xxxviii} it was held that the duties and responsibilities of the Chairman and Deputy Chairman bear no resemblance to that of the manager and hence, it 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 conduct of its business. It was the obligation of 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 charge of and responsible for the conduct of the business of the company to hold them liable.

7. Conclusion and Suggestions

In conclusion, 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 corporates. Initially the Government harboured a carefree attitude towards its regulation but subsequent to the Bhopal gas tragedy, it jumped into action and enacted a plethora of legislations and rules in addition to formulating several policies and guidelines in order to regulate corporates carrying on business in India especially with regard to their social and environmental responsibilities.

A perusal of the legislative framework quite evidently points out the fact that there is no dearth of law to regulate corporates but their impact is limited in the sense that they encompass a narrow field of the environmental impacts of business activities carried out by the corporates. The provisions relating to the corporate environmental and social responsibilities are basically in the form of guidelines and not at all binding in nature. This undermines the efficacy of the said policies and guidelines.

However, 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.

Nevertheless, the enactment and formulation of all the said legislations, rules, policies and guidelines is definitely a positive step towards regulation of these corporates in comparison to the situation that existed at the time of the Bhopal gas tragedy.

With respect to the carrying out of corporate environmental and social responsibilities by corporate entities in actual practice, the researcher carried out a case study of five of the topmost corporates carrying

on business in India in both public and private sectors. A perusal of the data shows that the corporates do not have a separate Corporate Environment Responsibility policy except for one; the rest have integrated environmental responsibilities in their Corporate Social Responsibility policies. They have undertaken several steps towards the fulfilment of their environmental responsibilities and have also reported about it in the form of Sustainability Reports. However, the accuracy of these reports remains to be tested specially on the parameters of whether they are mere greenwash.

The researchers seek to make a few suggestions with

regard to corporate environmental and social responsibilities in the light of the research undertaken. First of all, efforts have to be made for the evolution of a consolidated law on the matter. Second, the corporates have to be made to realise that activities in respect of corporate environmental responsibility is not philanthropic in nature but a must duty on their part.

Third, policies on corporate environmental responsibility have to be made binding in such manner that it does not hamper the prospects of the corporates and at the same time succeeds in affording better protection to the environment.

Annex I

Table 2: Disclosure of Information

Sl. No	Rules	Disclosure of information regarding industrial operations	Disclosure of information regarding accidents	Disclosure of information regarding mitigation measures
1.	Bio- Medical Waste (Management and Handling) Rules, 1998.	Rule 10	Rule 12	
2.	Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996.			Rules 3, 6, 8
3.	Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.	Rule 15(2)	Rule 5	Rules 4, 13, 14, 15
4.	Hazardous Wastes (Management and Handling) Rules, 1989.	Rule 9	Rule 10	
5.	Rules for the Manufacture, Use, Import, Export, and Storage of Hazardous Micro- organisms, Genetically Engineered Organisms or Cells, 1989		Rule 16	
6.	Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008.		Rule 24	Rule 4(5)
7.	Batteries (Management and Handling) Rules, 2001.	Rules 4(iii), 7(iv), 8(iii), 8(iv), 10(2)(ii) 11(ii)		Rules 4(viii), 8(vi)
8.	Municipal Solid Wastes (Management and Handling) Rules, 2000.	Rule 4	Rule 9	

Annex II

Table 3: Assistance to Authorities

Sl.No	Legislation	Information	Inspection & Investigation	Co-operation	Taking Samples	Returns
1.	The Water (Prevention and Control of Pollution) Act, 1974	Sections 20(3), 31	Section 23		Section 21	
2.	The Air (Prevention And Control of Pollution) Act, 1981	Sections 23(1), 25	Section 24, 25	Section 24(2)	Section 26	
3.	The Environmental (Protection) Act, 1986	Section 9(1)	Section 10(1)		Section 11	Section 20

End Note

- i The European Multi-Stakeholder Forum, where the European Council first pushed for adoption of CSR principles by business, adopted this definition in its final report on Corporate Social Responsibility. Available at, http://ec.europa.eu/enterprise/mobile/topics/policies/sustainable-business/corporate-social-responsibility/index_en.htm (Last visited on January 10, 2014).
- ii AIR 1987 SC 1086 (Supreme Court of India).
- iii AIR 1996 SC 1446 (Supreme Court of India).
- iv The relief has been specified in the Schedule attached to the Public Liability Insurance Act, 1991.
- v Section 38, The National Green Tribunal Act, 2010.
- vi The NGT has been set up by the Central Government. The first Green Tribunal was officially notified on October 19, 2010 and Lokeshwar Singh Panta J. was appointed as the Chairperson of the Tribunal.
- vii Schedule I, The National Green Tribunal Act, 2010. The enactments are The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; The Biological Diversity Act, 2002.
- viii The Tribunal has benches at New Delhi, Bhopal, Pune, Kolkata and Chennai.
- ix Notification can be accessed online, available at <http://envfor.nic.in/sites/default/files/EIA%20Notification.pdf> (Last visited on January 14, 2014).
- x The list of these activities can be accessed online, available at <http://envfor.nic.in/sites/default/files/EIA%20Notification.pdf> (Last visited on January 14, 2014).
- xi listed in Annexure-I, 1999 Rules.
- xii listed in Annexure-II, 1999 Rules.
- xiii listed in Annexure-III, 1999 Rules.
- xiv listed in Annexure-IV, 1999 Rules.
- xv listed in Annexure-I, 1999 Rules.
- xvi An area of 10400 sq.km. between 26°45'N and 77°15'E to 27°45'N and 77°15'E to the West of TajMahal and between 27°00'N and 78°30'N and 78°30'E to the East of TajMahal, known as the Taj Trapezium.
- xvii The CPCB has specifically laid down Guidelines for this area entitled 'Inventory and Assessment of Pollution Emission in and around Agra-Mathura Region (Abridged)'.
- xviii (1996) 9 S.C.R. 982 (Supreme Court of India).
- xix Rules 3, 6 of 8 the Chemical Accidents Rules, 1996.
- xx Crisis Alert System consists of the following:
- setting up a functional control room at such place which is deemed fit;
 - setting up an information networking system with the State and district control rooms;
 - appointing adequate staff and experts to man the functional control room;
 - publishing a list of Major Accident Hazard installations;
 - publishing a list of major chemical accidents in chronological order;
 - publishing a list of members of the Central, State and District Crisis Groups;
 - taking measures to create awareness amongst the public to prevent chemical accidents.
- xxi It contains details specified in Schedule II of the Rules.

- xxii http://www.cccindia.co/corecentre/Database/Docs/DocFiles/environmental_india.pdf (Last visited on January 16, 2014).
- xxiii Ibid.
- xxiv <http://www.iso.org/iso/home/standards/management-standards/iso14000.htm>(Last visited in January 18, 2014).
- xxv http://www.iso.org/iso/catalogue_detail?csnumber=31808(Last visited on January 18, 2014).
- xxvi <http://www.iso.org/iso/home/standards/iso26000.htm> (Last visited on January 18, 2014).
- xxvii http://www.iso.org/iso/catalogue_detail?csnumber=42546 (Last visited on January 18, 2014).
- xxviii http://www.iso.org/iso/discovering_iso_26000.pdf(Last visited on January 18, 2014).
- xxix The Corporate Social Responsibility Voluntary Guidelines, 2009 are available at:http://www.nfcgindia.org/pdf/CSR_Voluntary_Guidelines_2009.pdf (Last visited on January 10, 2014).
- xxx The Guidelines on Corporate Social Responsibility for Central Public Sector Enterprises, 2007 are available at: <http://www.hindustanpetroleum.com/Upload/En/UPdf/DPECSR1.pdf> (Last visited on January 10, 2014).
- xxxi The National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business, 2011 are available at: http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf (Last visited on January 10, 2014).
- xxxii Reserve Bank of India Circular on Corporate Social Responsibility, Sustainable Development and Non-Financial Reporting-Role of Banks dated December 20, 2007 is available at: <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/82186.pdf> (Last visited on January 10, 2014).
- xxxiii AIR 2000 SC 1456 (Supreme Court of India).
- xxxiv AIR 1988 SC 1128 (Supreme Court of India).
- xxxv 1983 CriLJ 1479 (Supreme Court of India).
- xxxvi AIR 1986 Pat 133 (Patna High Court).
- xxxvii 1993 CriLJ 384 (Punjab- Haryana High Court).
- xxxviii 1990 CriLJ 1856 (Supreme Court of India).
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