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THE JUDICIAL RESPONSE AND CORPORATE SOCIAL RESPONSIBILITY IN INDIA

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ABSTRACT

The researcher has made an effort to shed some light on the judicial approach regarding Corporate Social Responsibility in this chapter. This study is an attempt to shed some light on the approach. Legislative, executive, and judicial branches make up the three institutions that make up the state. While the executive branch is responsible for putting the legislation into effect, the judiciary is responsible for interpreting it. In India, the legislative is the Parliament. Aside from that, the judiciary, through the practice of judicial activism, endeavours to fill the void that the legislature has left behind in the process of legislating the law. In addition, the term "legislation" can be used to refer to international treaties, covenants, principles, and recommendations that pertain to issues on which the Indian legislature has either been silent or has not enacted any laws.

As the protector of the Constitution of India, the Judiciary is responsible for interpreting its provisions and declaring any statute that is in conflict with the Constitution to be invalid and unenforceable. The role of interpretation has been played by the judiciary in a very skillful and conscientious manner. In this chapter, we will examine how the Indian court has instilled a sense of responsibility in the commercial activities of the Indian corporate sector through the decisions that it has made that it has handed down. In the past, a company was only considered to be a legal entity that was established to conduct business and make profits. However, with the introduction of the welfare state concept, the judiciary began to recognize corporations as an organ of society that carries the responsibility towards its stakeholders as well as social responsibility towards society as a whole.

Keywords: judicial; legislative; constitution; unenforceable; conscientious; commercial; corporate; established; responsibility; considered.

“I am pained to observe that the judicial system in the country is on the verge of collapse. These are strong words I am using but it is with considerable anguish that I say so. Our judicial system is creaking under the weight of errors.”

Chief Justice Bhagwati said in his speech on Law Day

The British ruled India for an extended period, during which they established a judicial system primarily designed to support their business interests rather than to serve justice for the Indian populace. After gaining independence, India adopted this British judicial framework with minimal modifications. The adversarial system introduced by the British has evolved into a costly, time-consuming, and inefficient process. Several factors contribute to its shortcomings, including procedural delays, an overabundance of forums and laws, and poorly established courts. Consequently, the time required for courts to resolve disputes has lengthened, leading to significant delays in justice. These backlogs result in prolonged delays, effectively denying the common man true access to justice. The endless trips to court and consultations with lawyers can drive individuals to despair. Many Indians find themselves spending excessive time in court corridors, making it a frustrating part of their daily lives. Key reasons for the delays in case resolution include a dramatic rise in the number of cases filed in courts and tribunals, often stemming from hastily enacted legislation, arbitrary administrative orders, and an increased awareness of rights. Additionally, the legal system's provision for multiple appeals and revisions fosters a gambler's mentality among litigants, further complicating the situation.

The Role of the Judiciary in Encouraging CSR

According to the Indian Constitution, the executive branch, the legislative, and the judiciary each have their own distinct set of authorities. The Constitution of India is the highest authority, and the Supreme Court of India is the body that is responsible for protecting it. According to the constitution, the nature of the Indian state is that of a democratic republic that is constitutionally sovereign, socialist, and secular. In addition to this, the preamble addresses issues of social and economic justice.

The responsibility of interpretation, providing precise meaning, and determining the correct intention of the legislator behind any legislation lies with the judiciary. The judiciary has performed this function to a high degree of efficiency up until this point, all the while

preserving the integrity of the provisions. if it comes to issues concerning social welfare, social justice, and the conservation of the environment. Additionally, the scope of Article 21 has been broadened by the judiciary. It has also placed several aspects of Directive Principle of State policy under the purview of definition of fundamental rights in many circumstances connected to the overall welfare of society, particularly of weaker sections. The Right to Life and Liberty has been able to do this by tying it to the environment, employment, and dignity. Now, the provisioning of a socialist state, social justice, and economic justice are the goals that are envisioned in the preamble. The provisions of Article 21, Article 23 & 24 of the fundamental rights, and the provision of Directive Principle of state policies all relate to the aspect of corporate social responsibility. The judiciary has played a very significant role in establishing this relationship and by ensuring that the state makes legislation that is suitable to make corporations socially responsible.

It is possible to determine the attitude that the judiciary takes towards social responsibility by analyzing its approach in a variety of instances that are related to the provisions stated above that support the idea of corporate social responsibility either directly or indirectly under the following headings:

- a) Application of Jurisprudential Postulates related to social responsibility.
- b) Judicial Approach Towards constitutional provisions supporting Corporate Social Responsibility.
- c) Judicial Approach towards Tax Breaks on CSR expenses.

The Judicial Response and Fundamental Rights for CSR

Article III of the Constitution of India stipulates that every citizen is entitled to certain fundamental rights. The nature of these fundamental rights is such that they are enforceable, which means that if they are violated, an individual has the ability to directly petition the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution of India. The Indian court, by the decisions that it renders, makes an effort to instill a feeling of responsibility in the corporations and business entities that are concerned with the fundamental rights of the citizens of India. Companies have been recognised by the courts as an essential component of both progress and society as a result of the decisions that they have made. Article 14 of the Constitution of India ensures that every person of India is afforded equal protection

¹ The Constitution of India, 1949

under the law and that they are treated equally before the law. The notion that all people are equal before the law and are entitled to equal protection under the law without any discrimination is embodied in this article, which is a representation of the Universal Declaration of Human Rights Principles. According to the decision that was made by the Supreme Court in the case of *Banglore Water Supply and Sewerage Board v. A Rajappa*² the definition of the word "industry" encompasses a wide variety of enterprises. The court stated that the scope of industry has been expanding over time. In addition, the concept of a trade union encompasses the associations or unions that are created within such an establishment.

The Supreme Court of India issued directions against the Union of India, the Government of Rajasthan, and the Rajasthan Pollution Control Board (RPCB) in a writ petition. The court asked these entities to carry out their statutory duties in accordance with the provisions of the (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, and the Environment (Protection) Act of 1986. According to the grounds that the non-performance of statutory responsibilities as established in the laws that were mentioned earlier poses a threat to the fundamental right to life of the people who live in Bichari Village and the people who live in the surrounding region, the Court issued orders. In addition, the court ruled that if a business is operating without the appropriate authorization and approvals from the law, then the operation of that business poses a risk to the lives and liberties of the people who live in the surrounding area. When a situation like this arises, the court has the authority to intervene and protect the fundamental rights of the affected individuals, including their right to life and liberty. The Constitution of India, Article 21, declares that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." This provision was included in the Constitution³. Using its judicial interpretation, the Supreme Court of India has, on occasion, broadened the scope of the provisions contained in Article 21 of the Constitution of India. The following are some of the instances that are decided: The Supreme Court of India ruled in the case of *Olga Tellis v. Bombay Municipal Corporation*⁴ that the right to life encompasses the right to livelihood. This is because no one can have a life without the means to survive. Access to means of subsistence is an essential component of the right to life.

² AIR 1978 SC 548.

³ (2005) 8 SCC 534.

⁴ *Id.*, art. 21.

The Judicial Response and Directive Principles of State Policy for CSR

The Directive Principles of State Policy (DPSP) are one of the topics that are discussed in Part IV of the Constitution of India. With the help of these DPSP, the government will be able to accomplish its objectives while it is in charge of the state. The government must keep these DPSPs in mind while formulating its policies and objectives, even though these principles are not legally enforceable. Fundamental rights and Directive Principles of State Policy are like two sides of the same coin; they complement and contribute to one another.

During the case of *Air India Statutory Corporation v. United Labour Union*⁵ the Supreme Court of India ruled that the notion of social justice, as outlined in Article 38 of the Constitution of India, is a dynamic instrument that aims to remove injustice and suffering among the sector of society that is considered to be particularly disadvantaged. While speaking at a seminar that was held by the United World School of Law, J. Madan Lokur, a member of the Supreme Court of India, noted that the mandatory supply of CSR is a step towards the implementation of directive principles of state policy that are established in Part IV of the Constitution of India. According to him, every decision that a business entity makes, beginning with the extraction of raw materials and continuing through the employment of labour, manufacturing, the selling of commodities, and the creation of new things, all the way through to the conclusion of operations, has the potential to have a significant impact on the lives of thousands of people, either directly or indirectly.

In the case of *LIC of India v. Consumer Education and Research Centre Anr*⁶. the highest court in India ruled that all authorities, private individuals, and industries are required to comply with the directives that are included in Part III, Part IV, and the Preamble of the Constitution of India. This decision was made to establish the role and significance of Directive Principles for State Policy during the case. The articles of the Constitution of India, the Universal Declaration of Human Rights, the European Convention of Social-Economic and Cultural Rights, and the Convention on the Right to Development for Socio-Economic Justice all apply to the right to engage in commercial activity. These rights are subject to the provisions established by these documents. People can maintain their livelihoods and experience socioeconomic justice through the provision of social security.

⁵ 1995 AIR 922.

⁶ 1983 AIR 750.

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The Judicial Interpretation for the Concept of CSR:

In tandem with the transition from a shareholder-centric approach to a stakeholder one, the Judiciary has also begun implicitly acknowledging the concept of corporate social responsibility. This particular case, which was known as *Commissioner of Income Tax v. Modi Industries Ltd*⁸. was about the tax status of corporate buildings that offered flats to employees who had a low income. After investigating the significance of employee interests, the Court concluded that the consideration of employee interests by firms has to be regarded as an essential component of corporate social responsibility.

The matter at hand in the case known as *Tata Power Company Ltd. (Transmission) v. Maharashtra Electricity Regulatory State Commission*⁹ concerned how the company must be taxed for its expenditures. According to the decision of the court, it is the responsibility of the firm to make expenditures to carry out its corporate social responsibility activities, and the burden of such expenditures cannot be placed on the shoulders of the shareholders. The case that was brought before the court in *Mohammad Ahmed (Minor) v. Union of India and Others*¹⁰ concerned the issue of health facilities. The decision that the Delhi High Court made in this particular case was that the government ought to increase the amount of donations, whether

⁷ 1991 AIR 537.

⁸ (2010) 327 ITR (570).

⁹ MANU/ET/015/2013.

¹⁰ W.P (C) 7279/2013 (Del) at 70.

they are monetary or in kind, in order to improve the health sector of the country. Medications, pharmaceuticals, and medical care are all quite expensive, and the average person is unable to pay them. In addition, the court stated that it is not possible to place the entire responsibility of enhancing and providing health care facilities on the private sector. Instead, the government ought to allocate a greater proportion of its budgetary expenditures to the health sector in order to ensure that Article 14 and 21 of the Constitution of India are actually enforced.

According to the court's recommendation, the Ministry of Corporate Affairs of the Government of India ought to provide additional credit to businesses that are engaged in corporate social responsibility initiatives in the provision of health care facilities to the general public. Therefore, in order to provide relief, the court came to the conclusion that corporate social responsibility is in its very early stages, and there is currently no such mechanism available in the country that can increase donations. As a result, the state is fully and completely responsible for providing better and more essential health care facilities to everything.

In the case of *Aam Janta v. State of M.P. and others*,¹¹ the residents of five villages, through their village leaders, filed a lawsuit in which they requested that the court order Prim Cement Limited, a public limited company that operates a cement plant, to cease polluting the environment of the village and to improve the sanitation of the surrounding area. The cement company was ordered by the court to establish a healthy connection with all of its stakeholders, particularly with the local villagers in the areas where it has its business units after the court had gone through the reports that were submitted by the State Pollution Control Board. The court went on to clarify that the firm ought to engage in corporate social responsibility activities for the welfare and the general good of the communities. The company cannot avoid its social obligation of preserving the quality and purity of the environment and protecting the villages from any inconvenience or disturbance caused by its business activities, which in turn pose a threat to their right to life. This responsibility cannot be avoided.¹²

The Judicial Attitude towards Corporate Social Responsibility in India

There is no such thing as a business that operates in a vacuum; rather, it is carried out inside society. Since no business can exist in isolation from society, it will inevitably have either a

¹¹ C.S No. 35 of 2013, N.G.T, 21 Feb 2014.

¹² Sandeep Gopalan, Akshaya Kamalnath, "Mandatory Corporate Social Responsibility as a Vehicle for Reducing Inequality an Indian Solution for Piketty and The Millennials" 10 *Northwestern Journal of Law & Social Policy* (2015).

positive or bad impact on society, and vice versa. A company is not just the property of its owners, but it is also a social institution that has duties and responsibilities towards the community in which it operates, according to the socio-economic thinking that is currently prevalent. The concept of corporate social responsibility is brought up by the Supreme Court of India when discussing the obligations that businesses have to the community. By Article 297¹³ of the Constitution of India, natural resources are vested in the Union of India.

Furthermore, Article 39(b) mandates that resources be distributed in a manner that serves the common benefit, which is a commercial practice in the oil and gas business. In addition, the Preamble of the Constitution ensures that the people of India will receive economic and social justice, and the judiciary is fulfilling its function as the protector of public interest and the guardian of constitutional rights to ensure that this economic and social justice is provided.

This series of cases, the Goa High Court in *Birla Zauri Agro Chemical Ltd., Goa Case*¹⁴. ordered the closure of the company's operations because the effluents of the company were polluting the sea. The judiciary expanded the responsibility of companies by ensuring that those companies that are hazardous to natural resources and society as a whole should not be allowed to go free because of their actions. The Unilever Company was responsible for the disposal of 300 metric tons of mercury in the year 2001 at Kodaikanal, which is located in the state of Tamil Nadu. On the website of Unilever, there is a statement that declares, "We are committed to conducting our operations with integrity and with respect for the interests of our stakeholders..." This information stands in contrast to the action described above. In addition, we are dedicated to making consistent advancements in the management of our environmental impacts and to working towards our longer-term objective of establishing a sustainable business¹⁵.

The Judicial Interpretation of Stakeholders' Approach:

The rulings of the Indian courts were primarily founded on the idea that directors are the agents of shareholders or creditors of the company before the Companies Act of 1956. This approach was in place before the Companies Act of 1956. During the course of the discussion regarding the liability of directors for a negligent act, J. Scott of the Bombay High Court stated that

¹³ Art. 297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union. -

¹⁴ AIR 1975 SC 999

¹⁵ Available at www.unilever.com 2014

directors must protect the interests of shareholders and creditors from any negligent act or misconduct. This was stated in the case of *New Fleming Spinning and Weaving Company Ltd. v. Kessowji Naik and Others*¹⁶ Therefore, the responsibilities of the directors should not be made so burdensome that a sensible or reasonable individual would refuse to accept such a position. During the course of another case, *Dikshit and Corporation Ltd. v. Mathura Prasad*¹⁷ the Allahabad High Court stressed the agent and principle theory and declared that directors are the agents of the shareholders of the corporation. This was done while considering the matter that was related to the salary of the directors.¹⁸

This notion of agent and principle remained to be used even after the Companies Act of 1956 was passed into law. As stated in the case of *Albet Judah v. Rampada Gupta and Aur*¹⁹ J. P. Mallick alluded to a number of English precedents and stated that directors carry out their responsibilities and manage the business of the company solely for the purpose of ensuring that the shareholders of the firm receive advantages. A detrimental influence was caused on the business world as a result of the scam because it was so large. Furthermore, the firm Law Board noted that it is the necessity of the hour to establish confidence in the minds of stakeholders of the firm to change the situation and impart confidence in the market. This was mentioned to accomplish both of these goals. Last but not least, the Company Law Board decided to give ex-parte interim relief to safeguard the interests of the company, its members, its consumers, and society as a whole.

Bhopal Gas Tragedy Case:

The Bhopal gas leak was one of the most significant accidents involving the release of industrial chemicals anywhere in the world. More than five lakh people were brought into contact with toxic gases as a result of the catastrophe, which resulted in the deaths of between three thousand and ten thousand individuals and left between one and two lakh people with injuries that are permanent. The Union Carbide Corporation was a corporation that was owned by the United States of America. Through its subsidiary, Union Carbide Indian Limited, which was established in India, Union Carbide Corporation held a control of 50.9% of the company. The remaining 49.1% of the company was controlled by the Indian government and banks that

¹⁶ 1885 ILR 9 (Bom.) 373 at 14.

¹⁷ AIR 1925 (All.) 71 at 7.

¹⁸ Michael C. Jensen and William H Meeking, "Theory of the Firm: Managerial Behaviour, Agency costs and Ownership structure" 3 *Journal of Financial Economics*. 305 (1976).

¹⁹ AIR 1959 (Cal.) 715.

were under the jurisdiction of the Government of India. Bhopal was the location of the construction of a pesticide facility by Union Carbide Indian Limited in the year 1969. During the production of carbonate insecticides, the factory utilised methyl isocyanate as an intermediate step within the process. In the early years of the business, methyl isocyanate was brought in from the United States. Subsequently, the company, with the approval of the Madhya Pradesh government, erected a facility for the production of methyl isocyanate. This plant was built in close proximity to the pesticide plant that was already in operation. In 1980, the facility began producing methyl isocyanate in accordance with the information and knowledge that was provided by the holding firm that was located in the United States of America.²⁰ On the day of the accident, the refrigerating unit installed in the plant to cool the Methyl Isocyanate and prevent chemical reactions had not working for the last three months, the flare towers of the plant were not in working position, and water sprayers were unable to reach flare towers, alarm system of the plant was non-functional, scrubbers and vents were removed for maintenance, gauges maintaining temperature and pressure were not functioning, tank kept for storing Methyl Isocyanate was filled above its capacity and residing tank kept for use in case of excess was already filled with Methyl Isocyanate. As an additional point of interest, on November 29th, 1984, the Union Carbide Corporation decided to relocate the Bhopal plant to either Indonesia or Brazil. The feasibility report for the same was submitted on November 29th, 1984, which is three days before the catastrophe took place.²¹

Compensation for the Victims of Bhopal Gas Leak Disaster:

After the Bhopal Gas tragedy, in 1985, the government of India passed a law that is now known as the Bhopal Gas Leak Disaster Act. According to the provisions of this law, the statutory right of victims to represent themselves in a court of law, whether it be within the territory of India or outside of it, was transferred to the government of India. Cases of both civil and criminal nature have been brought against the firm Union Carbide, which is headquartered in the United States, as well as its subsidiary, Union Carbide India Limited.

Following the hearing of the claims, the Supreme Court of the United States granted 470 million dollars in the United States as immediate assistance to the victims of the disaster. This amount of compensation was determined by the court based on the presumption that there were

²⁰ Ingrid Eckerman and Tom Borsen, Corporate and Governmental responsibilities for preventing chemical disasters: Lessons from Bhopal, available at: <file:///C:/Users/BEST%20BUY/Downloads> 2019.

²¹ Sandipa Lahiri Anand, Bhopal Gas Disaster and Dow Chemical: Need for CSR, www.csringreece.gr/files/research/csr-1289901995.pdf.

three thousand fatalities and one lakh individuals who sustained injuries. According to the findings of the investigation that was carried out in 2003, it was discovered that the number of deaths that were reported was greater than fifteen thousand, and the number of persons who had injuries was close to five lakh. This is five times more than the statistics that were calculated from the beginning. According to the data that was made public in 2003, the compensation was not increased, and as a result, only two hundred rupees were allocated for the rehabilitation of an individual each year. All of the victims were treated unfairly because the amount of compensation was so insufficient. As a result, the victims found themselves in a hopeless predicament. There was a fight for justice that took place in the courts of India and the United States, but it was unsuccessful in obtaining proper compensation and treatment for the victims, as well as the decontamination of the company's site.

Government's Role:

The government of India and other statutory organisations have failed to impose criminal liability on the corporation, even though they are aware of all the data, which indicates that the company was responsible for the case of negligence and carelessness that led to such a fatal disaster. Although the government made efforts to offer victims services in the areas of environmental, social, economic, and medical care, it was ultimately unsuccessful in doing so. There was a failure on the part of the government to provide proper and adequate treatment, drugs, and infrastructure assistance to government hospitals in the medical sector. Even though the government had allotted monies for the relief and rehabilitation of catastrophe victims, such funds were either not used at all or were used inappropriately. There were funds granted by the government for the rehabilitation of those who were impacted; but, in practice, very few people benefited from these funds, and the majority of those affected were left to rely on their resources.

In this particular instance, the Union Carbide Corporation and the Union Carbide India Limited failed to pay attention to the safety of their personnel as well as the neighborhood that was located close to their establishment of operations. Even though the calamity had already occurred, they did not take the necessary actions to give victims aid and to rehabilitate those who had been impacted. It was five times less than the amount of loss that was caused by the accident, and the compensation that was offered to sufferers was insufficient. Almost immediately after the occurrence of the catastrophe, the Dow Chemical Company took control of the Union Carbide Corporation and issued a statement stating that it did not face any

outstanding responsibility for the Bhopal gas tragedy and the harm that it caused to people, the environment, and the communities that were in the surrounding area. By asserting that it is obligated to safeguard the interests of its shareholders, it was able to alleviate the burden of responsibility that was placed on the shoulders of the government and free itself from any legal action whatsoever.

The Bhopal gas Leak tragedy (Processing of claims) Act of 1985 and the Environment Protection Act of 1986 were both pieces of legislation that were adopted by the government of India in 1985 and 1986, respectively, to prevent future negligence of the same sort. The Bhopal gas leak tragedy (Processing of Claims) Act of 1985, on the other hand, did not provide productive results even after twenty years had passed after the disaster.²²

As a result of the Bhopal gas catastrophe, the government of India enacted several laws to improve the working conditions of individuals who were employed in industrial units and to safeguard the environment from the pollution and damage that was created by the activities of enterprises. Some of them are:

- The Factories (Amendment) Act, 1987;
- The Environment Protection Act, 1986;
- The Manufacture, Storage and Import of Hazardous Substances Rules, 1989;
- The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008;
- The Chemical Accidents (Emergency Planning, Preparedness, and response) Rules 1996;
- Public Liability insurance Act, 1991 and
- Disaster Management Act, 2005

Coca-Cola Case:

In the year 1886, Coca-Cola began its adventure in the business world as a local soda producer in Atlanta, Georgia, in the United States of America. At the time, the company could sell nine beverages each day. Over the course of the 1920s, the corporation began expanding its operations by selling its product initially in the markets of the Caribbean and Canada, and then eventually to practically all countries across the world. 2005 marked the year when the

²² *Supra* note 44 at 6-8

corporation achieved the position of being the largest manufacturer, distributor, and marketer of non-alcoholic beverages and syrups in the world.²³

A report was published in 2003 by the Centre for Science and Environment (CSE), an Indian non-governmental organization. In the paper, the CSE produced proof that beverages marketed in India by the Coca-Cola and Pepsi companies included levels of pesticides that were higher than the limit that was marked by the European Standards. The number of rallies, campaigns, and protests that took place in India is based on the report that was released by the CSE. While the CSE was storing this report as proof, it was transferred to the Indian government in order to ensure that water standards are strictly implemented. The following claims were made against the Coca-Cola Company by the CSE in each respective report:

The presence of Pesticides:

Coca-Cola beverages were found to have a significant number of pesticides, according to the charges that were made in the report that was published by the CSE. The government of India established a joint committee to investigate the situation and test Coca-Cola products. According to the local standards, the tests that were carried out by the Joint committee on Coca-Cola beverages were deemed to be safe, even though they did not meet the criteria that are in place in Europe. Ultimately, the Joint Committee concluded that the level of pesticides did not violate any national legislation regarding the matter. The government, on the other hand, has also realized that there is a requirement for adequate standards for carbonated beverages.

The Water Pollution and Excessive use of Ground Water:

It was also alleged that the Coca-Cola corporation was responsible for the degradation of the water and soil in the Plachimada village of south Kerala by discharging waste from the plant directly into the fields and rivers of the villages. A scenario similar to a drought has arisen as a result of the excessive consumption of ground water in the village of Plachimada by the Coca-Cola company.

Coca cola's CSR Initiatives in India, after the Controversy:

Because of the involvement of stakeholders in the firm's business strategy, Coca-Cola was involved in a number of scandals in other countries; however, these issues did not have a

²³ The Coca-Cola Company, '2010 Annual Review', *available at*: http://www.thecoca-colacompany.com/our-company/ar/pdf/TCCC_2010_Annual_Review.pdf (last visited on October 12, 2019).

significant impact on the company's reputation or on the company itself. Coca-Cola, on the other hand, chose not to investigate the problem in India and instead rejected all of the charges that were made by the CSE report and the residents of Plachimad. Instead of listening to the claims and offering a remedy that could be implemented, the corporation chose to deny all of the allegations and instead focus its efforts on demonstrating its integrity. People began to view the firm as a corporate monster that is more concerned with its profits than with the improvement of public health and the preservation of the environment.

The Satyam Scam Saga

After the Satyam scam, in which the promoter directors of one of India's leading software businesses, Satyam Computers, admitted to manipulating the company's financial books, Indian Corporate Law continued to exist in its stalled state until the system was jolted by the Satyam incident. In the case of *Union of India v. Satyam Computer Services Ltd, et al*²⁴. the Company Law Board (CLB) heard a petition submitted by the Indian Central Government. The petition requested that the board be removed from its position and that permission be granted for the appointment of new directors to take their place. The CLB's decision acknowledges the detrimental effects that can result from corporate fraud and the manipulation of financial statements with the intention of misleading stakeholders, employees, and the general public. It would appear that a significant deception has been committed against the entirety of the global community. According to the Tribunal, the manner in which "the affairs of the company have been conducted has shaken the confidence of the public in the company." This is obvious from the fact that the share price of the company dropped from 188 rupees to 38.40 rupees on January 7, 2009. Furthermore, the CLB declared that "their interests along with the interests of the company have to be protected." This was due to the fact that the company was the fourth-largest information technology corporation in India, with clients from over sixty countries, over 53,000 employees, and approximately 300 thousand shareholders.

The Judicial Approach and Standard Guidelines in CSR

The administration of justice is one of the most essential tasks of the state, and the judiciary is responsible for carrying out this specific job through the use of the judicial approach. If there were no people in society who committed wrongdoing, then there would be no need for the legal system or the judicial system. Nevertheless, there is a tendency among certain members

²⁴ (2009)148 Comp.Cas.252 (CLB),p.1

of the community to disobey the rules of the society, whether they are written or unwritten, and this is where the role of the law and the judiciary comes into play. Trials of those who have committed wrongdoing are conducted through the judicial system, which is overseen and controlled by the courts. There are four organisations that make up a state: the legislative, the executive branch, the judicial branch, and the press. Among these, the legislature is the authority that is responsible for making laws, the executive branch is responsible for putting laws into effect, the judiciary is responsible for interpreting statutes and the goals of specific pieces of legislation, and the press is the part of the government that has the authority to either praise or criticise the benefits of good legislation or to oppose bad legislation. The phrase "the judiciary among them is the weakest of among all the organs of the state" is possibly something that could be mentioned. Neither the power of the purse nor the power of the sword, neither money nor patronage, and not even the physical force to implement its judgement, it does not possess any of these things. This is despite the fact that courts have, for the most part, enjoyed a high level of reputation among the people and have been respected by them. According to Khanna²⁵ this is the case because of the moral authority that the courts possess, as well as the confidence that the people have in the courts' ability to administer justice in an impartial manner.

In light of this, the judicial process can be understood as the administration of justice for both the plaintiffs and the defendants. The scope of our study is limited to the function of the judiciary and the administration of justice in the context of corporate social responsibility. There is a connection between the Indian judicial system and the British legal system. Additionally, the Indian judicial system has progressively developed into the current system through a process of social transformation and the shifting pattern of the society, which is dynamic in nature. The Environmental Impact Assessment, which was the subject issue of the case *Indian Council for Environmental Legal Action v. Union of India*²⁶ may be worth mentioning in order to provide evidence that the judicial approach to corporate social responsibility is appropriate. By adopting the Polluter Pays Principle²⁷ it was decided that the financial costs of preventing or repairing damage caused by pollution should be borne by the

²⁵ Justice H. R. Khanna, former judge, the Supreme Court of India has vividly portrayed the role of the judiciary and the judicial process in his Tagore Law Lectures, *Judiciary in India and Judicial Process*, University of Calcutta, Ajoy Law House, S. C. Sarkar & Sons Private Limited, Kolkata, p. 4

²⁶ AIR 1999 SC 1502

²⁷ Polluter pays principles advocates that the polluter is bound to compensate the damage or loss caused to anybody by the pollution doer and this is the cardinal principle of law under the Law of Torts.

activities that generate the pollution. This was the conclusion reached in this particular case. In addition to prohibiting any industrial or building activity that took place within 500 metres of the high tide line, the Supreme Court assigned a time restriction to the coastal states in order to facilitate the development of coastal management plans. A civil wrong is committed when pollution is caused. It is a tort committed against the community as a whole because of the very nature of the offence.

Companies Responsibility in Environment Protection

Due to the inability of establishments to take tangible steps against violations and the growing number of occurrences of environmental exploitation, there is a need for the interpretation of the Court on topics pertaining to the protection of the environment. Through the use of judicial activism, the judiciary attempted to assert that businesses have a responsibility to protect the environment. Because of industrialization and an increase in population, pollution levels in the air, water, and land have all grown. When it came to the protection of the environment, the Supreme Court of India was very involved in the process of issuing suitable orders and enumerating principles. With the help of its interpretive authority, the Supreme Court of India has broadened the scope of Article 21 of the Constitution of India and incorporated a pollution-free environment as an essential component of the provision.

In the case of *Indian Council for Environmental Legal Action v. Union of India*²⁸ the Supreme Court of India adhered to the "Polluter Pays Principle," which states that the absolute liability in the protection of the environment from acts of disaster includes not only the payment of compensation to victims, but also the cost of restoring the environment from degradation. Furthermore, the court ruled that a component of sustainable development is the protection of the environment from degradation and the restoration of the environment to its original state following any activity that is damaging. The environmental protection measures and statutory authorities of the state are obligated to identify and prevent the factors that contribute to the degradation of the environment. In situations where the threats are of a serious and irreversible nature, states should not delay their efforts to avoid the degradation of the environment solely on the basis of a lack of scientific confidence but rather any other reason. It was the first time that the Supreme Court of India requested for a balance to be maintained between the environment and ecological integrity in relation to the demand that industry had for forest

²⁸ AIR 1996 SC 1446.

resources. In addition, the principal of sustainable development was stated by the court.

The Jurisprudential Postulates Related to Social Responsibility

When determining issues that involve the social responsibility component, the judiciary has established a number of significant principles that are associated with social welfare and social responsibility. These principles have been established through the utilisation of jurisprudential postulates such as social solidarity and social engineering. In order to determine whether or not the application of the judiciary has any link or finding of the judiciary contributes in the development of CSR, the researcher has analysed some of the principles that have been laid down in this manner. The analysis is as follows:

Egalitarian Social Order Principle

In the case of *Samatha vs. State of Andhra Pradesh and Others*, the Supreme Court of India established the Principle of Egalitarian Social Order. Furthermore, in paragraph 73 of the respective judgement, the Honourable Court said that justice is a characteristic of human behaviour. In a Socialist Secular Bharat Republic, the purpose of law, as a form of social engineering, is to provide a means of establishing an egalitarian social order and to correct any existing imbalances that may exist. According to the Upanishad, "let all be happy and healthy, let all be blessed with happiness, and let none be unhappy." None of the people should be dissatisfied. It is through Yudhishtira that Bhagwat Geeta conveys the message that "I do not long for kingdom, heaven, or rebirth; rather, I wish to alleviate the sufferings of the unfortunate." As a result of this order, the Supreme Court has acknowledged the social engineering theory that was proposed by Rosco Pound and provided an explanation of the very purpose of legislation, which is to eliminate or at the very least reduce the disparities that exist. Therefore, the mandate of the judgement can be applied for the purpose of regulating the overall behaviour of corporations, including aspects related to corporate social responsibility. This is due to the fact that corporations, despite being a part of a larger social set up in general, are also a part of the economic set up in particular, and they serve as the foundation for the establishment of an egalitarian social order.

The Judicial Approach and Constitutional Provisions for CSR:

This aspect can be studied by further sub-dividing the topic in to following parts:

The Judicial Interpretation of Socialist State & Social Justice:

According to the decision made in the case of *DS Nakara VS Union of India*²⁹ the Supreme Court of India stated that the primary objective of a socialist state is to eradicate inequality in terms of income status and way of living, particularly among the working population, and to guarantee safety from birth to death. The previous effect of the word socialist in the preamble was taken into consideration by the Supreme Court of India in the case *Excel wear Vs Union of India*³⁰ The court came to the conclusion that the inclusion of the word socialist could perhaps make it possible for the courts to have a more favourable stance towards nationalization and state ownership of an industry. But as long as private ownership of industries is acknowledged and governs an overwhelming large proportion of our economic structure, this principle of socialism and social justice cannot be pushed to such an extent that it ignores the interests of another section of the public, specifically the private owners of the undertakings, either completely or to a very large extent. This is because the private owners of the undertakings are the private owners of the businesses.

The Judicial Approach and Constitutional Provisions Related to CSR

Application of Art.14 for ensuring socially responsible behaviour.

The residents of India are afforded equal protection under the law and equality before the law thanks to Article 14. It exemplifies the ideals that are outlined in the United Nations Declaration on Human Rights, which state that all individuals are equal before the law and are entitled to equal protection under the law without any form of discrimination. When viewed in this light, it is of the utmost importance to address the landmark judgement that the Honourable Supreme Court of India handed down in the case of *Reliance Natural Resources Ltd. vs. Reliance Industries Ltd.*, in which it interpreted the terms of Article 14, 39. as well as Article 297 using the Public Trust Doctrine as a reference point. Due to the fact that this theory is a component of Indian law, the Supreme Court of India has decided that it is applicable to the current case as well. Because of this, it is the responsibility of the government, in its capacity as a trustee of the people in general, to ensure that the natural resources are completely protected. For the sake of this discussion, it is important to keep in mind that the Constitution places the responsibility for the exploration, extraction, and supply of gas within the purview of the government. The

²⁹ AIR 1983, SC 130.

³⁰ AIR 1979, SC 25

responsibility of ensuring that these resources are utilised for the benefit of the people who live in this country falls on the shoulders of the Union, and that every citizen possesses an equal right to the natural resources that are available to the nation.

Role of Judiciary in expanding the scope of Article 21 which provides Protection of life and Personal Liberty. It is stated in this article that no one shall be deprived of his life or personal liberty unless it is done so in accordance with the procedure that has been established by law. Regarding this matter, the Supreme Court of India has repeatedly broadened the scope of the right to life and liberty by employing a very expansive interpretation of the words "life" and "liberty," as demonstrated in the following cases: In the case of *Olga Tellis vs. Bombay Municipal Corporation*, it was said that the right to life encompasses the right to livelihood. This is due to the fact that the right to livelihood is an essential component of the right to life, as it is impossible for a person to survive without the means of living, also known as the means of livelihood³¹.

According to the decision made by the court in the case of *In MC Metha Vs State of Tamil Nadu*³² the right to live, as outlined in Article 21, include the right to breathe clean air and water. A citizen has the right to assert their right to have recourse to article 32 in the event that something violates the law and puts their quality of life in jeopardy or diminishes it. This is one of the most important aspects that pertains to the concept of corporate social responsibility. This is due to the fact that corporations and industries are the primary contributors to air and water pollution. Therefore, in order for corporations to continue to reap the benefits of industrialization and liberalisation, they will need to protect the environment, and the only way to accomplish this is by participating in social responsibility.

Sexual harassment of women at workplace:

The Supreme Court ruled that the basic right to engage in any occupation, trade, or profession is contingent upon the provision of a safe working environment. A life lived with dignity is what the right to life means. The following is a list of some of the most important recommendations that were established by S.C. in this particular instance:

- a) It is the responsibility of the employer or any other responsible person in the workplace or other institutions to prevent or discourage the commission of acts of sexual

³¹ AIR 1986, SC 180

³² AIR 1991, SC 417

harassment, as well as to provide the procedure for the resolution, settlement, or prosecution of acts of sexual harassment by complying with all of the necessary steps.

- b) It is the responsibility of the employer to establish a process for handling complaints and disciplinary actions, as well as to raise awareness among workers by conspicuously notifying them of the guidelines that have been issued by the S.C. or in accordance with appropriate legislation.

The Judicial Approach in Protecting Labour from Exploitation

In the case known as *M.C. Metha vs. State of Tamilnadu*³³ which is also known as the child labour abolition case, a three-judge panel of the Supreme Court decided that children under the age of 14 cannot be employed in any hazardous industry, mines, or other work. Following Shri MC Metha's presentation of the plight of children who were employed in Siva Kasi Cracker Factories and his explanation of how the constitutional rights of these children, which were guaranteed by Article 24, were being grossly violated, the court issued a number of directives to the government in order to ensure that the rights of children are protected.

The Judicial Approach and Directive Principles of State Policy for CSR

An explanation of the idea of social justice was supplied by the court in the case of *Air India Statutory Corporation vs. United Labour Union*³⁴ Article 38 of the Constitution of India. And granted that social justice is a dynamic strategy to alleviate the sufferings of less fortunate members of society, such as the poor, the weak, dalits, tribals, and other disadvantaged elements of society, and to bring all of these individuals to the level of equality so that they can live their lives with dignity.

In the case of *Tamilnadu against A bu Kavar Bai*³⁵ It was decided by the court in this particular case that it is the responsibility of the corporation to behave in such a manner as to fulfil the obligations outlined in article 39 (b) and (c). In the event that the corporation does not comply with these obligations, it may resort to acquisition or take over by means of nationalization in order to achieve the goal of preventing the accumulation of wealth.

³³ AIR 1997, SC 3011

³⁴ AIR 1997, SC 645

³⁵ AIR 1984, SC 516

Article 51 -A (g). The residents of India are obligated to fulfil essential responsibilities, which include the conservation and improvement of the natural environment, which includes the forest, lakes, rivers, and wild life, as well as the obligation to have compassion for living creatures. The right to life and the protection of the environment have been linked by the Supreme Court in a number of judgements."

The Indian judiciary has been particularly active in several areas, including the protection of citizens' fundamental rights, the interpretation of Directive Principle of State Policy (DPSP), and the expansion of its reach. 'Welfare state' is the goal of both the Directive Principles of State Policy and the Fundamental Rights of the People. In the case of *Bandhua Mukti Mrocha vs. Union of India*³⁶ the Supreme Court of India stated that it is a fundamental right of every individual in India to live with dignity and to be free from exploitation. This was stated while summarizing the joint role of these two. The Directive Principles of State Policy, in particular clauses (e) and (f) of article 39 and articles 41 and 42, are the source of these rights, which are derived from the Directive Principles of State Policy.

The Judicial Transition of Shareholder to Stakeholder:

A difficult change has taken place in Indian corporate law, moving away from a shareholder-centric perspective and towards a more comprehensive understanding of stakeholder interests. This chapter takes a look at the transformation that has taken place in the court system from the time before the Companies Act of 1956 has been implemented to the most current judicial decisions. Even before the Companies Act of 1956, early Indian decisions were founded on the notion that directors are merely agents of shareholders and, in some instances, creditors. This principle underpinned the decisions that were made. In the case of the Bombay High Court, for example, Justice Scott made the following statement in 1885 while he was considering the scope of directors' culpability for carelessness: "On the one hand, the interests of shareholders and creditors must be safeguarded against negligence and misconduct." On the other hand, the responsibilities of directors should not be made so burdensome that any guy who is honest and prudent would be dissuaded from assuming such a position³⁷ It is possible that Justice Scott's statement, which was written "in the interests of the public, therefore, whether shareholders or creditors..."³⁸ was not particularly surprising at the time.

³⁶ AIR 1984, SC 802

³⁷ *New Fleming spinning & Weaving Co. Ltd. v. Kessowji Naik & Ors.*, (1885) I.L.R. 9 (Bom.) 373 at p. 14

³⁸ *id*

Judicial Recognition of Corporate Social Responsibility

Furthermore, the judicial system has been increasingly recognising the importance of considering the interests of non-shareholders and explicitly embracing the notion of corporate social responsibility. As an illustration, in the case *Commissioner Of Income Tax v. Modi Industries Ltd*³⁹ which dealt with the tax treatment of company buildings providing housing for low-income employees, the court emphasized the importance of considering the employees' interests. The court emphasized the significance of these interests, highlighting their role as a crucial aspect of corporate social responsibility.

Although the court relied on the Environment Protection Act of 1986 to establish this case, the language used to discuss corporate social responsibility is noteworthy. It suggests a growing recognition of a company's social obligations. It is worth mentioning that this is quite remarkable, especially considering the criticism directed towards the CSR provision, which supports a more charitable approach rather than a more comprehensive stakeholder model.⁴⁰ While corporate social responsibility and corporate philanthropy may sometimes be mistaken for each other⁴¹ Aam Janta highlights the ability of courts to differentiate between these two concepts and emphasize CSR from a stakeholder-centric viewpoint.⁴²

On certain occasions, the Indian courts have contributed to the concept of corporate social responsibility by interpreting the law. The business world has become increasingly aware of its responsibility towards stakeholders, communities, and the environment. By making certain decisions, the judiciary shifted the firms' focus from being solely on shareholders to considering the interests of all stakeholders. After the Bhopal Gas Tragedy, the Supreme Court of India took a firm stance against any disaster or environmental harm caused by businesses. The concept of "Absolute Liability" was developed or established in the case of *M.C. Mehta v. Union of India*. The precautionary principle, the polluter pays principle, the principle of public trust, and sustainable development are all examples of principles that were established by the Supreme Court of India through various judgements.

³⁹ (2010) 327 ITR (570)

⁴⁰ See, e.g., Afra Afsharipour & Shruti Rana, The emergence of New Corporate Social Responsibility Regimes in China and India, 14 U.C. DAVIS BUS. L.J. 175, 223 (2014).

⁴¹ Corporate Social Responsibility in India: No Clear, but plenty of Debate, Knowledge @ WHARTON (Aug. 2, 2011),

⁴² See *Aam Janta v. State of M.P.* Ors., C.S.No.35 of 2013.N.G.T. 21 Feb, 2014

Due to these principles and legal pronouncements made by the Court, the scope of corporate social responsibility (CSR) in India has been broadened. In addition, companies that are seen as state institutions have been urged to act responsibly and contribute to the betterment of disadvantaged communities through their corporate social responsibility initiatives.

Expenses Under Corporate Social Responsibility Activities

In this particular case, Power System operation corporation v. Nrlc⁴³ the power system operation corporation has filed a petition to request a relaxation of the provisions in Regulation 12(3) of the Central Electricity Regulatory Commission (Fees of Regional Load Dispatch Centre and other related matters) Regulations, 2015. The purpose of this relaxation is to enable the petitioner to utilise the LDC Development Fund for the funding of training programmes for system operators from SLDCs, specifically for capacity building programmes conducted by NPTI. The petitioner has made the following requests. They are seeking relaxation of the provisions of Regulation 12(3) of RLDC fees regulations, 2015 in order to utilise the LDC development fund for two purposes. Firstly, they are requesting funding for training system operators from state load dispatch centres (SLDCs) to participate in capacity building programmes conducted by NPTI. Secondly, they are seeking funding for corporate social responsibility activities. The word depreciation could be removed from the provisions of Regulation 12(5) and its computation could be permitted under the provisions of Regulation 19 of the RLDC fees Regulations.

Conclusion:

Prior to the implementation of Section 135 of the Companies Act of 2013, India had established guidelines to govern the business activities of companies and required them to fulfil their social responsibilities. At that time, the concept of CSR was seen as a voluntary provision, left to the discretion of the companies. The Indian Judiciary has played a dynamic role in instilling a sense of responsibility in the business activities of companies. The judiciary has recognized that companies have evolved into a crucial institution for the state, contributing to both its economic and social progress over time. Indian Courts have occasionally used their interpretation power to shape the concept of CSR with a fresh perspective. The corporate world has become increasingly aware of its responsibility towards stakeholders, communities, and the environment. The judiciary, through their decisions, has shifted the focus of companies from

⁴³ 2016seconline CERC 447(petition no. 222 / MP/ 2015)

being solely centred around shareholders to considering the interests of all stakeholders. The Supreme Court of India has adopted a stringent stance towards any incidents of mishap or environmental damage caused by business entities, particularly in the aftermath of the Bhopal Gas Tragedy. The principle of 'Absolute Liability' was established in the case of M.C Mehta v. Union of India. The Supreme Court of India has developed several principles in its judgements, including the precautionary principle, polluter pays principle, Principle of public trust, and sustainable development.

These principles and judicial pronouncements by the Court broaden the scope of CSR in India and also call on companies, as institutions of the State, to act responsibly and contribute to the development and upliftment of disadvantaged sections of society through their CSR initiatives.

