

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE
SOCIAL RESPONSIBILITY: GUIDELINES AND PRINCIPLE VICE
VERSA INDIAN GUIDELINES**

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RESPONSIBILITY: GUIDELINES AND PRINCIPLE VICE VERSA INDIAN
GUIDELINES**

“In my view the successful companies of the future will be those that integrate business and employees' personal values. The best people want to do work that contributes to society with a company whose values they share, where their actions count and their views matter.”

Jeroen van der Veer, Committee of Managing Directors (Shell)

5.1 INTRODUCTION

The fifth part investigations the universally perceived Corporate Social Responsibility Guidelines and Principle the other way around Indian Guidelines. This chapter talks about the universally perceived corporate social obligation Standards and Guidelines i.e. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy³⁰³, OECD Guidelines for Multinational Enterprises³⁰⁴, UN Global Compact and The Universal Declaration of Human Rights. Besides, concentrate on Indian rules keeping in mind the end goal to dissect the points of interest and hindrances of the CSR arrangements under S.135 of Companies Act 2013. This study will prompt the examination of the current CSR arrangements under S.135 of Companies Act 2013. Additionally certain corporate embarrassments identified with CSR are talked about.

³⁰³ <http://www.ilo.org/>. Last visited on 01-03-2016 at 22.31.

³⁰⁴ <http://www.oecd.org/corporate/mne/>. Last visited on 07-04-2016 at 22.52.

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

CSR practices are followed in India in past too. In India the emphasis was on giving help to the poor, in any case it is not by any stretch of the imagination CSR. It is an action which is not faced off regarding or talked about yet rather actualized. In India CSR exercises have created by method of a few undertakings like institutional improvement, group advancement and it concentrates on the use of benefits made by an organization for society, economy and ecological improvement also. Besides, making up such strides were a humanitarian effort for all partnerships till it was made required by the Companies Act 2013. As in European Union the accentuation is on practical business technique, in this way the same CSR pattern is currently developing in India too.

CSR is firmly associated with the adage of supportable improvement, it expresses that organizations ought to make strategies construct not just in light of elements like benefits, profits additionally it ought to be built up on short and long haul social and ecological impacts because of its business exercises. Confederation of Indian Industry (CII) has gone for advancing eco-accommodating modern operations through Environment Management Services³⁰⁵. In this manner it can be expressed that corporate social duty would imply that organizations ought to be more sober minded so as to break down the constructive and pessimistic impacts of their business exercises and choices which influences the general population and society on the loose.

The goal of the Corporate Social Responsibility (CSR) ('Policy') is to set up rules for companies to make Corporate Social Responsibility (CSR) as one of the key center ranges in understanding to CSR arrangements as expressed under various global principles and rules³⁰⁶.

³⁰⁵ <http://www.cii.in/>. Last visited on 01-12-2016 at 12.00.

³⁰⁶ BHATTACHARYA, CB; SEN, SANKAR; KORSCHUN, DANIEL (2011). LEVERAGING CORPORATE SOCIAL RESPONSIBILITY: THE STAKEHOLDER ROUTE TO BUSINESS AND SOCIAL VALUE. CAMBRIDGE: UK: CAMBRIDGE UNIVERSITY PRESS.

5.2 ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT GUIDELINES FOR MULTINATIONAL ENTERPRISE

There are thirty individuals in the Organization for Economic Co-operation and Development (OECD). Additionally ten non-part nations like Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia have likewise taken after the Guidelines . For this there are two boards of trustees, the Business and Industry Advisory Committee and the Trade Union Advisory Committee for the advancement and supporting the rules. OECD additionally underpins

the Guidelines. OECD screens a coalition of about 65 common society associations. The OECD Multinational Enterprises offers a complete code which is adjusted and supported and displays the commonly shared estimations of the followed nations. The motivation behind the OECD MNE Guidelines is to offer an equilibrated, versatile - embraced, and exhaustive Code that communicates the mutual estimations of followed governments. These are rules together concurred by multinational undertakings which express the guidelines and standards which are good with existing laws. The Guidelines supports compelling commitments of multinational organizations which they can execute towards natural, financial and social advancement. The rules gives a reasonable arrangement of reckonings which is made out of intentional suggestions in real ranges identified with vocation, mechanical relations, environment, rivalry, engaging pay off, human rights, tax assessment, purchaser welfare, innovation and corporate citizenship. These are incorporated a portion of OECD venture instrument. The presentation on Multinational Enterprises and International venture are outlined with a specific end goal to support direct speculation and for global financial advancement. The rules are official and contain wilful elements .Binding governments are resolved to advance them among multinational organizations working in their particular domains. National Contact Points bolster intercession and placation methodology which is known as particular occasions. It includes claims if the

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

Guidelines have been abused. About 160 particular cases were considered by the National Contact Points since 2000.

According to study it has been seen that enterprises allude to the Guidelines in their CSR strategies. Following governments meet every year at the OECD. They answer to the Investment Committee. Speculation Committee leads an associate survey of execution. The Guidelines were outlined keeping in mind the end goal to bulk up the universal standardizing system. It is in reference with the ILO Declaration, the Universal Declaration of Human Rights, Agenda 21, the Copenhagen Declaration for Social Development and the Rio Declaration on Environment and Development . Additionally the Guidelines can be utilized as a part of arrangement with alternate instruments. A portion of the useful materials were defined to extract their association with the Principles for Responsible Investment, with the GRI Guidelines and the UN Global Compact.

5.3 INTERNATIONAL LABOUR ORGANIZATION

In 1919, the International Labour Organization was made keeping in mind the end goal to show the confidence that the general and additionally unending peace can be expert just in the event that it depends on social equity. The security of works was the fundamental main impetus behind the possibility of ILO. The ILO is the main office of United Nations which has particular security of Labour rights. There was sharp energy about the significance of social equity in guaranteeing peace, against the abuse of specialists. There was likewise expanding comprehension of the world's requirement for participation to get likeness of working conditions in various nations.

Considering every one of these considerations the Preamble expresses the accompanying:

- Whereas all inclusive and enduring peace can be set up, on the off chance that it depends on social equity.

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

- Whereas circumstance of work exist including such treachery hardship are so much that the peace and amicability of the world are jeopardized and there is a need to enhance those conditions.
- Whereas additionally the disappointment of any country to embrace sympathetic states of work is an obstacle in the best approach to enhance the conditions in their nations.

The center territories are as per the following:

- Proper direction of work supply, arrangement of business and giving them adequate wages.
- Prevention of any sort damage or word related danger.
- Defending the privileges of works, when they are working in their own province or anyplace else on the planet.
- To secure the privileges of value and correspondence of the specialists. With the goal that they ought to be given equivalent compensation for same sort of work.
- To secure the privileges of arrangement of union.
- Proper preparing and advancement for the improvement of the work through professional projects

The International Labour Organization is the main UN office which unites every one of the delegates like of bosses, government, specialists in order to define approaches together, to accomplish the settled objectives.

5.4 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights expresses that each person and every assortment of society is dependable to strain to advance appreciation for the human rights and ought to advance progress by measures, broadly and additionally globally keeping in mind the end goal to secure their widespread and viable acknowledgment. As the partnerships are a critical organ consequently they have a duty to energize overall admiration for human rights. The ILO Conventions has set up the standards which cover every one of the

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

parts of working states of works and in addition modern relations. The fundamental essential component is human rights at their work environment. These incorporate the privilege to sort out, to aggregate haggling, right to flexibility of affiliation furthermore opportunity from constrained work. The nations which have marked in the ILO traditions, then the traditions are official on every one of them. The ILO Tripartite Declaration of standards which are worried with MNEs and in addition social strategy . It is a worldwide instrument intended to give guidance to manager, government and associations identified with mechanical relations, preparing, occupation and states of work. All the primary work guidelines are secured in it. In any case it is a non-restricting instrument. The ILO Declaration on Fundamental Principles and Rights at Work: The Declaration additionally fortifies the center work benchmarks in private firms too. The rights and duties of states in connection to human improvement and prosperity were announced in the 1992 Rio Declaration.

The understanding of Agenda 21, goes about as a manual for the legislatures, business and people that the approaches to create triple primary concern in a reasonable way . It recognizes the significance of advancing capable enterprise. The Millennium Development Goals had distinguished a progression of targets and timetables regarding issues, for example, advancement of sexual orientation equity, destitution destruction and change in social insurance and in addition instruction. In 2002, in the Johannesburg Declaration on Sustainable Development, it was expressed that the private part has an obligation to add to the advancement of just and fit for being maintained social orders, additionally there is a prerequisite that private section partnerships ought to likewise execute corporate responsibility . In 2005, the World Summit Outcome had reiterated the significance of regarding the current human rights, work standards and ecological duties and supported the dependable business rehearses which were empowered by the Global Compact . The UN Convention in 2003, was against Corruption had created universal organizations to anticipate degenerate practices and to arraign guilty

parties . Additionally it prompts collaboration with different governments so as to recuperate the stolen resources and help each other to battle debasement.

5.5 UNITED NATIONS GLOBAL COMPACT'S TEN PRINCIPLES

The ten principles are extracted from the following-

- The UN convention against corruption
- The Universal declaration of Human Rights
- The Rio Declaration on Environment & development
- The ILO declaration on fundamental principles and rights at work³⁰⁷.

This global compact lays emphasis on companies to follow, act on a set of core values related to human rights, labour welfare, environment and against corruption³⁰⁸.

The ten principles are mentioned below-

- Business should support and give protection to internationally defined Human rights rule
- They should have zero tolerance for violation of human rights.
- They should maintain the harmony by removing forced labour
- Abolition of child labour
- There should be no discrimination related to employment.
- Business should support the preventive approach to protect environment
- It should take up steps in order to promote environment welfare
- It should support the environmental friendly technologies i.e. go green concept.
- The organizations should adopt anti-corruption policies.

As a participant of the Global Compact, a corporation should³⁰⁹;

- Incorporate the adjustments keeping in mind the end goal to adjust the arrangements of Global Compact. Along these lines the standards of the

³⁰⁷ <https://www.unglobalcompact.org/what-is-gc/mission/principlesCompanies> (Corporate Social Responsibility Policy) Rules, 2014. Last visited on 10-09-2016 at 17.46.

³⁰⁸ *Id* at 1.

³⁰⁹ *Id*.

Global Compact ought to wind up an essential part of procedure and in addition its day by day operations.

- Publicly bolster the standards of Global Compact by sorting out official statements, addresses too through correspondence vehicles.
- Communicate all the ten standards of Global Compact to its partners and ought to report the advancement of the same society in the association every year. It ought to incorporate two things i.e. execution of the ten standards and other thing is venture activities which depended on the objective of United Nation.

The concept of communication on progress (COP) plays a very crucial role in Global Compact. The companies, which are member of Global Compact, should publish their annual or corporate report where they should give a description about the methods by which they are implementing those ten principles of Global Compact. This kind of reports are known as communication on progress (COP)³¹⁰. The failure to give COP will lead to communicate an inactive status of a company. The corporations under Global Compact have immense opportunities to participate in several Global Compact sponsored programmes. Global Compact is a voluntary initiative and supports all those companies which are ready to follow the ten principles. It does not force any corporation to follow those ten principles rather it an attempt where the corporations are encouraged to develop a culture of corporate citizenship.

The term Triple Bottom Line has been originated from the concept of sustainable development. The World Commission on Environment and Development (WCED), which started in 1983, had published a report in 1987 entitled Our Common Future³¹¹. The document came to be known as the Bruntland report which had combined development and environment was described by generally used term 'sustainable development'. It called for a strategy that was named after the Commission's Chairwoman, Gro Harlem

³¹⁰ <https://www.unglobalcompact.org/what-is-gc/mission/principlesCompanies> (Corporate Social Responsibility Policy) Rules, 2014. Last visited on 10-09-2016 at 17.46.

³¹¹ http://www.un.org/esa/sustdev/csd/csd15/media/backgroundunder_brundtland.pdf. Last visited on 16-07-2016 at 14.43.

Burndtland, who was the Prime Minister of Norway. This report had formulated the guiding principles for sustainable development. Sustainable development means the growth that meets the requirements of the present without compromising the resources of the coming generations.

The findings of Burndtland Report were that the critical global issues related to the environment primarily the results of the enormous poverty in South and the non- sustainable patterns of consumption and production in the North.

The report specifics were the following points:

- (i) The environmental issues related to development matters, which were and still are common challenges, which the world is facing, and it should be resolved by collective multilateral action rather than through the pursuit of national self – interest.
- (ii) The report made institutional and legal recommendations in order to confront common global problems.
- (iii) Critical amongst these recommendations is the call for the development and expansion of international institutions for mutual cooperation, and the setting up of legal mechanisms to confront common concerns. The report effectively called the international action on issues of common concerns and also for increasing cooperation with industry.

The main concept is that today's need should not finish the tomorrow's resources. Also any action should consider the impact of same on future generation. In 1989, the report was debated in the UN General Assembly, where it was decided to organize a UN Conference on the issues related to environment and development. The Burndtland Report has stated the tangible results, such as the emergence of international agreements like the Montreal and Kyoto Protocols, Agenda 21, etc., which have further shrined the concept of environmentally sustainable development³¹².

International concern related to the sustainable development which is

³¹² <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>. Last visited on 20-11-2016 at 15.46.

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

connected to the environmental and social issues is recognizing that the development is not only regarding huge profits and higher living standards for a minority. It should lay importance to make life better for everyone. This should not involve destroying or restlessly using up our national resources, nor should it involve polluting the environment.

5.6 INTERNATIONAL PROVISIONS FOR ENVIRONMENTAL PROTECTION UNDER UNITED NATIONS CONFERENCE ON HUMAN ENVIRONMENT

The UN Conference on the Human Environment (Stockholm Conference) conference convened under United Nations aegis held in Stockholm, Sweden from June 5 till 16 in 1972³¹³. It was the United Nation's first major conference on issues related to international environment and a paradigm shift in the development of environmental politics on an international basis. One of the major issues addressed was the use of chlorofluorocarbons, due which the ozone layer is depleting and causing global warming.

The Stockholm Conference laid framework for future environmental cooperation, it also led to the creation of global and regional environmental monitoring networks and creation of the United Nations Environment Programme.

5.7 PROVISIONS UNDER UNITED NATIONS ENVIRONMENT PROGRAMME

International efforts towards environment protection have their roots in the United Nations Environment programme (UNEP), which was established in 1972 after the UN Conference on Human Environment was held. Since then, it has done a noteworthy job starting with the 'Convention on International Trade in Endangered Species of Wild Fauna and Flora', which was held in 1973, moving to the Vienna Convention in order to protect the Ozone Layer in

³¹³ Baylis, Steve Smith. 2005. The Globalization of World Politics (3rd ed). Oxford. Oxford University Press. P.454-455.

1985³¹⁴.

UNEP hosts many environmental conventions which include the Ozone Secretariat, as well as the multilateral fund of the Montreal protocol, the Stockholm Convention on Persistent Organic Pollutants which are also known as POPs, as well as the Convention on Biological Diversities (CBD) etc. The area of operations of UNEP extends to assessment of global and national environment related conditions and trends, development of international agreements and national environmental instruments, strengthening of institutions for the wise management of the environmental protection, providing facility of the transfer of knowledge and technology for sustainable development, and providing encouragement to new partnerships and mind sets within civil societies and the private sector.

In India, the Water (Prevention and Control of the Pollution) Act, 1974 and the Air (Prevention and Control of the Pollution) Act, 1981 have been enacted essentially to give effect to the decisions taken at the International Conference on the topic related to Human Environment at Stockholm in 1972 declaring fundamental right to live in a healthy atmosphere and the responsibility to protect and improve the environmental conditions³¹⁵.

5.8 PROVISIONS UNDER BRUNDTLAND COMMISSION FOR ENVIRONMENTAL PROTECTION

The Brundtland Commission, which was formally the World Commission on Environment and Development (WCED) and known by the name of Chair Gro Harlem Brudtland which was convened by the United Nations in 1983. The commission was formed to deal with the growing fear related to the accelerating deterioration for economic and natural resources and the

³¹⁴ Schrijver, Nico (2010). Development Without Destruction: The UN and Global Resource Management. United Nations Intellectual History Project Series. Bloomington, IN: Indiana University Press. p. 116. ISBN 978-0-253-22197-1.

³¹⁵ <http://www.ecology.edu/environmental-legislation.html>. Last visited on 24-09-2016 at 20.49.

consequences of the deterioration for economic and social development³¹⁶. Furthermore the UN General Assembly addressed that the environmental concerns were global in nature. Also it was determined that it was beneficial for all nations that they should formulate policies for sustainable development. The Report of the Brundtland Commission, titled; Our Common Future, which was published in 1987, actually deals with sustainable and the change of policies needed for achieving the same.

5.9 PROVISIONS UNDER UNITED NATIONS CONFERENCE ON ENVIRONMENT & DEVELOPMENT

The United Nations Commissions on Sustainable Development i.e. CSD was established by the UN General assembly in December 1992 to make sure rigorous follow-up of United Nations Conference on Environment and Development which is known as UNCED (known as the Earth Summit) held in Rio De Janeiro³¹⁷. The documents stated below were the result of the Rio Summit:

- Agenda 21- is a blueprint on how to make development economically, socially and environmentally sustainable.
- The Rio Declaration on Environment and Development- it has 27 principles stating the responsibilities & rights of nations as they pursue human development and well-being.

A statement of forest principles- Is a guide for the management, conservation and sustainable development of all types of forests, as essential to economic development and the maintenance of all forms of life.

- The United Nations Framework Convention on Climate Change- focuses to make stable the concentrations of greenhouse gas in the atmosphere at those levels that would stop life-threatening carbon emissions caused due to humans in the climate system.

³¹⁶ supra note 311

³¹⁷<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>. Last visited on 20-11-2016 at 19.48.

5.10 KYOTO PROTOCOL

The Kyoto Protocol was adopted at the third conference of the parties to the United Nations Framework Convention on Climate Change also known as COP 3 in Kyoto, Japan, in 1997 came into force in 2005, which is an global agreement linked to the UN framework convention on climate change³¹⁸. The important characteristic of the Kyoto protocol is that it defines binding targets for thirty seven industrialized countries as well as on the European community for reduction of the greenhouse gas emissions, which is also known as GHG emissions. This amounts to an average of five per cent against 1990 levels over the five-year period 2008-2012³¹⁹.

One of the main differences between the Convention and the Protocol is that while the Convention had supported and bucked up industrialized countries to stabilize GHG emissions, the Protocol commits them to do so. The Kyoto Protocol I generally seen an important first step towards a truly global emission reduction regime which will make stable the GHG concentrations at a level which will avoid dangerous climate change. Due to result of the Protocol, the governments have already framed and are carrying to mandate legislation and policies in place fulfil their commitments where in a carbon related market has been created and many businesses are making the investment decisions required for an eco- friendly climate in near future for the people.

The Protocol gives the essential layout for any new international agreement or several agreements on the issues related to climate change. Furthermore, the first engagement period of the Kyoto Protocol expires in 2012.

The targets focus on emissions of the greenhouse gases, which are mainly six gases-

- Carbon dioxide (CO₂)
- Methane (CH₄)

³¹⁸ <http://unfccc.int/resource/docs/convkp/kpeng.pdf>. Last visited on 17-08-2016 at 11.40.

³¹⁹ *Id.*

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

- Nitrous Oxide (NO)
- Perfluorocarbons (PFCs)
- Sulphur hexafluoride (SF6)
- Hydrofluorocarbons (HFCs)

The detailed rules for the effectuation of the Protocol were taken over at conference of the parties as well as in Marrakesh in 2001 and are known as “Marrakesh Accords.”

**5.11 BALI ROADMAP AD HOC WORKING GROUP ON LONG-TERM
COOPERATIVE ACTION UNDER THE CONVENTION**

The United Nations Climate Change Conference was held in Bali which is in Indonesia on December, 2007, the participating nations had adopted the Bali Roadmap as a two-year process to finalize a binding agreement in 2009 in Denmark. The Bali Road consists of a number of issues which were addressed by looking forward decisions that showed the various routes, necessary in reaching a secure climate in near future. The Bali Road map has included the Bali Plan of Action, which chalks down the course action for a new negotiating procedure which is developed to deal with the change in climate, in order to attain the goal of completing the same by 2009. A subsidiary body was set up known as Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) was appointed to conduct the process, under the convention.

The Conference of the parties which served as meeting of the parties to the Kyoto Protocol established a working group in December 2005 in order to discuss future commitments of industrialized countries under the Kyoto Protocol, which was known as Ad Hoc Working Group on advanced stage commitments for Annex I Parties under the Kyoto Protocol (AWG-KP). The AWG-KP is also set to complete its work by the end of 2009. UN conference was held in Copenhagen in December 2009 where world leaders have met to agree on a new treaty in order to take over on the Kyoto protocol, as it was

going to expire in 2012³²⁰.

5.12 INTERNATIONAL/GLOBAL CSR DISCLOSURE REQUIREMENTS

The importance of CSR reporting in today's financial markets is rising. There has been an increase in the number of social reporting requirements driven by regulatory bodies and stock exchanges around the world that have played a role in advancing the field of social reporting. We are indicating below the recent requirements by governments and stock exchanges related to Global CSR disclosure, as well as developments with emerging socially responsible indices.

Argentina

- In 2008, Local and international companies in Buenos Aires with over 300 employees are required to generate annual sustainability reports³²¹.

Australia

- The Corporation Act, 2001 requires disclosure of violations of environmental legislation in listed company's annual reports.
- In the year 2004, ASX mandated that in investment selection, all products disclose the extent to which environmental and social considerations are taken into account³²².
- Introduction of new ethical disclosure requirements under the Financial Reforms Act (FSRA) in 2010. Accordingly, issuers of financial products need to disclose the extent to which "labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of an investment."

³²⁰ http://unfccc.int/meetings/copenhagen_dec_2009/meeting/6295.php. Last visited on 18-02-2016 at 22.31.

³²¹ Krumwiede, Dennis; Hackert, Ann M.; Togle, Joanne; Vokurka, Robe, "The Practice of Corporate Social Responsibility in Different Countries: A Study of Firms in Canada, Hungary, Italy, Lebanon, Taiwan and the United States", International Journal of Management, Vol.29, No.1.

³²² <https://blog.ipleaders.in/corporate-social-responsibility-csr-laws-around-the-world/>. Last visited on 19-01-2017.

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

- In 2010, Companies listed on ASX to disclose if they have developed a code of conduct on environmental risks and controls³²³.

Austria

- The government brought out an action plan in 2002 for sustainable public procurement, containing environmental, social and ethical aspects to be taken into consideration.
- The Austrian Business Council for Sustainable Development (respect) initiated a project in 2010 wherein they trained 25 SMEs in sustainability reporting³²⁴.

Belgium

- Under Loi Pensions Complementaries (Occupational Pension Law) of 2003, pension fund managers are required to disclose the extent to which they consider ethical, social, and/or environmental criteria in their investment policies in publically available annual reports³²⁵.
- The Federal Action Plan for CSR was developed in 2006 to promote CSR in Belgium and stimulate companies to integrate it in their management³²⁶.

Brazil

- BM&F Bovespa created a corporate sustainability index in 2005.
- Bovespa and development bank (BNDES) Launched the ICO₂ Carbon Efficient Index in 2010 at the United Nations Climate talk in Cancun, Mexico in December³²⁷.
- In 2012, BM&F Bovespa announced sustainability reporting recommendations for listed companies.

³²³ *Id* at 1.

³²⁴ *Id.*

³²⁵ *Id* at 2.

³²⁶ Krumwiede, supra note 320.

³²⁷ *Id* at 56.

Canada

- The Environmental Protection Act of 1999 requires companies to provide information on specific pollutant emissions.
- The Jantzi Social Index was launched in the year 2000.
- iShares launched a social responsible ETF in 2007.
- Canadian Standards Association (CSA) GHG Registries was created in 2007- 2008 to assist companies to manage, measure and report GHG emissions.
- 2008 The TMX Group services carbon trading through its participation in the Montreal Climate Exchange (MCeX)³²⁸.

China

- An influential directive in 2008 strongly encouraged state- owned enterprises to follow sound CSR practices.
- The government's "Green Securities" policy of 2008 requires listed companies to disclose more information about their environmental record.
- The SSE and the China Securities Index Company launched the SSE Social Responsibility Index in the year 2009.
- Hang Seng Corporate Sustainability Index Series is launched in 2010.
- The Shanghai Stock Exchange launched new Environmental Protection Industry Index in September 2012, which screens for stocks that obtain more than 25 per cent of their revenue from resource management, clean technology, or pollution management³²⁹.

Denmark

- In the year 1996, Companies with "significant environmental impacts" were obligated to publish green reports.
- The government passed a new law in 2009 (which came into force in 2010) wherein companies are required to disclose their CSR activities

³²⁸ *Id.*

³²⁹ *supra* note 329.

CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

and use of environmental resources³³⁰.

European Union

- EC proposed Directive of the European Parliament and of the Council in 2013 to require CSR disclosure in annual financial reporting.
- Investors support amendments proposed by European Commission (EC) in 2013, aimed at improving transparency on environmental, social, and governance (ESG) reporting³³¹.

Ecuador

- 2001 companies undertaking hydrocarbon activities must publish annual report of environmental activities.
- 2009 mining companies are required to maintain records on consumption of materials and resources and to present an annual environmental audit³³².

Egypt

- An ESG index (S&P-EGX/ESG) was developed in 2010 with S&P, the ECRC, and the Egyptian Institute of Directors.

Finland

- The Finnish accounting standards board published guidelines in 2006 for environmental disclosure in annual reports.
- The Finnish government adopted a resolution in the year 2011 asking non-listed state-owned companies and state majority-owned companies to report their sustainability performance³³³.

France

- In 2001, public pension funds were required to disclose how their investment policy guidelines have addressed social and environmental

³³⁰ *Id* at 14.

³³¹ *Id*.

³³² Krumwiede, *supra* note 320.

³³³ *Id* at 57.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

considerations.

- 2002 listed companies to disclose data on 40 labour and social criteria.
- 2009 companies with more than 500 employees in high emitting sectors are required to publish greenhouse gas emissions.
- Article 225 includes a CSR reporting and social and environmental information obligation in 2010 for listed companies and other large companies.
- New national law of 2011 states the proportion of women directors should not be below 40 per cent in any company with annual revenues over 50 million euro³³⁴.

Germany

- 2002 pension fund trustees must inform beneficiaries how ecological, ethical and social needs have been considered in investments.
- 2004 companies are required to report on key financial and non-financial indicators that materially affect the company.
- Deutsche Borse established the DAX Global Alternative Energy Index in 2006 which includes international companies whose revenue is based on technology and services designed to promote and generate alternative energy.
- Deutsche Borse established the DAX Global Sarasin Sustainability Germany Index and the DAX Global Sarasin Sustainability Switzerland Index in 2007 which follow companies that meet sustainability requirements of the Sarasin Sustainability Matrix.
- The German Council for Sustainable Development (GCSD) developed a German Sustainability Code in 2011. It includes 20 criteria and 27 GRI Performance Indicators.
- Deutsche Borse developed a two-tier system in 2011, where companies are list according to their level best practices³³⁵.

³³⁴ *Id* at 57.

³³⁵ aei.pitt.edu/43368/1/Mullerat_CSR_Europa.pdf. Last visited on 19-01-2016 at 19.40.

Greece

- EU Modernisation Directive 2003/51/EC of the year 2006, requiring material ESG factors to be included in annual corporate reporting, is transposed into national legislation³³⁶.

Hong Kong

- The Stock Exchange of Hong Kong published a consultation paper in 2011 to seek views on its proposed Environmental, Social and Governance (ESG) Reporting Guide.
- Hong Kong Stock Exchange in 2012 announced to implement new requirements for board diversity for listed companies. Companies will have to comply or explain their reasoning for not adhering to the requirements³³⁷.

Hungary

- EU Modernisation Directive 2003/51/EC of 2004, requiring material ESG factors to be included in annual corporate reporting, is transposed into national legislation³³⁸.

India

- Specified corporations shall submit an annual environmental audit (1986).
- The Companies Act stated in 2008 that Board of director's reports shall contain information on conservation of energy.
- Voluntary guidelines for CSR are issued in 2009.
- The Securities and Exchange Board of India in 2011 mandated listed companies to report on Environmental, Social and Governance (ESG) initiatives undertaken by them, according to the key principles enunciated in the "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business".

³³⁶ *Id* at 18.

³³⁷ Krumwiede, *supra* note 320.

³³⁸ *Id* at 17.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

- The Bombay Stock Exchange ('BSE') launched the BSE Carbonex, the first carbon-based thematic index in the country in 2012. It tracks the performance of the constituent companies of the BSE-100 index and their commitment to greenhouse gases emission reduction.
- BSE launched green index in 2012³³⁹.
- The Companies Act, 2013 makes it mandatory for companies with net worth of Rs. 500 crore or more, or turnover of Rs. 1,000 crore or more, or a net profit of Rs. 5 crore or more during any financial year, to adopt a CSR policy³⁴⁰.

Indonesia

- Companies involved in operations that affect natural resources are obligated to create, implement, and disclose CSR programs. (2007)
- KEHATI-SRI Index is launched in 2009 to track Indonesian corporations with sustainable business practices.
- The Government of Indonesia adopted a law in 2010 that requires listed companies to report on the effects of their activities on society and the environment. Failure to do so entail an explanation for not disclosing this information³⁴¹.

Ireland

- Financial institutions supported by the government guarantee scheme are required to issue a bi-annual corporate responsibility report. (2008)³⁴²

Italy

- In the year 2002, pension funds are required to disclose non-financial factors that factor into their investment making.
- EU Modernisation Directive 2003/51/EC of 2007, requiring material

³³⁹ www.karmayog.org/csr. Last visited on 17-11-2016 at 20.30.

³⁴⁰ supra note 346.

³⁴¹ Krumwiede, supra note 320.

³⁴² *Id* at 9.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

ESG factors to be included in annual corporate reporting, is transposed into national legislation³⁴³.

Japan

- Morningstar Socially Responsible Investment Index (MS-SRI), the first socially responsible investment index launched in 2003 in Japan.
- Specified companies and government agencies are required to produce annual reports on their activities related to the environment³⁴⁴. (2004)
- Environmental ETF Japan Green Chip 35 (1347) is launched in 2009.

South Korea

- In the year 2001, the required percentage of independent directors elected as board members for listed companies was increased to 50 per cent.
- KPX announced the development of a Korean SRI Index in 2009.

Luxembourg

- The Luxembourg Fund Labelling Agency (LuxFLAG) awarded a recognisable label to eligible Microfinance Vehicles in 2006³⁴⁵.

Malaysia

- Listed companies are required to publish CSR information on a “comply or explain” basis. (2007)
- In 2007, Bursa Malaysia updated its listing requirements to implement government policy mandating disclosure of corporate responsibility data in annual reports.
- Disclosure of CSR data in annual reports of listed companies is mandated in 2007.
- Bursa Malaysia launches its Business Sustainability Program in 2010 to encourage Malaysian publicly listed companies to integrate

³⁴³ *Id.*

³⁴⁴ *supra* note 18.

³⁴⁵ *supra* note 346.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

sustainability into their business strategies. The program includes the publication of a sustainability guide for company directors³⁴⁶.

Mexico

- The Clean Industry Certificate (CIL) is a voluntary audit awarded by the federal government, and has become an obligatory reference for Mexican Companies in the year 1997.
- It is mandatory to register the releases of toxins and pollutants at federally regulated industrial plants. (2004)
- Bolsa Mexicana de Valores launched a sustainability index in 2011³⁴⁷.

The Netherlands

- 1993 the Environmental protection Act included a section on environmental reporting for the “largest polluters”.
- In 1999, listed companies are required to publish annual environmental reports.
- The government stated its intention in 2010 to have 100 per cent sustainable procurement³⁴⁸.

Norway

- Gender equality and environmental issues are to be included in companies directors reports. (1998)
- In 2006, large publicly listed companies are required to have their boards of directors be at least 40 per cent woman.
- Listed companies must publish a statement on the company’s principles for corporate governance. (2007)
- Norwegian Accounting Act of 2009 proposed amendments to extend public reporting to include sustainability performance.
- Companies that apply for listing on Oslo Bors or Oslo Axess should define and disclose guidelines for corporate social responsibility.

³⁴⁶ *Id* at 1.

³⁴⁷ Krumwiede, *supra* note 328.

³⁴⁸ *supra* note 346.

(2010)

- The Norwegian government passed legislation in April 2013³⁴⁹, requiring large companies to disclose information on how they integrate social responsibility into their business strategies.

Pakistan

- The Securities and Exchange Commission of Pakistan (SCEP) approved the CSR Voluntary Guidelines in 2013 that encourage corporations to align their business strategies with responsible practices.

Philippines

- The Philippines Stock Exchange (PSE) planned launch of Maharlika Board in 2012 that creates listing and disclosure rules for companies that voluntarily abide by corporate governance practices in addition to those required by law³⁵⁰.

Poland

- The Warsaw Stock Exchange launched the region's first stock index of responsible companies in Central and Eastern Europe in 2009.
- The Warsaw Stock Exchange launched the RESPECT index in 2012 that lists companies with high reporting quality and advanced level of investor relations or information governance³⁵¹.

Saudi Arabia

- Funded by the Saudi Government, the Saudi Arabian Responsible Competitiveness Index (SARCI) is launched in 2008³⁵².

Singapore

- The Code on Corporate Governance (2011) provides principles and

³⁴⁹ *Id.*

³⁵⁰ *supra* note 346.

³⁵¹ *Id.* at 1.

³⁵² *Id.*

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

guidelines for corporate governance, for which companies are required to disclose compliance.

- The Singapore Stock Exchange launched voluntary guidelines for sustainability reporting in 2011³⁵³
- In 2012, the Singapore Stock Exchange announced plan to utilise environmental data to help listed assess their environmental impact as a means to better understand the country's dependency on natural resources.

South Africa

- The Board-Based Black Empowerment Act, 2004 requires disclosure on corporate initiatives regarding black empowerment.
- Johannesburg Stock Exchange (JSE) launched its socially responsible Index (SRI) Index in 2004, composed of the top performing companies on the exchange with regards to ESG issues.
- The Companies Act 2008, holds directors personally liable for poor public disclosure of information.
- The Mineral Resources and Petroleum Act, 2009 requires certain companies to disclose to the government how they will address the impacts of their operations.
- King III requires integrated sustainability reporting and third party assurance (2009).
- In 2012, the Johannesburg Stock Exchange announced more than 70 per cent of listed companies fulfil the base requirements to become constituents of its 2012 SRI³⁵⁴.

Spain

- In 2007, listed companies are required to nominate women to 40 per cent of Board seats
- The Bolsa de Madrid Exchange (BME) offered sustainability- related investment index- FTSE4GoodBEX in 2008.

³⁵³ supra note 346.

³⁵⁴ supra note 18.

CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

- In 2011, Government- sponsored commercial companies and state-owned business enterprises are directed to file annual corporate governance and sustainability reports³⁵⁵.

Sweden

- National pension funds directed in 2000, to draw up annual business plans, that describe how environmental and ethical issues are considered in investment decisions.
- In 2007, the Swedish government announced that by 2009 all state-owned companies will be required to produce an annual sustainability report in accordance with G3 guidelines.
- In 2007, OMX reserved the right to delist companies who violate ethical norms.
- OMX launched the OMX GES Nordic Sustainability Index in 2008.

Switzerland

- BBGI-Ethical Quote Swiss Equities created first objective benchmark of the socially responsible investing sector in Switzerland in 2012³⁵⁶.

Taiwan

- 2008 The financial markets regulator required all public and listed companies to disclose their CSR performance, including measurements which the company has adopted with regards to environmental protection, community participation, contribution to society, social and public interests, consumer rights and interest, and the state of implementation.
- In 2010, the Taiwan Stock Exchange released CSR best practice principles, originally drafted by the Taiwan Business Council for Sustainable development and the Taiwan CSR Institute³⁵⁷.
- Taiwan Stock Exchange (TWSE) launched an index in 2012 that

³⁵⁵ supra note 346.

³⁵⁶ *Id* at 1.

³⁵⁷ supra note 18.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

focuses on the corporate governance and corporate social responsibility.

Thailand

- In 2002, environmental impact assessments became necessary for appropriation of funds for construction procurement contracts.
- In 2003, the Capital Markets Boards of Turkey states that companies should respect the environment, consumers, and the public health.
- The Istanbul Stock Exchange Sustainability Index (ISE SI) is launched in 2010³⁵⁸.

United Kingdom

- Pension managers must provide a written statement dictating the extent to which social, environmental or ethical considerations are taken into account in investment decisions. (2000)
- The London Stock Exchange is involved in the launch of the FTSE4Good Index in 2001.
- In 2006, Companies listed on the London Stock Exchange required to disclose information on environmental, workplace, social, and community matters that are material to their business.
- The UK-based Social Stock Exchange (SSE) is launched in 2009.
- In 2010, Companies that use more than 6,000 MWh per year are required to report on all emissions related to energy use³⁵⁹.

United States of America

- Emergency Planning and Community Right-to-Know Act (EPCRA) enacted in 1986 to inform citizens of toxic chemical releases and waste management activities in their areas.
- The Sarbanes-Oxley Act (SarbOx), 2002 requires the chief executive officer (CEO) and chief Financial Officer (CFO) of public companies to certify annual and quarterly reports as fair presentations of

³⁵⁸ supra note 18.

³⁵⁹ Krumwiede, supra note 320.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

company's financial conditions.

- The New York stock Exchange adopted corporate governance rules in 2003 requiring that listed companies “adopt and disclose a code of business conduct and ethics.”
- The Mandatory Reporting of Greenhouse Gases rule, often referred to as 40 CFR Part 9, 2010 states that the EPA now requires large emitters of greenhouse gases to collect and report data with respect to their greenhouse gases to collect and report data with respect to their greenhouse gas emissions.
- NYSE Euronext joined the United Nation's Sustainable Stock Exchanges (SSE) Initiative in 2013
- In May 2013, S&P Dow Jones Indices. The eight new indices are targeted at investors who measure performance against standard benchmarks but wish to add sustainable companies to their portfolio.
- 2013 NYSE Governance Services launched suite of integrated resources for private and public companies looking in advance their corporate governance, risk, ethics, and compliance practices.
- The FTSE Group, the National Association of Real Estate and Investment Trusts, and the Green Building Council are developing a sustainability index that measures the portfolios of real estate investment trusts. This green-property index will feature 172 companies, scored upon the proportional value of their holdings that are LEED certified or have achieved Energy Star labelling. (2013)
- Dow Jones launched Dow Jones Sustainability Emerging Markets, the first index to measure sustainability performance from emerging markets in 2013³⁶⁰.

Europe

- The EPA and states are mandated I 1986 to collect data on releases and transfers of certain toxic chemicals from industrial facilities and make the data available to the public.

³⁶⁰ Krumwiede, supra note 320.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

- Dow Jones Sustainability Indexes are launched in 1999 to track the performance of the leading sustainable companies worldwide.
- In certifying annual and quarterly reports as fair presentations of company's financial conditions, CEOs and CFOs of public companies are to scrutinise disclosures of environmental information that affect asset values. (2002)
- The New York Stock Exchange adopted corporate governance rules in the year 2003, requiring that listed companies disclose a code of business conduct and ethics.
- In 2010, large emitters of greenhouse gases are required to collect and report data with respect to their greenhouse gas emissions.
- The S&P Nordic Low Volatility Index was created in 2013 from a selection of the 30 least volatile stocks in the S&P Nordic Broad Market Index.
- The European Parliament passed a law created in 2013 requiring oil, gas, mining and logging companies to disclose the payments they make for access to natural resources in all countries where they operate.
- In 2013, NYSE Euronext and Vigeo, European expert in responsible performance, partnered to create a range of indices that focus on ESG issues. These indices include major listed companies from Europe, the Asia – Pacific region, and North America.
- In 2013, NYSE Governance Services launched suite of integrated resources for private and public companies looking to advance their corporate governance, risk, ethics, and compliance practices.
- Thompson Reuters announced the launch of Thompson Reuter Corporate Responsibility indices in 2013, developed in conjunction with S-Network Global Indexes. These indexes rate company's CSR investing through an assessment of their ESG practices.
- The FTSE Group, the National Association of real Estate and Investment Trusts, and the Green Building Council are developing a sustainability index that measures the portfolios of real estate

investment trusts. (2013)

- In 2013, Dow Jones launched Dow Jones Sustainability Emerging Markets, the first index to measure sustainability performance from emerging markets. The index has a market capitalisation of 680 billion dollars and evaluates sustainability performance on ESG criteria³⁶¹.

5.13 INTERNATIONAL FOREST CARBON INITIATIVE

In Australia the International Forest carbon Initiative is a key part of its international leadership on reducing emissions due to deforestation. This Initiative will support international efforts to reduce deforestation through the United Nations Framework Convention on Climate Change, which is also known as UNFCCC, it aims to demonstrate that reducing emissions from deforestation and degradation of forest can be part of a just and effective international agreement on climate change³⁶². A central element is the Initiative's focus on developing practical demonstrations activities, particularly in Indonesia and Papua New Guinea.

5.14 ENVIRONMENTAL ISSUES IN INDIA

Many reports and codes on corporate governance has been published in India also, e.g. CII Code, Kumar Mangalam Birla Report, Corporate Excellence report, etc. All these reports focus on the financial aspects of corporate governance and to the conformity. Thus, the issues of corporate social responsibility such as environment degradation, violation of fundamental human rights including women rights and also getting job done from child labour have a bearing on the future existence and overall financial health of a company. These issues were excluded in the code of corporate governance in India. But WHO has recognized the significance of an audit assurance on

³⁶¹ Krumwiede, supra note 320.

³⁶² <http://unfccc.int/resource/docs/convkp/kpeng.pdf>. Last visited on 15-04-2016 at 23.00.

these aspects which would strengthen good corporate governance.³⁶³

The main issues of corporate social responsibility related to environment are; Safety, health and environmental accountability- major disasters, such as Bhopal gas tragedy, push for attention that environmental protection is a social responsibility of all corporations and the financial aspects of corporate governance must include the principles of environment accounting. In India this portion is neglected. Environment accountability encompasses the following:

- Commitment to implementing principles
- Protection of the atmosphere
- Holistic use of resources
- Reduction and disposal of water
- Energy conservation
- Risk reduction
- Environmental restoration

5.14.1 EGRESSION OF SOME METHODS TO PROMOTE

ENVIRONMENTAL PROTECTION UNDER CSR IN INDIA

In the fast changing business “environment when companies are driven by market force and competitive forces then their position in markets is evaluated on the basis primarily by the financial indicators, namely, profits, earning per share etc. Board members receive incentives based on these above mentioned performance indicators. There is no overwhelming evidence that a company’s share price reputational damage. If socially responsible behaviour does not reflect into a company share price or its profits then the companies would not have the tendency and inclination to pursue socially responsible policies.

Corporate Social Responsibility (CSR) could only take root when it is rewarded by the financial markets. One way to ensure that markets rewards for the ethical corporations, is by changing the accounting systems so that

³⁶³ Goergen, Marc, International Corporate Governance,(Prentice Hall 2012) ISBN 978-0-273-75125-0.

companies are audited not only according to the financial performance, even on the basis of a wide range of environmental and social indicators. This would mean that, if companies are audited in this way, and penalized if they do not perform, then shareholders would also start to form a critical opinion about companies as per their wider impact on society. Share prices would then automatically reflect the ethical aspects of a company's operations. Internationally there is an:

- (i) ISO 14000 series Environmental Management System.
- (ii) ISO 14000 is a series of international standards on environmental management. It provides framework for the development of both the system as well as the environment.
- (iii) ISO 14001 specifies the requirements for implementation of an Environmental Management System. This is applicable to those environmental aspects which are under the control of an organization and it can influence those aspects. Confederation of Indian Industry (CII) has aimed at promoting eco-friendly industrial operations through Environment Management Services³⁶⁴.

The thrust is on building in- house potentialities in Indian Industry so as to handle environmental issues effectively and pro-actively.

The activities carried out are³⁶⁵:

- Design and implementation of EMS as per ISO 14001.
- Environmental Audits.
- Pollution Prevention and waste minimization audit.
- Safety Plans including Safety Audit.
- Company-wide Audits of Environmental, Health and safety programme.
- Social Accountability as per SA-8000.
- Environmental Risk assessment and Disaster management plan.
- Advising Services for Environmental impact Assessment and Environmental management plan.

³⁶⁴ www.cii.in/webcms/Upload/BCG-CII%20Green%20Mfg%20Report.pdf. Last visited on 01-10-2016 at 19.20.

³⁶⁵ supra note 372.

GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES

- Holistic Development and Environmental Planning.
- Environmental Performance Benchmarking of Industries.
- Detailed Advice on impacts, Mitigation Measures.
- Greening of Supply Chain for industrial Sectors.
- Environmental Assessment of Proposed Developments.

Within days, several faxes were sent to his office and then within few days after the action began, he had suddenly resigned. Also, in India there are public appeals associated with activists Vinoba Bhave, Medha Patkar, Baba Amte, Sunderlal Bahuguna, Swami Ramdev, etc. The Society for Environmental Communications Delhi (www.cseindia.org) is one of the organizations which enjoys a mass appeal and is recognized for its involvement in such issues³⁶⁶.

5.15 EMERGENCE OF ENVIRONMENTAL ACCOUNTING

Some years from now, corporate environmental financial reporting will be just as common as environmental financial reporting will be just as common as environmental management systems are today. Environmental accounting is generally defined as ‘the identification, measurement and allocation of environmental costs, as well as the consolidation of these environmental costs, in the business decisions and the subsequent communication of the information to a company’s stakeholders. Environmental accounting may be understood from two broad perspectives- national-level accounting of environment, and corporate environmental reporting³⁶⁷. The concept of carrying out the environmental cost-benefit analysis of a project is more prevalent in public investment projects being undertaken by governments. In order to respond to the request of the countries so as to mainstream environmental & economic accounting related statistics, and to raise the profile of accounts as the tool to measure the sustainability of growth and

³⁶⁶ www.cseindia.org. Last visited on 14-04-2016 at 13.48.

³⁶⁷ <http://unstats.un.org/unsd/envaccounting/seea2003.pdf>. Last visited on 11-04-2016 at 14.58.

development, the United Nations Committee of Experts on Environmental-Economic Accounting in March 2005.

The objectives of the committee were:-

- To mainstream environmental-economic calculation and statistics related to it.
- To promote the System of integrated Environmental and Economic Accounting (SEEA) to international statistical standard.
- To advance the implementation of the SEEA in countries.

Environmental accounting can also indicate the extent of pollution of soil, air and water by an industrial unit through the emission of several fumes, dusts and wastes. Due to this a term has evolved i.e., “Environment Management Accounting” or EMA³⁶⁸. It gives vital information for meeting these goals.

Examples of the many environmental initiatives include:

- Pollution prevention.
- Design for environmental protection.
- Environmental lifecycle assessment.
- Environmental supply chain management.
- Environmentally preferable purchasing.
- Extended producer/product responsibility.
- Environmental management systems.
- Environmental performance reporting.
- Environmental performance calculation and evaluation as per benchmarking.

Some of the major accounting issues which have led to a debate on the need to develop separate accounting standards for environmental accounting relate to:

(i) distinction between environmental expenditure and normal business expenditure, (ii) capitalization of environmental expenditure expensing them during the current accounting period or vice versa, (iii) identification of

³⁶⁸ www.unido.org/fileadmin/import/26164_EMApartIcropped.5.pdf. Last visited on 06-02-2016 at 22.51.

environment related possible liabilities, and (iv) the unintentional 'hiding' of many environmental costs in overhead accounts. The European Commission suggestion on the recognizing, measuring and disclosing of environmental issues defines environment expenditure by an inclusive definition as the costs of steps taken by an undertaking and on its behalf by others to prevent, reduce, and repair damage to the environment which results from its operating activities³⁶⁹. These costs include, amongst others, the disposition and keeping away the waste, the protection of soil and of the surface water and ground-water, the protection of pure air and climate, reduction of noise and the conservation of biodiversity and landscape. Costs that may favourably influence the environment but whose primary purpose is to respond to the needs of other like to increase profit, health and safety at the workplace, or to promote the safe use of the company's products or production efficiency, are excluded from the definition of environment expenditure.

5.15.1 ENVIRONMENTAL ISSUE RELATED INDIAN CASE LAWS

The interpretation of Supreme Court in Maneka Gandhi's³⁷⁰ case has explained a new concept of personal liberty. This states that if a law is enacted by legislation but somehow curtails the liberty of a person, then it is necessary that the steps accepted for curtailing it should be fair as well as just. The court has expended the Article 21 to the right of wholesome environment. In other words, if pollution is caused due to an organization's or a person's act then it will amount to the violation of Article 21 of the constitution. Similarly in Dehradun Quarry's case³⁷¹, it was decided by Supreme Court as per Article 32, that the closure of some of these quarries as these were affecting the ecological balance. However the judgment had not made a reference to Article 21 but had involved the jurisdiction by the court under Article 32 on the presumption the violation of right to life (Article 21). It can be easily noticed that the courts are legalizing its function so as to enforce the constitutional

³⁶⁹ [http://ec.europa.eu/environment/eia/pdf/Note%20%20Interpretation%20of%20Directive%20085-337 EEC.pdf](http://ec.europa.eu/environment/eia/pdf/Note%20%20Interpretation%20of%20Directive%20085-337%20EEC.pdf). Last visited on 17-07-2016 at 16.45.

³⁷⁰ Article 14 enshrines the right of Equality before law and guarantees equal protection of laws.

³⁷¹ Article 19 guarantees freedom like the right to form associations, freedom of speech.

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

objectives to prevent the actions of state and the citizen which are affecting badly the ecological balance. It can be inferred that corporate social responsibility provisions actually exist in Indian Constitution in form of Article 14, Article 21, and Article 32.

As the sustainable development and protection of triple bottom line is part and parcel of corporate social responsibility. Also it is directly associated to equality & right to life (social, economic & environment). In this article the major focus is on environmental provisions hence the emphasis is on environment related Indian case laws. *Banwasi Sewa Ashram v. State of UP*³⁷², this case came up due to public interest litigation filed under Article 32 on behalf of the common people who raised voice against the reserved land by the state. It was contended that the local people who were dependent on the forest land for their livelihood hence it was violation of their right to life, as guaranteed under Article 21. The Supreme Court had laid down certain safeguards in order to defend tribes who were being ousted due to NTPC Ltd. for Power project, allowed the acquisition of the land after National Thermal Power Corporation Ltd. agreed that they will make provisions for settlement and rehabilitation of tribes who were residing in that area. As per Article 19(1)(g) all the citizens have a right to take up any occupation or trade.

But the fundamental question arises that whether any person or business has the right to cause public injury or health hazard to society at large, for this one important case law is *Abhilash Textiles v. Rajkot Municipal Corporation*³⁷³. The petitioners were doing a business of dyeing and printing at different places in Rajkot. The petitioners were discharging the dirty water without treating it. The Municipal commissioner of Rajkot had served a notice to the petitioner, ordering them to prevent from discharging the dirty water.

Finally they failed to comply with the notice then it had led the commissioner

³⁷² Rural Litigation & Entitlement Kendra, Dehradun v. State of Uttar Pradesh AIR 1988 SC 2187.

³⁷³ AIR 1987 SC 374.

to close the factory. It was contended by the petitioner that the Municipal Commissioner should have considered that a large number of employees will be unemployed. They have appealed that as per Article 19(1)(g) of the Constitution of India as per which any Indian citizen can do any trade or take up a business. However here is a limitation which states that no one has a right to do a business or trade, due to which nuisance is caused to the society. The court stated that business activity should be stopped which would cause health problems to the society. The court held that the petitioners have no such right to carry a business which will make profit at the cost of the health of the common public by violating the existing law. Hence this case law clearly shows that public health is a vital part of environment protection.

In *Shriram Chemicals case*³⁷⁴, when the Supreme Court was dealing with the compensation claims arising due to leakage of Oleum gas, it had in its mind as a second case of leakage of noxious gas. Earlier, the leakage of deadly methyl isocyanate i.e. MIC gas from the Union Carbide plant in Bhopal had resulted in the passing of more than 2,500 persons and several persons suffered from serious diseases due to the same incident. Hence, the Court thought that if the regulation of strict liability as set in *Rylands v. Fletcher* was applied to such situations, persons having hazardous and inherently dangerous industries could escape the liability for the environmental and health hazards caused thereby, pleading some exception to the rule in *Rylands*. Although the public health hazards of environmental pollution are often potential and it is difficult to assess them, yet a system is to be evolved to determine and impose the liability on hazardous enterprises to pay the victims. The Supreme Court had decided and came up with a rule of, Absolute Liability, which is a part of Indian law in preference to the regulation of strict liability will not be subjected to any of the exceptions laid down under the rule in the case law of *Rylands v Fletcher*.

Regarding the application of the rule in *Rylands* in the *Shriram Chemicals case*, the Supreme Court observed that that rule was evolved in the 19th century at a

³⁷⁴ AIR 1988 Gujarat 57.

time when much development in science and technology had not taken place. The rule did not help much also in view of the constitutional norms the requirement of today's economy and social structure. Hence the court had expressed the view that they have to evolve new principles and establishes new standards which would deal in an adequate manner with the new problems which arise in a highly industrialised economy. The court also expressed that we have to build up our own jurisprudence and we cannot countenance an argument merely because the new law does not recognize the rule of strict and absolute liability in cases of hazardous or dangerous liability and the principles as set in *Rylands v. Fletcher* as is developed in England recognizes certain limitations and responsibilities³⁷⁵. As the court realized that the law cannot afford to remain static and accordingly the judge mentioned to work out a new rule of liability which English Courts have not done. He had stated that we have to liability to deal with an unusual state of affairs which has risen and which may originate in time to come on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy.³⁷⁶ Not only this but court also stated that an enterprise which is engaged in a harmful and dangerous industry which can be a threat in near future to the health and safety of the workers of the manufactory and domiciling in the bordering areas owes an absolute and non-delegable duty to the community to ensure that no harm should be caused to anyone due to harmful or inherently dangerous nature of the activity which it was set about. The firm must be under a duty to provide that the hazardous or inherently dangerous activity in which it is involved must be carried on with the great standards of safety and if any harm results on account of such activity, the firm must be absolutely liable to compensate for such harm and it should be no answer to the firm to express that it had taken up due care and the damage had happened without any negligence on its part³⁷⁷.

Regarding the basis of liability, the court held that the enterprise must be

³⁷⁵ *M.C. Mehta v. Union of India* supra note 7.

³⁷⁶ *M.C. Mehta v. Union of India* supra note 7.

³⁷⁷ *Id* at 1098.

strictly liable for causing harm as a part of social cost by doing the harmful or highly dangerous activity. The court had observed that if the enterprise is permitted to carry on a hazardous or harmful activity for the sake of profit, the law must presume that such permission is contingent on the firm that taking up the cost of any accident, which is caused due to such hazardous or inherently harmful acts as an appropriate item of its operating expense. Such hazardous or inherently dangerous activity for private profit can be abided only on the term that the firm engaged in such harmful or dangerous activity, carried out such activity with due care³⁷⁸. The rule of liability is also to detect and protect against dangers or hazards and to provide warning against potential hazards.³⁷⁹ Thus, in the Shriram Chemical case, the requirement of non- natural user or the condition of escape of a dangerous substance, which are commonly regarded as essential for liability under the Rylands case, need not be proved in matters of hazardous industries endangering the environment. Similarly, the use of the term absolute is deliberate and may eliminate at least some of the exceptions commonly recognized to the rule in the Rylands case. Future developments alone will indicate which of the exceptions have been dropped and to what extent³⁸⁰. In the Shriram Chemicals case, the issues were about the closure of the hazardous industries and the award of compensation to the victims. In the Shriram Chemicals case, the Shriram industries were allowed to restart under certain conditions, some of which were modified³⁸¹, however in the Shriram chemicals case, the Supreme Court declared anew principle of liability for the industries engaged in inherently dangerous and hazardous activity³⁸². This has led to new jurisprudence on the subject of absolute liability which disapproves application of the exceptions to the Ryland's Rule. However, in the Shriram Chemicals case the court did not consider the question of determining the norms of liability of the hazardous industries to pay compensation to the victims of accidental escape of poisonous gas yet the importance of the cases lies in the Court's formulation of the principle of

³⁷⁸ *M.C. Mehta v. Union of India* supra note 7

³⁷⁹ *Id* at 1098.

³⁸⁰ *Id* at 1098.

³⁸¹ *Id*

³⁸² *M.C. Mehta v. Union of India* AIR 1987 SC 965.

measure of liability of an industrial enterprise engaged in hazardous or inherently dangerous activity in case of an accident. The Bhopal Disaster case³¹ raised complex legal issues, particularly about the liability of the parent company, i.e., Union Carbide Corporation (UCC), for the acts of their subsidiaries, Union Carbide India Limited (UCIL), the responsibilities of multinational corporations engaged in hazardous activities and the principles of liability to be applied. On the allegation that UCIL should be liable either under the rule of strict on for negligence in operating the plant and in failing to give warning to the potentially affected population, it was argued that victims were themselves at fault because they knew about dangers in living close to the plant & therefore they should either be wholly or partially be liable. Still this argument seems to be harsh in light of the Indian economic conditions. It is also contrary to the usual United States and Indian laws of nuisance³⁸³.

The Union of India brought an action in the US District Court of New York because of the facts and the circumstances of Bhopal Gas disaster. It was thought that the federal judicial system would be the most effective and appropriate forum for a just, speedy and equitable solution of all claims. The Union of India had brought an action in the US District Court of New York because of the facts and the circumstances of the Bhopal Gas disaster. It was thought that the federal judicial system would be the most effective and appropriate forum for a just, speedy and equitable solution of all claims. Hence the Union of India had decided to file the case in the United States³⁸⁴. It was not only because the American judicial process often yields high damage awards in tort liability cases but also to avoid the Union Carbide's expected defences. In India, Union Carbide could have pleaded that no negligence could be attributed to it but American courts routinely impose strict liability in such accident cases and, as for the parent company being a separate company and so not liable for the acts of its subsidiary, the American courts generally do not accept such an argument in cases of accidents in hazardous installations³⁸⁵.

³⁸³ *supra* note 380.

³⁸⁴ M.C. Mehta v. Union of India AIR 1987 SC 982.

³⁸⁵ *Id at 984*.

It brought the action as *parens patriae* by virtue of its interest and duty to secure the health and well-being of all the victims of the disaster who were incapable of individually litigating their claims against giant MNCs. It further acted to protect, reserve and restore the earth, air and waters of the country. The Union of India brought the action as *parens patriae* for all persons to recover for their damages for all claims arising because of the massive unprecedented magnitude of the disaster. The Union of India alleged that the defendant Union Carbide knew that Methyl Iso Cyanate (MIC) is a toxic, volatile, flammable and ultra-hazardous chemical, the exposure of which poses an immediate danger to living beings and environment, including passing and severe diseases of eye, skin and the respiratory system. Therefore, Union carbide, a multinational corporation, has a primary, absolute and non-deputation duty to the individuals and the country, where it had undertaken the ultra-hazardous or inherently dangerous activity involved. Consequently, the escape of lethal MIC from Bhopal plant was unacceptable.

As Union Carbide failed to observe its duty, it is primarily and absolutely liable for all damages caused by the escape of the lethal MIC plant.³⁸⁶ The Union of India alleged that UCC was under a duty to design, construct, maintain and operate its Bhopal plant with reasonable care so as to protect persons from unreasonable dangers associated with the plant and its manufacturing process. The UCC breached these duties resulting in massive escape of lethal MIC gas as the proximate result of this negligence³⁸⁷. Since the UCC had exclusive control over the Bhopal plant and the massive escape of lethal MIC occurred due to negligence of Union Carbide, it was liable for any and all damages caused by the escape of MIC from its plant³⁸⁸. Similarly, the Union Government alleged that Union Carbide was under duty to design, construct, maintain and operate its Bhopal plant in such a manner as not to let the lethal MIC escape from the plant. It was also under duty to protect persons from unreasonably dangerous and defective conditions of the plant

³⁸⁶ *supra* note 380.

³⁸⁷ *Id* at 965.

³⁸⁸ *Id*.

and to warn them of the risks associated with manufacturing processes. Due to breach of duty on the part of Union Carbide, massive escape of lethal gas occurred. Thus, in creating and maintaining unreasonably dangerous and defective conditions, Union Carbide was strictly liable for any and all damages caused by or contributed to the escape of lethal MIC from its plant³⁸⁹. Regarding designing and putting the Bhopal plant into operation for manufacturing, processing, handling and storing MIC at its plant, the defendant Union Carbide engaged itself in an ultra-hazardous and inherently dangerous activity. The defendant Union Carbide is absolutely liable to all damages caused by the escape of the MIC from its plant, which created the danger of passing, serious injury and property damage³⁹⁰. Thus, Union Carbide is liable for negligence as it has exclusive control over the Bhopal plant and failed to take reasonable care to warn persons of the dangers involved in the hazardous process. It is strictly liable for all gas leak damages because it “created and maintained unreasonably dangerous and defective conditions” at its Bhopal plant. It is absolutely liable as the Union Carbide’s lethal MIC production at Bhopal was an “ultra- hazardous and/or inherently dangerous activity,” which makes the Union Carbide absolutely liable for all gas leak damages³⁹¹. It can be concluded that environment is an important part of CSR, hence it can be inferred that laws and provisions are protecting CSR issues since long back.

Past is a witness that human beings are struggling to manage environment in order to improve their well-being. But the threat to environment had started due to industrial revolution, which in turn brought the technological changes as well. Due to the population explosion, the unlimited wants is leading to the higher energy usage, increase in radiations, etc. are causing distress to the ecological i.e. environmental balance. Massive industrialization, chemical usage in agricultural land had led to pollute the Air, Water and Soil. This is not only endangering the vegetation on earth but also adversely affecting the

³⁸⁹ *Id* at 966.

³⁹⁰ *Id.*

³⁹¹ *supra* note 380.

man kind and animals³⁹². The main source of water i.e. the rivers are so badly polluted that they have become drains, not at fit for any kind of usage. The over usage of pesticides, urea, fertilizers have contaminated the soil leading to soil pollution and not only this consumption is the vegetables and fruits are leading to cancer due to these chemicals. Due to competition people are living a fast life where they are using motor cars to make maximum of their time. This usage of vehicles is actually leading to air pollution and thus there is only impure air to breathe and several air borne diseases. It can be concluded that the development should not take place at the cost of environmental degradation.

5.16 CORPORATE SCANDAL IN ABROAD- CASE LAWS

Waste Management Scandal in 1998, in which Houston Company had reported fake earning of 1.7 billion dollar³⁹³. Chairman Dean L. Buntrock, who was also the CEO of the company and Arthur Andersen, auditor has committed this fraud. The new CEO and some persons of management team had gone through the account books and then they came to know about this fraud. The penalties levied on them were four hundred fifty seven million dollar. Not only this but also SEC had collected a fine of seven million dollar from Arthur. Due to this scandal the new CEO, Maurice Meyers had started a company hotline service where any employee could report any kind of corrupt or unethical behaviour of a company's employee.

Enron Scandal in 2000, in which Houston-based commodities, energy and Service Corporation, the funniest fact is that Fortune Magazine had appreciated Enron as America's most innovative company in continuity for six years, before to the scandal³⁹⁴. Former CEO Ken Lay and current CEO Jeff Skilling had done the forgery by not showing the huge debts on the balance sheet. Even Arthur Anderson was also found guilty in tampering the Enron's

³⁹² *Id* at 965.

³⁹³ <http://www.accounting-degree.org/scandals/>. Last visited on 06-05-2016 at 21.28.

³⁹⁴ *Id* at 1.

**CHAPTER 5: INTERNATIONALLY RECOGNIZED CORPORATE SOCIAL RESPONSIBILITY:
GUIDELINES AND PRINCIPLE VICE VERSA INDIAN GUIDELINES**

account. The penalty levied on them was that Skilling had to serve 24 years of imprisonment, Lay died before the serving tenure. The company had filed for bankruptcy. The shareholders had lost seventy four billion dollars, several employees and investors had lost their retirement accounts and all the employees had lost their jobs. Sherron Watkins was the whistle blower and the high stock price actually led to external suspicions.

In 2002 in the WorldCom Scandal, happened in a telecommunications company which is now known as MCI, Inc. (earlier it was known as WorldCom). Its CEO Bernie Ebbers had done fake accounting entries. He was caught by the WorldCom's audit department. He had committed a fraud of \$3.8 billion³⁹⁵. The CFO was terminated from his services, not only this the controller had resigned and the company was declared bankrupt. The CEO was sentenced an imprisonment of 25 years because he was charged for fraud, conspiracy as well for filing false documents.

Tyco Scandal in 2002, in which Tyco Company which is based on New Jersey, it deals with blue-chip Swiss security systems. The chief financial officer, Mark Swartz and chief executive officer, Dennis Kozlowski had duped an amount of one hundred fifty million dollars from the company. They had syphoned the amount by unapproved loans and fallacious sales of stock. Investigations of SEC& Manhattan D.A. had uncovered the fraud. The CEO & CFO was sentenced an imprisonment of 8-25 years because he was charged for fraud, conspiracy as well for filing false documents. Due to class action law suit, Tyco was forced to pay \$2.92 billion dollar to the investors³⁹⁶.

HealthSouth Scandal in 2003, in which HealthSouth Company was a largest health care company of U.S. Richard Scrushy, who was the Chief Executive Officer had committed the fraud. He had committed a fraud by inflating the earnings to \$1.4 billion in order to meet up expectations of the stockholder. He was caught due to triggered suspicion of SEC when he had sold in stock of an

³⁹⁵ *Id* at 2.

³⁹⁶ *Id* at 1.

amount of seventy five million dollar a day prior when the company had posted an immense loss³⁹⁷. The CEO was sentenced an imprisonment of 07 years because he was convicted for bribing the governor of Alabama but was acquitted from rest all thirty six accounting frauds.

5.17 CORPORATE SCANDAL IN INDIA- CASE LAWS

Our country India is eighty seventh ranked internationally as far as transparency is concerned in corporate. Here are some of the corporate scandals of India. In the year 2010, on 24th November Central Bureau of Investigation had followed the wrong doers for a year and had caught all the eight persons for bribery³⁹⁸. The senior officials of state –run bank i.e. Central bank of India, LIC housing Finance’s chief executive, similarly the officials of Bank of India and Punjab National Bank were arrested in this case. The bribery amount was not revealed to the local media but it might be in hundreds of millions of dollars. Nearly twenty one companies were probed. The bribe amount was paid by a private finance firm, Money Matters Financial Services. This company had played a role of mediator for the loan beneficiaries. The arrested individuals have not admitted their wrong doing also the government authorities have declared that it is not case of widespread scam. In a case of Telecoms License, the Telecom Minister, Andimuthu Raja was fired³⁹⁹.

This happened when India’s state auditor stated that his ministry had sold spectrum and licenses lesser than the market prices. This had led the government a loss of nearly \$ 39 billion in revenue. The Comptroller and Auditor General of India had stated that the rules were violated because in the year 2007-2008, the licenses were sanctioned to many ineligible companies. In spite of CBI investigation no one is charged and Andimuthu Raja is denying all the allegations. Unitech units, Swan Telecom, Reliance Communication

³⁹⁷ supra note 399.

³⁹⁸ supra note 82.

³⁹⁹ *Id* at 1.

and a top lobbyist Nira Radia are part of the CBI probe but nothing has happened till date. In October 2010, Commonwealth Games Scandal Allegations of corruption over the international sporting event that took place in Delhi in are being the CBI, the state auditor & the anti-corruption watchdog is investigating this matter⁴⁰⁰. The Congress-party led coalition sports by lavish spending, which had cost up to \$ 6 billion. There were many allegations of corruption i.e. right from issuing of contracts. Not only this even in the purchase of equipment also it went even till scam in toilet rolls as well. It was identified that more than 16 projects were irregular during the investigation of India's anti-corruption watchdog. The Congress party had then removed Suresh Kalmadi from the position of secretary of the party's parliamentary wing and chairman of the organizing committee. The assistants were arrested and when Kalmadi came back from foreign then he was also arrested. The case is going on in court and the defendants have stated that they were not involved in the fraud.

Satyam Scandal in 2009, in which the Chairman & founder of Satyam Computer Services, which was one amongst India's top software companies, had resigned in January 2009. He had admitted that the profits were fraudulently enlarged beyond reasonableness for years⁴⁰¹. This fraud was also called as same the way Enron scam. The share prices dropped to penny level as clients have abandoned it. New boards of directors were appointed by the government and company was sold to Tech Mahindra. Now it is known as Mahindra Satyam. Mr.Ramlinga Raju, who was the chairman as well founder, CEO and CFO were also arrested on the basis of fraud and several other charges⁴⁰². The cases are continuing in the court of law. The defendants have stated that they were not involved in the deceitful pretences.

In 1992, Securities Scandal led to fuel a rise in the Mumbai stock market in

⁴⁰⁰ *Id* at 1.

⁴⁰¹ *supra* note 82.

⁴⁰² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1460022. "Satyam Scam in the Contemporary Corporate World: A Case Study in Indian Perspective IUP Journal, 2010", by Dr. Tabrez Ahmad & et al., University of Petroleum and Energy Studies (UPES) - College of Legal Studies. Last visited on 15-04-2017 at 13.01.

the year 1992, many Indian stockbrokers were accused for siphoning off nearly \$ 778 million of funds⁴⁰³. Politicians, bureaucrats and officers of state-run and foreign banks as well as financial institutions were involved in it. News of the scam led that nearly 40% shares had come down in stock market in two months, leading to heavy loss of millions of dollars from market value. The main accused was Harshad Mehta but he was convicted in only one case i.e. for misappropriation of funds in a case where, for trading in stocks the money was used from the bank account of Maruti Suzuki. Many bank executives were alleged for allowing bank funds to be used for trading stocks were also convicted for fraud⁴⁰⁴.

5.18 LEGISLATIVE HISTORY

Comparing arrangements of the 1956 Act This is another section. There was no relating arrangement in the 1956 Act. Similar study : 2013 Act opposite the 1956 Act section 135 of the 2013 Act is another section. This section gives that each organization having total assets of Rs. 500 crore or progressively or turnover of Rs. 1000 crore or increasingly or net benefit of Rs. 5 crore or all the more amid any money related year should constitute the Corporate Social Responsibility Committee of the Board. The piece of the advisory group might be incorporated into the Board's Report⁴⁰⁵. The Committee should define strategy incorporating the exercises determined in Schedule VII of the 2013 Act. The Board might unveil the substance of strategy in its report and place on site, if any of the organization. This section further gives that the Board should guarantee that no less than 2% of normal net benefits of the organization made amid three instantly going before monetary years might be spent on such strategy in each budgetary year. In the event that the organization neglects to spend such sum, the Board might give in its report the purposes behind not spending. There was no arrangement thusly for compulsory CSR approach and CSR spends in the 1956 Act.

⁴⁰³ supra note 82.

⁴⁰⁴ supra note 346.

⁴⁰⁵ SINGH supra note 1.

Parliamentary Standing Committee Recommendations (2009-10) Part II of the Report of the Parliamentary Standing Committee on Finance on the Companies Bill, clarifies the reason for compulsory CSR spends arrangements of section 135 as under: Corporates all in all are relied upon to add to the welfare of the general public in which they work and wherefrom they attract their assets to create benefits. Appropriately, the Committee prescribe that section 135(5) of the Bill commanding Corporate Social Responsibility (CSR) be changed by substituting the words 'should make each try to guarantee' with the words 'might guarantee'. Further, the Committee prescribe that the said statement should likewise give that CSR exercises of the organizations are coordinated in and around the zone they work.”

Idea of CSR United Nations Industrial Development Organization (UNIDO) characterizes 'Corporate Social Responsibility': 'Corporate Social Responsibility is an administration idea whereby organizations coordinate social and ecological worries in their business operations and cooperation with their partners⁴⁰⁶. CSR is by and large comprehended similar to the path through which an organization accomplishes a parity of financial, natural and social goals (“Triple-Bottom-Line-Approach”), while in the meantime tending to the desires of shareholders and partners⁴⁰⁷.’ Thus, CSR is an obligation wilfully expected by an organization in its illuminated self-interest. It is not something forced by law. Or maybe, it is something which a business does past what is required by law.

5.19 LEGAL PROVISIONS REGARDING CSR IN OTHER COUNTRIES

Authoritative intercession world over is not by method for forcing CSR commitments on organization by law however obliging organizations to uncover what they are doing by method for CSR on the off chance that they

⁴⁰⁶ www.unido.org/fileadmin/import/26164_EMApartIcropped.5.pdf. Last visited on 24-05-2016 at 15.24.

⁴⁰⁷ <http://www.unido.org/en/what-we-do/exchange/csr/what-is-csr.html>. Last visited on 18-05-2016 at 20.29.

are at all doing it. Furthermore, if organizations are not doing anything by method for CSR, they need to express the reality. Hence, administrative mediation is not by method for ordering CSR but rather by urging organizations to reveal their CSR activities if at all they are executing CSR. The idea of CSR worldwide is that it is a wilful key administration idea which should be supported by ordering revelations if organizations are actualizing CSR. A great case of this is the Danish Financial Statements Act in Denmark. The Explanatory Notes in the Proposal for correcting the Danish Financial Statements Act illuminate as under: “The Proposal executes an activity set down in the Action Plan of the Danish Government on Corporate Social Responsibility. The reason for the Proposal is to support around 1,000 of the biggest Danish organizations, recorded organizations and state-possessed open constrained organizations secured by the Danish Financial Statements Act to work effectively on courses in which they can add to tackling social difficulties⁴⁰⁸. Social obligation implies that the business should wilfully incorporate contemplations for human rights, societal, natural and atmosphere conditions and battling defilement in its business methodology and exercises. In this way the business won't be committed to this under the enactment in the nation in which the business is working. Thusly, it is recommended that such organizations be committed to make a record of their work on social obligation as a feature of their monetary reporting. The Proposal will be presented with a sole prerequisite that organizations secured by the Proposal must give data about their arrangements on social duty, how such strategies are acknowledged by the business, and the evaluation of the business on what has been accomplished as an aftereffect of its work on social obligation in the monetary year, and any future desires to the work. Organizations without approaches on social duty are obliged to give data in this admiration.

Regardless of the Proposal, corporate social duty remains an intentional matter. The business picks if and how it wishes to coordinate the above contemplations in its business technique and exercises. The exposure necessity in this manner does not commit organizations secured by the Proposal to draw up a strategy on social duty, and there are no prerequisites on how the

⁴⁰⁸ supra note 328.

individual business chips away at social obligation. In backing of the target to make Denmark surely understood for capable development, Danish organizations and their work on social obligation ought to be founded on a globally perceived reference structure. Subsequently, organizations and financial specialists may benefit from constructing their work with respect to the UN standards for social duty, i.e. the UN Global Compact and the UN standards for mindful ventures (UN PRI)⁴⁰⁹. The Explanatory Notes illuminate the intentional character of CSR as under: “The reason for the Proposal is to urge organizations and speculators to work effectively on social duty. Organizations may add to understanding social difficulties through their business driven social duties, and in the meantime, make better business open doors for themselves.

Business driven social duty implies that the social obligation of the business must be joined with its center business exercises.” Further: In this Proposal, Corporate Social Responsibility (CSR) implies that organizations deliberately incorporate contemplations for human rights, societal, natural and atmosphere concerns, and fighting defilement in their business procedures and exercises. “Wilfully” alludes to exercises and so on that are not subject to Danish enactment or the enactment appropriate in the outside nation where the business is working. Societal concerns may comprise in work on helping remote suppliers watch labourers’ and human rights. Societal concerns may likewise be about wellbeing and security at work, worker fulfilment and advancement, or comprise of organizations endeavouring unique endeavours to hold or incorporate individuals who are crippled, seniors, people with decreased limit or people with other ethnic foundation in the work market⁴¹⁰. Natural and atmosphere concerns might be about counteracting contamination, lessening utilization of vitality and different assets, creating or utilizing earth effective advancements or eco-naming items. Along these lines corporate social obligation may encapsulate various exercises, and the above are simply cases. The individual business can pick which exercises will be of the best

⁴⁰⁹ www.unpri.com. Last visited on 11-10-2016 at 10.20.

⁴¹⁰ supra note 423.

esteem to the business and society. In UK, section 172(1) of the UK Companies Act, 2006 gives as under in regards to obligations of executives: “Duty to advance the accomplishment of the organization (1) A chief of an organization must act in the way he considers, in compliance with common decency, would be well on the way to advance the achievement of the organization for the advantage of its individuals overall, and in doing as such have respect (amongst different matters) to—(a) the probable results of any choice in the long haul, (b) the interests of the organization's workers, (c) the need to encourage the organization's business associations with suppliers, clients and others, (d) the effect of the organization's operations on the group and nature, (e) the attractive quality of the organization keeping up a notoriety for elevated expectations of business behaviour, and (f) the need to act reasonably as between individuals from the organization⁴¹¹.”

5.20 DIFFERENCE OF SECTION 166(2) FROM SECTION 172(1) OF UK COMPANIES ACT, 2006

In UK, section 172(1) of the UK Companies Act, 2006 gives as under in regards to obligations of chiefs: “172. Obligation to advance the achievement of the organization (1) An executive of an organization must act in the way he considers, in accordance with some basic honesty, would be well on the way to advance the accomplishment of the organization for the advantage of its individuals in general, and in doing as such have respect (amongst different matters) to—(a) the conceivable results of any choice in the long haul, (b) the interests of the organization's representatives, (c) the need to encourage the organization's business associations with suppliers, clients and others, (d) the effect of the organization's operations on the group and nature, (e) the attractive quality of the organization keeping up a notoriety for elevated requirements of business behaviour, and (f) the need to act reasonably as between individuals from the organization⁴¹².”

Interests of the organization
Interests of the group
Interests of its shareholders
Protection of environment

⁴¹¹ The UK Approach To Corporate Governance, Financial Reporting Council, October 2010.

⁴¹² *Id.*

Interests of its workers. The distinction between section 172(1) of the UK Act and section 166(2) of the 2013 Act is critical⁴¹³. The words in section 172(1) are “having respect to” the interests of representatives, suppliers, clients, group and environment. So doubtlessly the partners can't sue any executive for disregarding their advantage. The words “having respect to” just mean attentiveness and don't cast any obligatory commitment. As indicated by Advanced Law Lexicon by PR Aiyar : “The expression 'have respect to' has by and large catalog impact and not a coupling impact”⁴¹⁴. The expression 'having respect to' means the matters to which respect is to be had are to be an aide and not a chain - *State of Karnataka v. Ranganatha Reddy* AIR 1991 SC 215⁴¹⁵. Be that as it may, section 166(2) of the 2013 Act is worded in an unexpected way. Section 166(2) gives that “A chief of an organization should act... .. and to the greatest advantage of the organization, its representatives, the shareholders, the group and the assurance of environment”. Section 166(2) of the 2013 Act appears to cast a coupling commitment on the chiefs of organizations. It might happen that the chiefs might be sued by partners in light of section 166(2). This is clear on the off chance that we look at the foundation behind the inclusion of the words “its representatives, the shareholders, the group and the insurance of environment” in section 166(2)⁴¹⁶.

The words “its workers, its shareholders, the group and for the assurance of environment” were presented in light of the accompanying recommendation of ICSI before the Parliamentary Standing Committee on money: “Particular reference for obligation of chiefs towards shareholders, representatives, environment and group ought to be given⁴¹⁷.” The Parliamentary Standing Committee's proposals in such manner in Para 11.80 of its Report (2009) are as under: “11.80 The Committee welcome the proposed changes with respect to the obligations of an executive to advance the objects of the organization to

⁴¹³ supra note 426.

⁴¹⁴ PR AIYAR, ADVANCED LAW LEXICON.

⁴¹⁵ *State of Karnataka v. Ranganatha Reddy* AIR 1991 SC 215.

⁴¹⁶ SINGH supra note 1.

⁴¹⁷ <http://www.icsi.edu/portals/70/NIRRULE.pdf>. Last visited on 07-03-2016 at 09.21.

the greatest advantage of its workers, the group and the earth also, especially in the setting of Corporate Social Responsibility, which is proposed to be incorporated into this statute⁴¹⁸. This is cumbersome. As CSR Policy of EXXON Europe states: "... . Be that as it may, we can't be all things to all individuals. We should adjust the requirements of an assortment of partners."

A company that has taken every reasonable push to keep the behaviour that underlies its criminal accusation is also ailing in volition. The DOJ itself has perceived the failure of partnerships to control each activity of their workers and that they ought not be considered in charge of every single such activity. In every last conceded indictment concurrence with the DOJ since the fall of Enron in late 2001, the DOJ has incorporated an arrangement that proofs its own particular acknowledgment of the out of line nature of strict vicarious risk. In the run of the mill post-Enron conceded indictment assertions, the respondent organization consents to an announcement of actualities furthermore concurs that it won't repudiate that arrangement of truths, through any of its representatives or different specialists⁴¹⁹.

The usage of corporate social obligation varies from organization to organization. The organization's size, division, its way of life and the dedication of its top level administration assumes a critical part in the usage of socially mindful angles. A few organizations may concentrate on a solitary zone i.e. on the social issues, or ecological issues, be that as it may others may coordinate every one of the parts of triple main concern⁴²⁰. The vision and mission of a socially mindful organization as often as possible determines that it will participate in dependable and moral organizations rehearses. Likewise these sorts of partnerships keep up the equalization identified with the necessities of partners which incorporate representatives, shareholders, clients, groups, CSR assumes an essential part in controlling the perils of today's business improvement, by keeping up the harmony between fulfilling the

⁴¹⁸http://www.mca.gov.in/Ministry/annual_reports/annualreport2009/Eng/MCA_AR0910_English.pdf. Last visited on 12-04-2016 at 22.30.

⁴¹⁹ supra note 399.

⁴²⁰ supra note 28.

requirements of the present era and then again guaranteeing that the assets of future era is not jeopardized. Organizations are slanted towards to cover their commitments towards the earth, society and in addition moral business exercises. Be that as it may, in CSR reporting, there is the region frequently missing is range of work rights and mechanical relations. One of the major centers of CSR ought to be the nature of modern relations inside an association.

CSR programs mean a mix of monetary, legitimate, moral and humanitarian standards with reasonable development. In this day and age, there is an expanded spotlight on comprehensive development for the partners. Whatever national and universal CSR arrangements are winning ought to be trailed by the organizations⁴²¹. CSR arrangements under S.135 of organizations Act 2013 is not adequate to ensure the triple main concern in India. In this way India ought to execute all the abroad based CSR standards with a specific end goal to give a shield to the triple main concern. This will give a legitimate lawful system which is universally perceived. Additionally it will give marking to the organization on a universal premise is minimal left to the prudence of the organizations how to outline their CSR approaches. Reasonable CSR programs mean a coordinated methodology of monetary, legitimate, moral and humanitarian parameters⁴²². In this day and age, there is an expanded bolt on offering back to society, making a structure which works long haul, which is supportable. In a worldwide economy, a globalized reaction to its issues are required and in the year 2000, at the UN Millennium Summit, all the 189 Member states at the time, had embraced the historic point Millennium Development Goals, which is otherwise called MDG, as a first worldwide exertion towards tending to the most unmistakable advancement issues with a specific end goal to accomplish quantifiable targets and deadlines eradication of poverty, social development and environmental sustainability⁴²³.

⁴²¹ HAWKINS, D. (2006), "CSR BALANCING TOMORROW'S SUSTAINABILITY & TODAY'S PROFITABILITY". PALGRAVE MACMILLAN, NEW YORK.

⁴²² supra note 28.

⁴²³ supra note 346.

While Millennium Development Goals had brought great changes, accomplishments, still the advancement had been uneven crosswise over various locales and nations, particularly millions fall through the crevice, the poorest and generally distraught. By the by, it demonstrated that aggregate activity on worldwide premise can bring changes. The rising worldwide difficulties for instance, the Sustainable Development Goals (SDG) advanced on the back of lessons learnt and it was trailed by 193 Member States at the UN General Assembly in September 2015⁴²⁴. The SDGs would manage through 17 Goals and 169 targets identified with advancement approach and subsidizing through 2030. The aspiring and far reaching advancement focuses of the SDG would need to depend on a portion of the key drivers for maintainable improvement for instance, more grounded interconnection of monetary, social and ecological issues, long haul considering, enhancing hazard administration, making between generational and societal value and fittingly esteeming nature⁴²⁵. In India, arrangement with the reasonable advancement objectives implies bringing moderate, clean water and giving sanitation to its 1.3 billion populace, i.e. SDG 6, making business open doors for the 10 million Indians that enter the workforce yearly i.e. SDG 8, giving perfect, 24x7 vitality to all families i.e. SDG and, making keen urban areas and guaranteeing protected and flexible living spaces i.e. SDG 11, and advancing maintainable horticulture, guaranteeing further thriving and annihilating craving i.e. SDG 2⁴²⁶. It is critical, that the best practices for exhaustive development ought to incorporate the welfare of the partners too.

5.21 CONCLUSION

India has to prepare itself better for intensifying change in weather by concentrating on adapting, moderating and building resilience to protect the

⁴²⁴ UN. 2007. CSR and Developing Countries: What Scope for Government Action? Sustainable Development Innovation Briefs. Policy Integration and Analysis Branch of the Division for Sustainable Development. <https://sustainabledevelopment.un.org/content/documents/no1.pdf>. Last visited on 17-08-2016 at 22.30.

⁴²⁵ *Id*

⁴²⁶ *Id* at 2

millions of vulnerable livelihoods, while ensuring economic growth. Schedule VII of the Companies Act 2013, that lists the broad developmental areas where companies need to focus on their CSR action is strongly aligned with the sustainable development goals and permits enough flexibility to companies to align their existing CSR provisions and programs and any new initiatives which has mutual relation in the regulations as well as the agenda of overall development of the world. With CSR spending expected to cross Rs. 8,500 Crores in financial year 2015-16⁴²⁷.

As more companies meet their 2% spend requirement and the anticipated strengthening bottom lines also there is an immense ambit for CSR projects to scale up. The embedding of CSR within the business strategy can improve the CSR initiatives. On world level, there are organizations that have successfully made implemented their corporate responsibility as well maintained sustainability, for example, IKEA, with its clear, sustainability focused growth path, or Unilever, with its far reaching plan. Yes Bank, in India with its responsible banking ethos is effectively demonstrating the case that unique flagship community engagement programs like yes Community, which has positively brought changes in lives in India with interventions like safe clean drinking water, employability skills and energy efficiency. Tata Steel, Mahindra & Mahindra and Infosys have also built linkages between CSR and their products and services by socially responsible behaviour.

The magnitude of developmental challenges in India covering 1.3 billion people is extremely important. Productive insight by innovative thinking and developing large scale solutions that are sustainable is highly necessary⁴²⁸. Hence, the corporations have to think about models that are replicable and can be implemented within the different demographics in India to solve the nature of challenges. There is an immediate need to tap and leverage the corporate management skills and organizational capabilities with the large government accessibility and by establishing mutual relationship and understanding with

⁴²⁷ supra note 409.

⁴²⁸ *Id* at 1.

the NGOs⁴²⁹. Establishing capability of the NGOs around controls, compliance, governance, risk, and performance management are core to the success of any CSR program. This would certainly contribute to the success of corporate participation in government's initiatives, for example the Swachh Bharat Abhiyaan, skill India and digital India. The ethical imperatives like social and environmental interventions are important as they should be measured and disclosed to the stakeholders. A 36 degree framework towards reporting on financial, human, social and natural capital assumes criticality.

CSR reporting needs to be taken as a learning tool which helps to look at processes differently and served as scorecard towards continuous improvement⁴³⁰. There are so many things to be achieved, and cohesive efforts from every one would be able to ring in a sustained focus on changing thought process and attaining the same would lead to a long lasting impact. It would not matter much of just making CSR count, but it is all about being successful in achieving inclusivity and overall sustainable development for India. Thus, it can be concluded that the current CSR provision in the Companies Act 2013 has the potential to bring the novelty in the CSR activities of the corporations in India. The international CSR provisions are controlling the corporate scandals in a better manner. But while going through the verdicts of foreign countries and India, it is noticed that in India the proceedings are delayed. Justice delayed means that justice is denied. Hence the provisions of S.135 of Companies Act should be given more judicial power and at the same time the national CSR provisions should be aligned with the international CSR provisions. There is a need to make amendments in S.135 of Companies Act 2013 so as to bridge in the gaps in order to meet the CSR objectives.

Current series of scandals which had involved major corporations throughout the world have brought to the attention of public, the need to analyse these issues. The legal issues related to the problem of corporate social responsibility have been finally identified in this Chapter. There is a wide gap between CSR activities in India and abroad because the companies in India are

⁴²⁹ SINGH supra note 1.

⁴³⁰ supra note 429.

not clear with the provisions of S.135. They are also taking undue advantage of no specification related to unspent amount of CSR fund; even they are not effectively spending the amount. This is leading to widen the gap of sustainable development⁴³¹.

⁴³¹ Deepak Nitrite Ltd v. State of Gujarat & Ors. (2004) 6 SCC 402.