

● INSTITUTIONALIZING THE DRAFT CORPORATE ENVIRONMENT POLICY (CER) THROUGH CORPORATE ENVIRONMENTAL RESPONSIBILITY - A PERSPECTIVE



Lakshmi Priya Vinjamuri¹

Abstract

The environment concerns are today at the world's development agenda and the Government of India is taking cue from such developments as it wants its corporate sector to be in synchrony with all the applicable standards which is meritorious and a much needed initiative that needs to be put into practice in the current context.

The economy of a nation is driven by the environmental, natural resources and continued sustainability efforts. To create a balance between the human needs and holistic environmental protection and conservation has been at the forefront on SD debate.

The well known NEP (National Environmental Policy, 2006 of the MOEF) to strengthen the constitutional provisions for environmental protection, the judicial interpretation of Article 21 by addressing main stream environmental concerns of conservation protection from degradation of the livelihood resources and the NVC (Non-violation complaints) on SERB (Science and Engineering Research Board) notified by the Ministry of Corporate Affairs focusing on the framework guidelines for voluntary responsible conduct of business, irrespective of the size, sector or situation and investment in India are presently operational.

The paper is an attempt to analyze the need to implement a policy whereby the corporate environmental responsibility (CER) is enhanced simultaneously spearheading the sustenance of the much debated sustainability.

Key words

National Environmental Policy; Corporate Environmental Responsibility; Sustainability; NVC on SERB

INTRODUCTION

The institutionalization of the corporate environmental responsibility requires not a standalone law or legislation that mandates such a requirement but a proactive, progressive and environment conscious work force right from the top-management.

It is but common knowledge that the policy exists and the bare minimum required compliances are seldom met with and this phenomenon is a global occurrence of the various means and methods resorted to flout or find a way around, often looking for the loop-hole in the laws that govern such a responsibility by the corporate sector. The HSE (health, safety and environment) norms which are stipulated for the employee welfare

¹Dr. Lakshmi Priya Vinjamuri, Associate Professor, Law College Dehradun, Uttaranchal University

and wellbeing are not a charity service by the employer but a fundamental right of the employee imbibed in one's basic right to life.

The corporate environmental responsibility² (CER) is the way ahead and a big learning curve for most of us in the current era of the global pandemic which is somewhere and somehow related to the environmental negligence by the corporate sector, in handling of the microorganism which led to a wide-spread chaos claiming more lives globally than imagined.

The author shall not deviate into the probability of the occurrence of the same owing to the backlash of a certain specific sector, perhaps the pharmaceutical industry as debated upon nor delve into the permutations and combinations of the world econometrics and the conflict of interest between the warring or yet to be warring global super powers.

Corporate Environmental Responsibility CER

The institutionalization of a policy on the environmental responsibility to be taken up by the corporate in all the sectors irrespective of the size and return of the industry is quintessential in prioritizing life at the grass-root and environment at large.

The present crisis (pandemic) of 2020 and the global lockdown is an eye opener on global environmental cleaning. Human life has been at stake and danger at the hands of a virus for which a vaccine is in the making. However, the eye opener is that the anthropocentrism of the human race was forced to open its eyes once again to the need and importance of eco-centrism where in we witnessed within two months the largest Ozone hole being healed, completely closed.³

We as world citizens have been globally spending on environmental protection right from the Earth Summit, hosting a myriad of conventions, signing multitude of protocols and yet without cleaning and cleansing our surrounding which went into an auto-repair mode with minimalistic human interference.

What we lost in two months economically perhaps we gained environmentally with the complete cleaning of the ecosystem which almost became an automated process. The Economic Data analysis on this aspect would be a study in itself. On a lighter vein, may be owing to this proven fact it may strongly be suggested that there shall be an annual Global lockdown for two months for a sustainable healthy planet. The idealism may however be extended through the Corporate Environmental responsibility as a policy.

The policy on Corporate Environmental Responsibility (CER) is proposed to streamline the process and enhance, envisage and enrich the postulates of the existent policies pertaining to the safeguard and enrichment of the environment so as to strengthen environmental actions and access & identify, monitor & assess, document and analyze the impact of various business activities spread across a myriad of sectors inclusive of

²Shihong Zeng, Yujia Qin and Guowang Zeng , Impact of Corporate Environmental Responsibility on Investment Efficiency: The Moderating Roles of the Institutional Environment and Consumer Environmental Awareness, MDPI, Sustainability 2019, 11, 4512; doi:10.3390/su11174512 www.mdpi.com /journal /sustainability;21 August 2019

³<https://atmosphere.copernicus.eu/copernicus-tracking-record-breaking-arctic-ozone-hole>. Last visited on 8-9-2020



the various operational functionalities in manufacturing, logistics and supply chain, education and medicine in the international domain in general and the country in specific.

The proposed Corporate Environmental Responsibility (CER) policy guideline⁴, focusing on the 3 S i.e. size, scale and scope of the organization, gives room for fine manipulations as it does not impose or mandate but suggests integration and promotion of self regulation of the legal aspects of environmental regulations, compliances and laws with a commitment for allocation of funds and personal for its implementation, aligning the organizations promotion as being environmental complaint to enable perhaps the ease of acquisition of global certification such as ISO 14001 and OHSAS 18001.

The environment ministry in India has firmed up guidelines that will require every corporate seeking green clearance to set aside up to 2% of its capital investment for Corporate Environment Responsibility (CER).⁵

In 2018, the guidelines made it mandatory for companies to set aside funds for CER over and above what is required for executing the environment management plan in a project affected area.⁶

While Brownfield (expansion) projects would be required to earmark 0.125% to 1% of additional capital investment for CER purposes, the slab for green-field projects ranges from 0.25% to 2% of the capital investment. The exact quantum, officials said, will be decided for every project by the Expert Appraisal Committee when it comes up for green clearance.

Much debated and deliberated upon by the members of the corporate affairs and commerce, the corporatization or rather institutionalisation of the environmental responsibility has a direct and tremendous impact on the environment impact assessment procedures which need to be robust and mandated failing which there cannot be an efficient and effective enforceability of the policy pertaining to the environmental responsibility thrust on the corporate sector irrespective of the industrial functionality.

Environment is a global concern and the norms for safe, secure and sustainable environment ought to be treated with the fundamental right to life as decided in many an Apex Court judgment⁷ and should not be based on the 3S philosophy. The defined targets for reduced emission, discharges and treatment of generated wastes should be regularly monitored for efficiency and performance.

In *Subhash Kumar vs. State. of Bihar (1991) 1 SCC 598* the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it include the right to

⁴http://environmentclearance.nic.in/writereaddata/public_display/circulars/OIEBZXV_J_CER%20OM%2001052018.pdf Last visited on 10-10-2020

⁵F.No. 22-65/2017-IA.III Government of India Ministry of Environment, Forest and Climate Change Impact Assessment Division

⁶https://economictimes.indiatimes.com/news/economy/policy/pay-2-of-capital-investment-for-green-clearance-environment-ministry-to-corporates/articleshow/64008830.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. Last visited on 10-10-2020

⁷*Subhash Kumar vs. State. of Bihar (1991) 1 SCC 598*

enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life.

In *Shanti Star Builders vs. Narayan Totame*,⁸ the Supreme Court held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.

There have been many cited instances where in the criminal corporate liability was established by the Indian Courts with respect to the environmental damage, destruction and degradation. This aspect has been established in many a judgment of the various Courts in India.

Not delving deep into the individual decisions in the cases of the *Uttar Pradesh Pollution Control Board v. Mohan Meakins Ltd.*⁹, *UPPCB v. Modi Distillery and others*¹⁰, *K.K.Nandi v. Amitabha Banerjee*¹¹, *Mohmud Ali v State of Bihar*¹², *N.A.Phalkiwala and another v. M.P.Pradushan Niwaran*,¹³ *Haryana State Board v. Jai Bharat Wooleen Furnishing Works*¹⁴ the individual presiding courts in India have slapped notices and fines where in the corporate criminal liability was established. This throws light on the re-enforcement a mandated policy would receive in the law of the land where by the principles of environmental jurisprudence and justice are imbibed in the constitutional framework.

SUGGESTIONS & CONCLUSION

The policy should be tweaked and so drafted such that the awareness of the repercussions on acts against the environment is to become an inherent belief in the organization. The organizations, through the implementation of the policy, with the required amendments, should comprehend the extent, nature and scope of the damage on the non-compliance to specified standards while focusing not only on the local occupational health and safety but the global impact of the act. The Hindustan Polymer gas leak in Visakhapatnam¹⁵, on the 7th of May 2020, during the peak of the COVID-19 pandemic, the latest of the incidents to be added to the many criminal negligent acts of the management and the non-compliance of the standards leading to not only widespread damage to the environment along with hazard to life at large are an index that reflect on the lack of seriousness on the legal enforceability mechanism and hence this can be brought about by a mandated policy that ensures such accidents or incidents to be precise do not occur.¹⁶

⁸*Shantistar Builders v Narayan Khimalal Totame*, Civil Appeal No. 2598/1989. Cited as: (1990) 1 SCC 520

⁹Special Leave Petition (crl.) 3978 of 1999

¹⁰1988 AIR 1128 1987 SCR (3) 798 1987 SCC (3) 684 JT 1987 (3) 221 1987 SCALE (2)208

¹¹1983 CriLJ 1479

¹²AIR 1986 Pat 133, 1986 (34) BLJR 154

¹³*N.A. Palkhivala v. M.P. Pradushan Niwaran Mandal*, Bhopal (1990) ILR MP 466

¹⁴1993 77 CompCas 386 P H, 1993 CriLJ 384

¹⁵<https://www.deccanherald.com/national/south/vizag-gas-leak-from-hindustan-polymers-to-lg-chem-three-ownerships-in-six-decades-834787.html> last visited on 8-06-2020

¹⁶<https://www.hindustantimes.com/india-news/andhra-pradesh-gas-leak-ngt-slaps-interim-penalty-of-rs-50-cr-on-lg-polymers-india/story-M1Djsf1TjLlvSCvJFqy9uN.html> last visited on 8-06-2020



The draft CER policy can be an excellent initiative on the part of the government only if it is prudently implemented with transparent policies for review, repair and regeneration.

For environment safe guard, incorporation of the requirement of a facility manager should not be confined to the representation on the organizational structure but should be a ramified act of incorporating regular monitoring measures for improvisation and incorporation of changes, so as to conserve energy and preserve the environment.

The proposal is a proactive and viable solution to many as an environmental concern but is evident by the constraints, challenges, its implementation and its back of power of prosecution against crimes committed against the environmental dis-incentivization and review of non- compliances have to be mandated for an effective Corporate Environmental Performance (CEP) that ought to be incorporated in the annual report of the organization. The compliance to guidelines may be made mandatory but monitoring and thorough implementation of the same is subject to acquisitions of certifications, which necessarily may not be through transparent means.¹⁷

Mere identification of information on non- complying aspects of efficiency and effectiveness, vain promises of future action and formulation of policies on paper with little or no practical implementation may be the attire donned by the CER policy for projects and activities of the corporate sphere; it is being an offshoot of the fiasco CSR. The draft CER policy to be proposed and implemented may not see this result, if required non diplomatic and unbiased amendments were incorporated with judicious prudence.

¹⁷http://environmentclearance.nic.in/writereaddata/public_display/circulars/OIEBZXVJ_CER%20OM%2001052018.pdf last visited on 8-06-2020