

# STRIVING TOWARDS A GREEN INDIA INC.: A CRITICAL ESSAY ON THE ENVIRONMENTAL POLICIES OF THE INDIAN CORPORATIONS

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*Sustainable development aims at improving the quality of human life while living within the carrying capacity of supporting ecosystems. The rhetoric raised by the advocates of sustainable development has compelled States and corporations alike to take initiatives to ensure compliance with standards believed to be consensually accepted. However, because of their immediate commitment to enhancing shareholder value and other structural flaws, corporations have inevitably turned out to be major defaulters. Hence in many instances, it has been seen that corporate social responsibility (CSR) initiatives remain mere theoretical models, lacking practical utility. This state calls for a green corporate governance mechanism involving public-private participation (PPP), where the corporation seeks to adopt a consensually constructed mechanism to address the concerns of all stakeholders by operating from a more grounded platform of green policies. As the paper progresses, it shall be examined whether such PPP initiatives can yield desirable results in complex economic and legal settings. Another critical area of research would involve whether CSR policies should be bespoke designed by the corporations themselves, or should be guided by larger public policy goals. We shall also dwell upon the business case of CSR, seeking to find the economic motivation behind such policies. This model which has been pitted directly against the strict 'shareholder model' of business is an interesting new development, and shall occupy considerable space in the paper.*

## I. INTRODUCTION

The last two centuries were a period of great achievements for human civilization. The most significant and one influencing every aspect of life had been the industrial revolution that shaped the modern world. The achievements made by the human society in the last two hundred years in terms of material growth are proportionately much greater than material gains made in any other era in the

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human history. However this unprecedented rise in industrialisation and exploitation of the nature's bounties has depleted nature's wealth to levels which natural processes would have otherwise taken millennia. The resulting changes that have been observed in the environment, especially in the 'chemistry of the atmosphere and genetic diversity of the planet', are portraying a very gloomy picture for the future of the planet and its inhabitants.<sup>1</sup> Hence in recent times, the concern for global environmental crisis has led to calls for a shift from exploitative industrialism to a 'sustainable development' model of business.

The awareness observed with regard to 'sustainable development' is commendable, but the problem is that, a comprehensive definition of the same is not yet easily available.<sup>2</sup> One reason for such a situation is that sustaining the natural wealth of the earth and simultaneously going ahead with material development of the society is a balancing act involving a number of components. However it is certain that for humans to live sustainably, the Earth's resources must be used at a rate at which they can be replenished. With this aim in mind, the Brundtland Report formulated a 'global agenda for change' to help reconcile the competing claims of economic development and environmental protection.<sup>3</sup> This report enunciated the most accepted version of the definition of 'sustainable development' when it declared, "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>4</sup> This was certainly a great leap since April 22, 1970, when the first 'Earth Day' was celebrated as a day for reflection and discussion of environmental problems. However the definition offered by the Brundtland Report is itself much debated upon, but that is a different issue altogether.<sup>5</sup>

In the last two decades since the Brundtland Report, 'sustainable development' and 'sustainability' have gained a strong foothold in the field of not only environmental policy but also politics.<sup>6</sup> The governments have increasingly become aware of the importance of ensuring a convergence of developmental and

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<sup>1</sup> MICHAEL CARLEY & IAN CHRISTIE, *MANAGING SUSTAINABLE DEVELOPMENT* 3 (2000).

<sup>2</sup> In the recent years there has been a significant amount of awareness observed regarding 'sustainable development', more so in relation to the responsibility of the corporate sector in maintaining the purity of the environment. However the depth of the knowledge regarding the meaning and scope of 'sustainable development' is doubtful since the experts themselves are involved in an endless debate regarding the same. See Susan L. Smith, *Ecologically Sustainable Development: Integrating Economics, Ecology and Law*, 31 WILLAMETTE L. REV. 261; also see Michael McCloskey, *The Emperor has no Clothes: The Conundrum of Sustainable Development*, 9 DUKE ENVTL. L. & POL'Y F. 153.

<sup>3</sup> United Nations Commission on Environment and Development, *Our Common Future: Towards Sustainable Development*, Report of the World Commission on Environment and Development, U.N. Doc. A/RES/42/187 (1987) (The Commission was headed by Gro Haellem Brundtland, the then Prime Minister of Norway.)

<sup>4</sup> *Id.*, Ch. 2.

<sup>5</sup> Smith, *supra* note 2.

<sup>6</sup> Michael Jacobs, *Sustainable Development as a Contested Concept*, in ANDREW DOBSON, *FAIRNESS AND FUTURITY* 21 (1999).

environmental issues. This has even become a matured political issue in many countries like UK, Germany and et al. This trend is a very positive one since the importance of the government in the 'sustainable development' model of economic growth is beyond any doubt. In Principle 2 of the Stockholm Declaration of 1972, it has been declared, "the Natural resources of the Earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate." Thus, it follows that the planning and management involved in environmental protection has to be undertaken at the highest level with the deepest reach. This is possible only when such initiative is a part of the wider 'public policy' concept.<sup>7</sup> So the role of governmental agencies becomes indispensable in this context. In fact the government is the sole institution which can take an objective stand on the issue of environmental protection. It is in this light that the emerging role of non-state corporate institutions becomes relevant, as they have traditionally been outside the purview of the formal law making process. Here, it is the government which can lay down the basic outline for a sustainable development model of growth keeping in mind the applicable principles like 'precautionary principle', 'polluter pays principle' etc., which can be expected to guide corporate policies.<sup>8</sup> However it is sad to note that more often than not, the wide range of regulatory instruments of the government fails to deliver desired results due to lack of effective implementation.<sup>9</sup>

In recent times we often come across news of large corporations pledging funds to various environmental agendas.<sup>10</sup> However when we scratch the surface, the reality is very often more talk without action. On the contrary the corporate world has in one way or the other, contributed in large proportions to the degradation of the environment. The degradation of environment apart, the hazardous behaviour of corporations has also time and again resulted in loss of life and property as is evident from instances like the Chernobyl nuclear accident or the Bhopal gas leak tragedy. In fact, the industrial process is regarded as one of the major causes of the destruction of the natural foundations of our life.<sup>11</sup> This is particularly true in case of India and according to one source there were 1551 industries in the country falling under 17 categories of high polluting classes as on

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<sup>7</sup> See *Central Inland Water Transport Corporation v. Brojo Nath Ganguly* (1986) 3 SCC 156 ('Public Policy' is not the policy of a particular government. It connotes some matters which concerns the public good and the public interest. The principles governing public policy must be and are capable, on proper occasion, of expansion or modification. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be covered by authority, courts should be guided by the Preamble to the Constitution and the principles underlying the Fundamental Rights and Directive Principles).

<sup>8</sup> See *M.C. Mehta v. Union of India*, (1997) 2 SCC 353.

<sup>9</sup> SHYAM DIVAN & ARMIN ROSENCRANZ, *ENVIRONMENTAL LAW AND POLICY IN INDIA* 1 (2002).

<sup>10</sup> See Chalida Ekvitthayavechnukul, *Growth and sustainability*, THE NATION (Thailand), April 21, 2008.

<sup>11</sup> INDRAJIT DUBE, *ENVIRONMENTAL JURISPRUDENCE: POLLUTER'S LIABILITY* 45-6 (2007).

March 31, 1996.<sup>12</sup> This is just the tip of the iceberg and the scale of degradation caused to the environment, directly or indirectly is enormous given the number of instances that go unnoticed and hence unreported. Corporate environmental degradation is a phenomenon from which no country in the modern world can remain oblivious of. In this respect, economic status matters a lot as it has been a matter of common understanding that the developed countries contribute much more to world environmental pollution than their developing counterparts.<sup>13</sup> It is not to be argued that industrial growth is bad, as it is essential for the developing countries to widen their development base to meet growing needs of their population.<sup>14</sup> Nevertheless, the fact that industry extracts materials from the natural resource base and inserts both products and pollution into the human environment, is a matter of concern for the world community as a whole.<sup>15</sup>

The available facts regarding the contribution of industry and commerce to environmental degradation certainly lead to the need for greater role of the corporate sector in pursuing a 'sustainable development' model. The government can at the best provide regulations and mechanisms to enforce the same. It is for the concerned sectors to take up initiatives that will help materialise the government policies. In view of the large scale involvement of corporations in environmental pollution, the need is to involve the corporate sector in sustaining the natural balance and simultaneous economic growth. In this paper, we shall look into the various models available with the corporations to ensure a fainter ecological footprint from their actions.

## II. ENVIRONMENT AS A STAKEHOLDER IN CORPORATE SOCIAL RESPONSIBILITY POLICIES

The severe impact that industry and commerce has on the environment can certainly be not denied. However, before proceeding to analyse the role that corporations can play in containing the damages to the environment, we shall make an attempt to examine the significance of the environment itself in the decision making process of the corporations. In other words, we shall examine the importance environment bears in regard to the Corporate Social Responsibility (*hereinafter* CSR) policies of the corporate sector.

By definition CSR means the relationship between corporations and the societies with which they interact, and includes the responsibilities that are inherent on both sides of these relationships.<sup>16</sup> For the purpose of the present paper, we shall be examining one of the significant components of the society that remains an issue of great debate, viz. the environment. In terms of CSR, society is

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<sup>12</sup> BANI P. BANERJEE, OXFORD HANDBOOK OF ENERGY AND THE ENVIRONMENT IN INDIA, 220 (2005).

<sup>13</sup> SMITH, *supra* note 2.

<sup>14</sup> Chapter 8: Industry: Producing More with Less, in *supra* note 3.

<sup>15</sup> *Id.*

<sup>16</sup> WILLIAM B. WERTHER JR. & DAVID CHANDLER, STRATEGIC CORPORATE SOCIAL RESPONSIBILITY 6 (2006).

defined in its widest sense to include all stakeholders and constituent groups that maintain an ongoing interest in the organization's operations.<sup>17</sup> However the notion of 'stakeholder' or 'constituent groups' needs a relook in light of the fact that the conventional theorists do not consider environment as one of the stakeholders in the scheme of CSR. There is a wide gap left open when conventional theorists assume that maximizing total firm value would maximize social welfare.<sup>18</sup> Since the economic performance of the firm is the prime goal, the CSR activities of most firms are guided by the same in their economic, ethical, legal and discretionary actions. As a result a misconception about CSR has been to regard CSR as primarily concerning the compliance of the legal or regulatory requirements faced in day to day operations.<sup>19</sup> A much touted counter to it has been the 'stakeholder theory' which is hailed as one of the best methods of resource allocation when it comes to business operations and corporate governance.<sup>20</sup> However the common understanding of 'environment' in relation to CSR may not suffice to meet the challenges of the unprecedented scale of environmental degradation in the present times. As such, in our endeavour to establish the environment as a worthy stakeholder in the scheme of CSR, we shall examine the conventional understanding of the concept of CSR and proceed to propose and analyse 'environment' as a significant contender to appropriate attention of CSR policies.

#### A. WHAT EXACTLY IS CSR?

The fact that CSR pertains to social responsibility is obvious from the term CSR itself. However it is a misapprehended fact that CSR is all about social responsibility in the general sense. In other words, though social responsibility includes respecting the laws of the land, it is not all about simply complying with the regulatory requirements in the day-to-day operations of the firm.<sup>21</sup> The proponents of an economic argument for CSR certainly believe that the most efficient means of maximising profits is to ensure that the companies meet the needs and values of the widest possible range of the stakeholders.<sup>22</sup> However in this paradigm of stakeholders, they fail to realise the true meaning of the 'environment' even though environment is considered one of the stakeholders in the CSR. We can have a better understanding of the same once we trace the growth of the concept of Corporate Social Responsibility.

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<sup>17</sup> *Id.*

<sup>18</sup> SUBRATA BOBBY BANERJEE, CORPORATE SOCIAL RESPONSIBILITY: THE GOAL, THE BAD AND THE UGLY 41 (2007).

<sup>19</sup> See WERTHER JR. & CHANDLER, *supra* note 16, 10.

<sup>20</sup> Marianne M. Jennings & Stephen Happel, *The Post-Enron Era for Stakeholder Theory: A New Look at Corporate Governance and the Coase Theorem*, 54 MERCER L. REV. 873 (Winter, 2003).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, 26.

The concept of social responsibility among the business communities is a phenomenon that can be traced back to the ancient Chinese, Egyptians and Sumerians. As a matter of fact, it has been discovered that these societies delineated rules for commerce to facilitate trade and ensure that the wider goal of public interest was respected in course of business transactions.<sup>23</sup> The growth of corporate activities in the last few centuries has brought along greater awareness about the responsibilities associated with growing interaction between business and society. In the common law world the trend has been present since the seventeenth century when concerns were expressed about the excesses of the East India Company.<sup>24</sup> As a result of such awareness in the British society, there had developed a tradition of benevolent capitalism in the UK.<sup>25</sup> In the course of the legal and commercial development of companies, while they established themselves as the driving force of the market based societies, social activism in response to the organizational activities also gained force.<sup>26</sup>

Social activism is in fact an outcome of the informed awareness of the conscious section of the public. As a response to the same the basic concepts of CSR had developed when the wealthy industrialists sought to balance their actions with personal or corporate philanthropy.<sup>27</sup> However, CSR as understood in the present times originates in the industrial leaders who realised and sought to materialise their role as stewards of resources owned by others viz. the shareholders and the environment.<sup>28</sup> This notion of CSR has been the dominant one though questions have been raised in the recent times regarding the acceptability of 'environment' in the sense generally understood especially in light of the 'sustainable development movement'.<sup>29</sup>

## ***B. WHO ARE THE STAKEHOLDERS?***

To define 'stakeholder' does not seem very difficult. In fact, as many as 27 substantial definitions of 'stakeholder' have been collated in a review of the available literature.<sup>30</sup> The earliest definition of 'stakeholder' referred to them as 'those groups without whose support the organisation would cease to exist', a definition attributed to an internal memo at the Stanford Research Institute in

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<sup>23</sup> *Id.*, 11.

<sup>24</sup> Adrian Henriques, 'Ten things you always wanted to know about CSR (but were afraid to ask); Part One: A Brief History of Corporate Social Responsibility (CSR)', *ETHICAL CORPORATION MAGAZINE*, May 26, 2003, available at <http://www.ethicalcorp.com/content.asp?ContentID=594> (Last visited on January 26, 2009).

<sup>25</sup> WERTHER JR. & CHANDLER, *supra* note 16, 11.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> BANERJEE, *supra* note 18. See also, David M. Ong, *Locating the 'environment' within corporate social responsibility: continuing problems of legal definition and representation* in *PERSPECTIVES ON CORPORATE SOCIAL RESPONSIBILITY* (Nina Boegar et al eds., 2008).

<sup>30</sup> Ong, *Id.*

1963.<sup>31</sup> Clearly such a definition was vague so far as the nature and role of the stakeholders in the policy framework was concerned. There have been many attempts made to formulate a comprehensive definition of stakeholder in the last couple of decades. However it seems that the most widely accepted notion of the definition of 'stakeholder' refers it to 'any group or individual who can affect or is affected by the organization's objectives'.<sup>32</sup>

Thus, in simple words the stakeholders are the components that any corporate body has to keep in mind while initiating any new activity. Under the conventional understanding of CSR, employees, creditors, suppliers, customers, and communities, in addition to shareholders, all contribute to the success of the corporation and as such they are considered the best candidates for benefiting from the CSR policies as stakeholders in the firm.<sup>33</sup> Nevertheless the term stakeholder is not exhaustive in the sense that different definitions of the term give the impression of an ever-evolving notion of the term. This has given rise to the 'stakeholder theory'.

As a matter of fact the 'stakeholder theory' originates in the 1930s and along with it the concept of CSR also gained a new impetus. However at that point of time the idea of a central state was prominent and thought of autonomous corporations undermined the utilitarian perspectives of CSR.<sup>34</sup> Nevertheless in the recent past the 'stakeholder theory' has come to take a central place in the CSR paradigm and has been relied upon increasingly by the environmentalists and all other concerned parties. However in the light of the attempt to ensure an appropriate role to environment, we need to have a deeper insight into the intricacies of this important theory.

### C. THE STAKEHOLDER THEORY AND 'ENVIRONMENT' AS A STAKEHOLDER

The 'stakeholder theory' scholars have forwarded a number of interpretations for 'stakeholder', though most of these interpretations are limited by narrow definitions.<sup>35</sup> Whatever the interpretation of this theory is, it cannot be denied that the 'stakeholder theory' is primarily perceived as an alternative to traditional theories of the firm.<sup>36</sup> Thus, primarily this theory holds that a firm's role has to be broadened to include other external and internal actors apart from shareholders. This is because, as stakeholder theorists argue, focussing purely on the economic function of the firm ignores the complexity that firms deal with along

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<sup>31</sup> See R. Edward Freeman & David L. Reed, *Stockholders and Stakeholders: A New Perspective on Corporate Governance*, 25 CAL. MGMT. REV. 88, 89 (1983).

<sup>32</sup> Ong, *supra* note 29.

<sup>33</sup> Jennings & Happel, *supra* note 20.

<sup>34</sup> See Marianne M. Jennings, *Teaching Stakeholder Theory: It's For Strategy, Not Business Ethics*, 16 J. LEGAL STUD. EDUC. 203 (1998).

<sup>35</sup> BANERJEE, *supra* note 18, 24-5.

<sup>36</sup> *Id.*, 26.

with related inefficiencies, information asymmetries and multiple incentive problems.<sup>37</sup> They further argue that the conventional input output model fails to take into account the complex, two-way interactions between firms and 'legitimate groups'.<sup>38</sup>

As we have seen earlier, the definitions of 'stakeholder' basically refer to a number of components that any corporate body has to keep in mind while initiating any new activity. Under the 'stakeholder theory', this definition has been widened to include any voluntary or involuntary risk bearers, the first category bears some risk by investing capital and the latter category is at risk as a result of a firm's activities.<sup>39</sup> The theorists who hold a broad view, base their claim on a moral argument where the focus is on building and maintaining 'moral relationships' or a firm 'fulfilling its affirmative duty to stakeholders' by ensuring that there is a just and fair distribution of the benefits and costs of the firm's actions.<sup>40</sup> On the other hand the theorists favouring a narrower view base their definition on pragmatic assumptions. According to them the legitimate stakeholders are the ones who are directly relevant to a firm's fundamental economic interest.<sup>41</sup> However both of these views of the 'stakeholder theory' seem to have failed in comprehensively and effectively dealing with the gravity of environment as a stakeholder in the CSR policies of the firm.

The problem seems to be in the understanding of the two notions of 'Corporate Social Responsibility' and 'Corporate Environment Responsibility'. The general tendency on the part of the stakeholder theorists has always been to include environmental values in the wide scope of CSR alongside economic and social values sought to be enhanced by corporate transparency, ethical behaviour, respect for diverse stakeholders and *et al.*<sup>42</sup> This simplification as 'corporate responsibility' has led to the overlapping of the two concepts of corporate 'social' and 'environmental' responsibility. The problem arises not because of the mere inclusion of corporate environment responsibility, but because of the lack of definitive interpretations of the two concepts.<sup>43</sup>

The most commonly accepted interpretation of 'environment' as a stakeholder in terms of CSR refers to 'human environment' rather than 'natural environment'. This definitional anomaly has led to a legal uncertainty.<sup>44</sup> The uncertainty is in regard to the major implications of the environmental laws that are instrumental in guiding the CSR policies. One reason for this uncertainty is because

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<sup>37</sup> *Id.*, 24.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, 25.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Ong, *supra* note 29, 186.

<sup>43</sup> *Id.*, 186-7.

<sup>44</sup> *Id.*, 189-91.

of the impression that ‘environment’ is all pervasive and so is concerned mostly with the wider spectrum of environmental issues, very often glossing over several important but marginalized environmental issues.<sup>45</sup> Secondly, such a perspective is followed by deficient CSR policies thus creating disillusionment and adding to the confusion regarding the appropriate legal protection of the ‘natural’ environment.<sup>46</sup>

Apart from such definitional issues there is also a sense of misrepresentation of the actual problems so far as environment policies are concerned. A major issue in this regard is the question of compensation in cases of corporate liability for ‘natural’ or ‘pure’ environmental, or ecological damage.<sup>47</sup> As such in order to have a clear understanding of CSR’s role in ensuring a sustainable environment, it is necessary to examine the significance and contribution of CSR in the sustainable development paradigm. The fact that environment, which is a major stakeholder in the CSR policies, is fraught with definitional incongruity adds to the importance of an analysis of CSR in light of environmental protection.

### III. CORPORATE SOCIAL RESPONSIBILITY TOWARDS ENVIRONMENTAL PROTECTION: AN ANALYSIS

In this part of the paper, we shall look into the role that can be played by modern corporations in preserving and promoting the goal of sustainable development declared earlier. However, there is no universal consensus on the precise definition of the term ‘sustainable development’.<sup>48</sup> This definitional ambiguity combined with some other equally crucial factors, has been long assailed as one of the factors contributing to the unimpressive performance of international community on sustainable development.<sup>49</sup> The definitional crisis arises from the sheer number of competing claims that need to be balanced. Given its very nature, sustainable development requires some constraints by the various entities involved, and hence tensions and disagreements are bound to arise. Whatever its ambit and nature, it is but obvious that a holistic approach towards what we term as sustainable development will require a fair amount of sacrifice and restraint from both state as well as non-state actors. In sync with the theme of this paper, we shall concentrate on the role of non-state corporate entities in this regard.

It has been seen that the role that non-state actors play in creating international norms is very limited. Most formal and non formal sources of international law like treaties and edicts of customary international law are formed among sovereign states, and hence despite the participation of non-state parties

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<sup>45</sup> *Id.*, 189.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, 199.

<sup>48</sup> Hari M. Osofsky, *Defining Sustainable Development after Earth Summit 2002*, 26 *Loy. L.A. INT’L & COMP. L. REV.* 111.

<sup>49</sup> *Id.*

in the deliberations, states still have a role that far exceeds that of other actors.<sup>50</sup> This despite being an inescapable predicament is nonetheless problematic: in the modern world order, non governmental organizations often play important policy formulation and advocacy roles, but lack real participation in the international fora. Similarly, corporations often have more money than smaller governments and they influence states' decisions greatly, but they cannot create binding international law on their own, and neither can they be directly held accountable.<sup>51</sup> This is not desirable as the number of corporations,<sup>52</sup> coupled with the enormous economic and political influence each possesses, makes them an indispensable participant in the movement for sustainable good governance. In fact, it is not an exaggeration to suggest that both our present and future are "in the hands of large corporations."<sup>53</sup> Hence, their active participation in the decision making process is close to inevitable.

### *A. CORPORATE SOCIAL RESPONSIBILITY TOWARDS ENVIRONMENTAL PROTECTION: AN INSTITUTIONAL SURVEY*

For the goal of sustainable development to reach its logical end, it is very important for it to include within its sweep, the activities of non-state actors in general and corporations in particular. The problem that needs to be addressed at the very outset is that corporations are not yet signatories to binding international instruments; yet they often play a significant role in the destruction and degradation of the environment.<sup>54</sup> Today, approximately half of the top economies worldwide belong to such corporations,<sup>55</sup> and their behaviour, especially when operating outside their domestic jurisdictions need to be monitored and regulated.<sup>56</sup>

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<sup>50</sup> Robert J. Fowler, *International Environmental Standards for Transnational Corporations*, 25 ENV'T L. 1, 18-21 (1995).

<sup>51</sup> Osofsky, *supra* note 48.

<sup>52</sup> Surya Deva, *Sustainable Good Governance and Corporations: An Analysis of Asymmetries*, 18 GEO. INT'L ENV'T L. REV. 707, citing UNCTAD, DEVELOPMENT AND GLOBALIZATION: FACTS AND FIGURES 45 (2004) (according to which there are 63,834 multinational (parent) corporations, with 866,119 foreign affiliates).

<sup>53</sup> Surya Deva, *id.* quoting Richard Welford, *Introduction: What Are We Doing to the World?*, in HIJACKING ENVIRONMENTALISM: CORPORATE RESPONSES TO SUSTAINABLE DEVELOPMENT 3, 6 (Richard Welford ed., 1997).

<sup>54</sup> Lauren A. Mowery, *Earth rights, human rights: Can international environmental human rights affect corporate accountability?*, 13 FORDHAM ENVTL. LAW J. 343.

<sup>55</sup> See Douglas S. Morrin, Book Review, *People before Profits: Pursuing Corporate Accountability for Labor Rights Violations Abroad Through the Alien Torts Claims Act*, 20 B.C. THIRD WORLD L.J. 427 (2000).

<sup>56</sup> See Mowery, *supra* note 54 ("Most poor countries attract transnational corporations by relaxing their environmental standards").

Voluntary corporate accountability has been the most preferred self regulatory tool,<sup>57</sup> and although its efficacy is still doubtful, it is definitely the most acceptable one.<sup>58</sup> Although different units of various sectors of the economy have voluntarily come to adopt self regulatory mechanisms, probably the first institutionalized set of voluntary principles came in the form of the Coalition for Environmentally Responsible Economies Principles (*hereinafter* CERES) announced in 1989. Although there was a proposal to lay down a set of ten enforceable principles for corporate environmental conduct, the corporations involved in CERES raised strong objections to signing, and the principles remained voluntary.<sup>59</sup> A later but supposedly more effective development in this field is the creation of the Global Compact under the aegis of the United Nations, with a mandate to ‘promote human rights and environmental standards in business.’<sup>60</sup> We shall now make an analysis of both these organizations, and determine their efficacy in achieving the stated larger goal.

## 1. Coalition for Environmentally Responsible Economies Principles

CERES is an international network of investors, environmental organizations and other public interest groups working with companies and investors, seeking to address sustainability challenges such as global climate change. At the heart of CERES’ working lies its ten-point code of corporate environmental conduct to be publicly endorsed by companies as an environmental mission statement or ethic.<sup>61</sup> Currently over fifty companies have endorsed the CERES principles or have adopted their own equivalent environmental principles.<sup>62</sup> The broad CERES principles include the following<sup>63</sup>:

1. Protection of the Biosphere,
2. Sustainable Use of Natural Resources,
3. Reduction and Disposal of Wastes,
4. Energy Conservation,
5. Risk Reduction,
6. Safe Products and Services,
7. Environmental Restoration,

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<sup>57</sup> Andy Smith, *The CERES Principles: A Voluntary Code for Corporate Environmental Responsibility*, 18 YALE J. INT’L L. 307, 309.

<sup>58</sup> *Id.* See also, Meaghan Shaughnessy, *The United Nations Global Compact and the continuing Debate About the Effectiveness of Corporate Voluntary Codes of Conduct*, COLO. J. INT’L ENVTL. L. & POL’Y 159. (2000).

<sup>59</sup> Smith, *supra* note 57.

<sup>60</sup> Shaughnessy, *supra* note 58.

<sup>61</sup> CERES, *CERES Principles*, available online at <http://www.ceres.org/Page.aspx?pid=416>. (Last visited on December 30, 2008).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

8. Informing the Public,
9. Management Commitment,
10. Audits and Reports.

Being a voluntary code, the companies by endorsing these principles pledge to go beyond the requirements of the law; although by doing so, they do not create any additional liability. By not creating legal obligations and liabilities, the efficacy of the principles has often come under the scanner. However, the reports and recommendations advanced by the organization have been mostly accepted as authoritative, and have gone a long way in building a rudimentary level of consciousness amongst corporations.

## 2. Global Compact

The CERES, as we have discussed earlier is a voluntary organisation composed exclusively of private entities, and although the goal was representative of a global consciousness, its efficacy remained questionable. Probably taking a cue from CERES, the United Nations in July 2000, created the Global Compact.<sup>64</sup> The Global Compact is “a voluntary coalition formed by nearly fifty corporate charter members to promote human rights and environmental standards in business.”<sup>65</sup> Incidentally just like the CERES, Global Compact also has ten guiding principles out of which Principles 7, 8 and 9 are related to environmental protection.<sup>66</sup> They are drawn from Agenda 21 that emerged from the United Nations Conference on Environment and Development commonly known as the Earth Summit held in Rio de Janeiro in 1992. Agenda 21 says that businesses can contribute through the promotion of cleaner production and responsible entrepreneurship.<sup>67</sup>

Although the inception of the organisation under the UN umbrella had initially inspired a lot of confidence, its real time working has left a lot to be desired. Most major corporations have resisted the setting up of a monitoring or enforcement mechanism, thus exponentially reducing its efficacy.<sup>68</sup> However, though the Compact lacks details; by reason of its sheer size, it may be effective in concretizing the obligations of corporations.<sup>69</sup>

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<sup>64</sup> Mowery, *supra* note 54.

<sup>65</sup> Shaughnessy, *supra* note 58.

<sup>66</sup> CERES Principles, *supra* note 61 (Principle 7 mandates business to support a precautionary approach to environmental challenges, while Principle 8 mandates them to undertake initiatives for promotion of greater environmental responsibility, and Principle 9 encourages the development and diffusion of environmentally friendly technologies. The other principles are related to human rights, labour standards and anti-corruption).

<sup>67</sup> Website of United Nations Global Compact, available at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/environment.html>. (Last visited on December 30, 2008).

<sup>68</sup> Shaughnessy, *supra* note 58.

<sup>69</sup> Surya Deva, *Sustainable Good Governance and Corporations: An Analysis of Asymmetries*, 18 GEO. INT'L ENV'T'L. L. REV. 707.

### 3. An Assessment of the Voluntary Codes Governing Corporate Behaviour

The main concern plaguing the voluntary Codes discussed above is the lack of an enforcement mechanism, which reduces them to being mere moral dictates having no real value. Corporations are always more concerned about maximizing shareholder value, and caring for the wider base of stakeholders has been a secondary; or more appropriately just a passing thought.<sup>70</sup> A related concern over these codes is that the adoption of such codes may only amount to a public relations gimmick.<sup>71</sup> Even the confidence of the consumers on the corporations have proportionally come down as they feel it hard to believe that a corporation will voluntarily comply with set standards but would still resist being watched doing so. Thus, it is clear that the current international regime on corporate social responsibility is far from being comprehensive, but it is without doubt a laudable initiative that, the *otherwise profit seeking* corporations have come together to achieve causes that are not mandated on their business charters.

#### *B. CORPORATE SOCIAL RESPONSIBILITY TOWARDS ENVIRONMENTAL PROTECTION: THE BUSINESS CASE*

So far, we have viewed CSR as a form of good practices which corporations engage in, when reminded of their position in the larger scheme. Although the conventional image of a corporation engaging in CSR practices is one of a good Samaritan, there are scholars who have argued that it is not mere philanthropy; rather it makes perfect business sense. In this part of the paper, we shall try to debunk the business case of CSR. There is a fairly prominent school of economists which argues that acting in a manner detrimental to the human rights and environmental concerns may have an adverse effect on the company's long term financial results.<sup>72</sup> Although it appears to be wishful for a person with ordinary human sensibilities, studies show that the economy does in fact reward or punish companies for their respective social and environmental policies.<sup>73</sup> According to the results of a global survey in 2002 by Ernst & Young, 94 per cent of companies believe that the development of a CSR strategy can deliver real business benefits, however only 11 per cent have made significant progress in implementing the strategy in their organisation.<sup>74</sup>

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<sup>70</sup> See *Id.*, 163-4.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> See Mowery, *supra* note 54 (The author cites an illustration of how a consumer boycott of Shell Oil caused sales to drop by about 50% after it announced plans to dump an oil platform into the sea). See, Ernst & Young, *Corporate Social Responsibility: A Survey of Global Companies*, Ernst & Young, Sydney, (2002) ("Company CSR programs influence 70 per cent of all consumer purchasing decisions, with many investors and employees also being swayed in their choice of companies").

<sup>74</sup> Ernst & Young, *Id.*

Unchecked economic growth inevitably leads to resource depletion, contamination, and a lowering of the quality of life,<sup>75</sup> thus making the world poorer. What is required is hence not economic growth but sustainable development; an increase in the quality of life, without necessarily causing an increase in quantity of resources consumed or of waste products generated.<sup>76</sup> This goal however, appears to stand in contrast with the conventional profit-seeking motive of the corporations. Free trade being the inescapable reality of our times, a rethinking may not be possible or at least desirable from a conventional perspective. Hence, a more middle-path alternative has to be worked out; it has been argued that the 'polluter pays' principle should be included in trade agreements, either as an investment criterion or as a 'green tax.'<sup>77</sup> This would ensure that part of the industry profits derived from the benefits of free trade would be shared with the communities where the industries are located and where the adverse impacts of increased growth are most felt.<sup>78</sup> In addition to this, responsible corporate behaviour would require industries to go beyond in-process improvements to provide such basic community needs as cleanup of existing hazardous waste dumps and groundwater contamination.<sup>79</sup> However on an objective assessment, corporations are still far away from implementing their pledge to the philosophy of sustainable development.<sup>80</sup> This nonchalance appears even more pronounced if their CSR actions appear to have an adverse effect on their business outcomes.

#### IV. ROLE OF INDIA INC. IN SUSTAINABLE DEVELOPMENT AND THE ENVIRONMENTAL GOVERNANCE REGIME: BRIDGING THE GAP

The role of a socially responsible corporate entity is one that holds immense potential. In fact, CSR represents nothing less than an attempt to define the future of our society.<sup>81</sup> When this is the case, the scope of a more environmentally responsible India Inc. appears even more promising. It is so because in a developing economy like India the driving force for economic development is essentially the industrial exploitation of the vast resource base, involving a considerable impact on the environment. The gravity of the concern is aggravated by the fact that the demographic pattern and the diversity of ecology is very complex in India. So the need to integrate the economic and environmental concerns is of great significance in the Indian context. In this part of the paper, we

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<sup>75</sup> Michael Gregory, *Environment, Sustainable Development, Public Participation and the NAFTA: A Retrospective*, 7 J. ENVTL. L. & LITIG.

<sup>76</sup> Robert Costanza & Lisa Wainger, *No Accounting for Nature: How Conventional Economics Distorts the Real Value of Things*, WASHINGTON POST (Washington D.C.) September 2, 1990.

<sup>77</sup> Gregory, *supra* note 75.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Surya Deva, *supra* note 69.

<sup>81</sup> WILLIAM B. WERTHER JR. & DAVID CHANDLER, STRATEGIC CORPORATE SOCIAL RESPONSIBILITY xvii (2006).

shall examine the existing scheme for environmental governance in India and shall explore the possibilities of a greater role to India Inc. in a sustainable model of economic development.

### A. SUSTAINABLE DEVELOPMENT OF THE INDIAN ECONOMY

In India, one of the most important factors playing a major role in the environmental health and economic development is the population. The high rate of population growth itself demands robust economic growth as well as the need to change the content and distribution of growth. In fact, one of the critical objectives for sustainable development is a sustainable level of population which was one of the major concerns for the World Commission on Environment and Development.<sup>82</sup> India being the second most populous state, is in a critical condition as far as the sustainable level of population is concerned. A closely related issue is that of economic development. To meet the needs of this ever increasing population, there is an acute need to speed up economic growth. This necessarily means increased economic activities resulting in higher exposure of the environment to adverse impacts.

To appreciate the true meaning of 'sustainable development' one needs to identify the actual meaning of development. In case of India, this is more so since being a developing country, the understanding of the concept of 'development' is not same as that in the developed nations. It is so because it is not that easy to find a single universally accepted definition that is appropriate for all cultures and regions of the world.<sup>83</sup> Inspired by the ideas floated by *Our Common Future*,<sup>84</sup> development is now seen as 'an iterative process which seeks to improve human conditions to find viable livelihoods for people in developing countries'.<sup>85</sup> Since Indian economic growth has a lot to do with meeting the ever increasing needs of a growing population, the above definition seems to suit it well. However development means much more than mere economic growth, though growth measured in terms of increase in Gross Domestic Product (GDP) is still the central factor in development theory, indicators and practice.<sup>86</sup> The need for a sustainable development model has increased in India in the post liberalization period. The Indian economic policies in this period have been directed towards integrating the Indian economy with global trade. This has resulted in reduced industrial regulation, lowered industrial trade and investment barriers.<sup>87</sup> One adverse affect of this has been that several environmental problems have been aggravated due to lack of

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<sup>82</sup> Our Common Future, *supra* note 3.

<sup>83</sup> SUSTAINABLE DEVELOPMENT IN INTERNATIONAL AND NATIONAL LAW 88 (Hans Christian Bugge & Christina Voigt eds., 2008).

<sup>84</sup> Our Common Future, *supra* note 3.

<sup>85</sup> Bugge & Voigt, *supra* note 83.

<sup>86</sup> *Id.*, 91.

<sup>87</sup> DIVAN & ROSENCRANZ, *supra* note 9, 37.

appropriate coordination between the enforcement agencies and the corporate sector.<sup>88</sup> The need for growth of the Indian economy is taking a heavy toll on the quality of the environment. As a matter of fact, the most challenging environmental problems in India, especially in the urban areas, stem from the rapid growth of large, polluting industries.<sup>89</sup> The primary reason behind such a situation is that industrial development in India came without adequate planning or appropriate environmental controls.

The concept of sustainable development entails a trade-off between the maintenance of life supporting systems and economic development. As such, any economic development achieved at the cost of environmental degradation will be considered unsustainable. In this regard there are some primary issues that the economic policy makers need to address. These are '*population, nation's food security system and biodiversity and ecosystem preservation*'.<sup>90</sup> However, in the case of India, the policies hitherto seem to have failed in attaining this goal. As a matter of fact, there have been several initiatives taken with a view to incorporating sustainable practices in the corporate sector, though it has failed utterly as can be seen in numerous instances of India Inc. causing irreversible damage to the environment. This critical assessment shall be included in a later part of this paper. Before that, we shall examine the theoretical options for a sustainable growth of the Indian economy.

India is an upcoming economic power that has a huge untapped potential in terms of natural resources. So naturally, there is a propensity to utilize the great reserve of natural resources for the rapid growth of the economy. However, in order to sustain such growth, the process must be an equitable one.<sup>91</sup> It means that for the sustainable growth of the economy and avoidance of depletion of the stock of natural resources, issues like poverty and unemployment have to be tackled with a sense of urgency. This translates into the full utilization of the most important resource viz. human resource. Another important requirement for the sustainable development of the Indian economy is greater and wider use of technology. However, adequate safeguards must be adopted so that the technology suits the Indian context, meaning that it should not be energy intensive or labour displacing. Anyways, it transpires that in order to have such utilisation of human resources and widespread use of advanced and eco-friendly technology, government initiatives would not be enough. The significant role that the corporate sector has to play in realisation of such objectives cannot be denied. However any activity of the corporate sector has to be guided and regulated in order to ensure

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<sup>88</sup> See A. Kothari, *Environment and Economic Policies*, ECONOMIC AND POLITICAL WEEKLY (Delhi) April 29, 1995, 924.

<sup>89</sup> DIVAN & ROSENCRANZ, *supra* note 9, 38.

<sup>90</sup> M.P. Nayar, *Conceptual Issues of Sustainable Development* in SUSTAINABLE DEVELOPMENT STRATEGY 69-70 (S.P.Shukla & Nandeshwar Sharma ed., 1996).

<sup>91</sup> See J.B. Ganguly, *A Strategy for Sustainable Development of India* in Shukla & Sharma ed., *Id.*, 180-192.

a desired level of commitment to the cause of sustainable growth. Thus, the adoption of a sustainable model of economic development must be the priority of the economic and environmental policies in India to ensure a wholesome development of human life in the true sense of term.

### ***B. ENVIRONMENTAL IMPACT OF INDIAN CORPORATE ACTIVITIES: SOME SPECIFIC INSTANCES***

The major driving force behind the recent economic development of India is the New Economic Policies (*hereinafter* NEP) initiated in 1991 which has unfortunately also, resulted in a severe environmental and social impact.<sup>92</sup> One of the major features of the new policies had been the export oriented model of growth which has led to a rapid sacrifice of natural resources in order to earn foreign exchange. This has been observed specially in the case of mining and fisheries. Another significant aspect of the NEP had been that in order to have rapid liberalization of the market, a compromise was made with a number of regulatory norms. Ignoring environmental standards by upcoming enterprises became a frequent incidence. Moreover a reduction in government expenditure due to a shift towards privatization has resulted in reduction in spending made towards programs for conservation and regeneration of natural resources. The priority allotted to the integration of the Indian economy to the global market had already set the trend of sacrificing natural habitats and resources for short time gains. This surely had contributed to the carefree attitude that many corporate houses had developed in the last decade when it comes to the conservation of nature's bounties.

Even respected and established business conglomerates like the Tatas have been embroiled in polluting and threatening the environment in course of their industrial pursuits. The ongoing debate about the threat to the endangered 'olive ridley turtle' due to the construction of the Dhamra Port has dragged Tata Steel into an ugly battle with conservationists and environment activists.<sup>93</sup> The olive ridley turtle is a species that enjoys the same conservation status as the tiger. Gahirmatha in Orissa is the world's largest remaining nesting ground for the turtles, a species classified as 'endangered' by the International Union for Conservation of Nature (*hereinafter* IUCN). Between 200,000 and 500,000 female turtles nest here every year in spectacular *arribadas* (mass nesting).<sup>94</sup> The Dhamra Port is coming up less than 5 km from Bhitarkanika Sanctuary and less than 15 km from Gahirmatha's beaches. The port is being built by Tata Steel via the Dhamra Port Company Limited, a 50:50 joint venture between Tata Steel and Larsen & Toubro.

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<sup>92</sup> See Kothari, *supra* note 88.

<sup>93</sup> Greenpeace.org, *Tata port threatens sea turtles*, available at <http://www.greenpeace.org/india/tata-port-threatens-sea-turtle> (Last visited January 10, 2009).

<sup>94</sup> Mangrove action project.org, *Tata Port Development Threatens Olive Ridley Sea Turtles*, available at <http://www.mangroveactionproject.org/news/action-alerts/tata-port-development-threatens-olive-ridley-sea-turtles-orissa-india> (Last visited January 10, 2009).

Dhamra is proposed to be a deep water port due to be completed in ten years. It would be one of the largest in South Asia, capable of handling 180,000 Dead Weight Tonnes ships and 83 million tonnes per annum.<sup>95</sup> As can be expected, the project is being confronted with two legal issues. The first, a petition filed by the Wildlife Society of Orissa, which has been pending in the Orissa High Court since 2000. The other is a petition filed before the Central Empowered Committee (*hereinafter* CEC) of the Supreme Court, which is yet to come up for hearing. Conservationists highlighted the Port's potential environmental impacts when it was first proposed in the 1990s. In April 2004, the Supreme Court appointed CEC had recommended that the Dhamra Port be shifted to an alternative site due to its proximity to the Gahirmatha Marine Sanctuary and the turtle nesting grounds. In 2007, a survey commissioned by Greenpeace and conducted by Dr. S.K. Dutta of the North Orissa University established the presence of rare species of amphibians and reptiles at the port site. To much disgust of environmentalists, the study also revealed the presence of over 2,000 turtle carcasses in and around the area.<sup>96</sup> The Tata Group is yet to respond to these findings, despite earlier committing to reconsider their role in the project if evidence of ecological significance was presented. This is very unfortunate in view of the fact that the Tatas have so far had an impressive record regarding Corporate Environment Responsibility. Even the other company involved, Larsen & Toubro has a fair amount of respectability in corporate circles.

There have been many other instances of environmental degradation in India Inc. which have put it on the wrong side of not only legal but moral norms as well. There is no lack of adequate laws or absence of any kind of formal corporate initiative; the problem lies in the fact that the CER policies of India Inc. and environmental governance mechanism are parallel, yet far apart. The need to integrate both shall be obvious once we take a look into the existing regulatory framework and some of the illustrative corporate initiatives aimed at sustainable development.

### ***C. ENVIRONMENT CONSERVATION AND CORPORATE REGULATIONS: INADEQUATE AND FLAWED POLICIES***

The environment is so delicate that very often; a minor irreversible damage to it may result in cascading effects that may end up causing more damage than the profit one derived at the expense of the initial minor damage. Such is the nature of environmental damage that no law, however stringent or however huge the compensation awarded, can make up for the wrong already done. As such it would be a utopian thought that strict laws can develop the environment and stop its degradation. This is so because pollution has come to stay and *ex post* regulations must give way to *ex ante* legal policies so that the damage is prevented at the earliest opportunity.<sup>97</sup> When one examines the regulations in India concerning

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> DIVAN & ROSENCRANZ, *supra* note 9, 579-604.

responsible corporate behaviour regarding conservation of the environment, there is a clear absence of *ex ante* provisions. Even if there are some, they lack in proper direction and enforcement.

As an illustrative instance, one may make a brief study of the legal framework for regulation of hazardous substances in India. Indian industry generates, uses, and discards large amount of toxic substances as in any modern industrial society. Even in the agricultural sector, which is the mainstay of Indian economy, an increasing number of farmers- encouraged by government agricultural policies spray highly toxic chemical pesticides to protect their crops. Apart from these, the hazardous substances that have invaded the Indian environment include flammables, explosives, heavy metals such as lead, arsenic and mercury, nuclear and petroleum fuel by products; dangerous micro-organisms; and scores of synthetic chemical compounds like Dichloro-Diphenyl-Trichloroethane (*hereinafter* DDT) and dioxins. Exposure to these toxic substances may cause acute or chronic health effects. Acute effects occur soon after a high level exposure and may range in severity from temporary rashes to death. Chronic effects frequently result from long term, low level exposure and include cancers, birth defects, miscarriages and damage to the lungs, liver, kidneys and nervous system. Apart from the Environment Protection Act, 1986 (*hereinafter* EPA) India has an extensive regime for regulating toxic substances. However the EPA is the most important one and in Section 2 (e), the Act has defined 'hazardous substance' to mean 'any substance or preparation which by reason of its chemical or physio-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro organisms, property or the environment'. Under the enabling provisions of the EPA, the Central Government in July, 1989 issued the Hazardous Wastes (Management and Handling) Rules. The first comprehensive rules to deal with one segment of the toxic problem, these rules applied to designated categories of waste that are enumerated in the Schedules to the Rules. Radioactive wastes and wastes discharged from ships as well as waste water and exhaust gases regulated under the Water Act and Air Act are explicitly excluded from the Hazardous Wastes Rules. Thus, a major step was taken towards ensuring a systematic regulation of hazardous wastes, which are mostly by-products of various industries.

These Rules prescribe a permit system administered by State Pollution Control Boards for handling and disposals of hazardous wastes. Accordingly no person without authorisation may receive, treat, collect, transport, store or dispose of hazardous wastes. The Rules also provide for the packaging, labelling and transport of hazardous wastes and require state governments to compile and publish an inventory of hazardous waste disposal sites. One noteworthy aspect is that Rule 11 prohibits the import of hazardous wastes into India for dumping and disposal, which has been applicable since January 2000. Another important step came when Rules to regulate the manufacture, use, import, export and storage of hazardous micro-organisms and genetically engineered cells were issued under the EPA in December, 1989. These rules cover industries, hospitals, research institutions and other establishments that handle micro-organisms or are engaged in genetic engineering. Most of these rules and regulations remain ineffective due

to a flawed strategy. Such a legal framework fails to take into consideration the fact that without the involvement of the major stakeholders in the conservation process, the desired results can never be achieved. Moreover, rather than providing for mechanisms to check further degradation of the environment, the policy should be to amend already existent polluting agents and deny any scope for new instances of pollution. This is possible only when the corporate sector, which is the major player in the pollution and conservation trade-off, is essentially involved in the conservation initiatives of the government. As a matter of fact, a large number of corporate entities have commendable CER policies which just need a definite guideline from the government leading to a fruitful public-private participation (*hereinafter* PPP) model. We shall discuss some of the significantly successful CER policies of some members of India Inc. as we proceed.

In the context of the broad national policy aimed at environmental conservation, we may take note of the 'Green Plans' developed in Canada and Netherlands.<sup>98</sup> These are part of an evolving process of comprehensive, national programmes for environmental improvement and resource stewardship, with government wide objectives and commitments. The National Environmental Policy Plan of the Netherlands is worthy of special mention as it is radical in nature. It calls for massive reductions in many emissions and wastes within a generation, backed by major clean-up of contaminated sites, to restore and maintain environmental carrying capacity. The system of targets and schedules provide a means of gauging its success reinforcing the commitment to environmentally responsible decision making. Thus, in India the outcome of numerous environmental laws will be more useful if the strategy is shifted from holding on to current levels of pollution to a shift towards gradual enhancement in the quality of the environment. In this regard, as mentioned earlier, India Inc. can play a major role once the environmental governance policies are linked up with the CERs of the India Inc. Taking cue from the foreign policies would be a good way to properly plan out the right PPP strategy.

Apart from the specific laws as mentioned earlier, there have also been a number initiatives directed towards the broad goal of environment protection in India. In the period following the Earth Summit,<sup>99</sup> there was a flurry of action seen on the part of the Indian government towards fulfilling a number of international obligations regarding environment conservation. Under the Environment Impact Assessment (*hereinafter* EIA) notification, it has been made mandatory for 29 categories of industries and projects to get environment clearance before expansion, modernisation or undertaking new projects.<sup>100</sup> A number of critically polluted areas have been identified and environmental management plans are being implemented

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<sup>98</sup> JEREMY CAREW-REID ET AL., STRATEGIES FOR NATIONAL SUSTAINABLE DEVELOPMENT 37 (1994).

<sup>99</sup> United Nations Conference on Environment and Development (UNCED) held at Rio de Janeiro, Brazil in June, 1992.

<sup>100</sup> Bimal Charan Swain, *Moving India Towards Sustainable Development* in Shukla & Sharma ed., *supra* note 90, 76.

for the control of pollution and improvement of environment in these areas.<sup>101</sup> Another commendable effort has been the National Environment Awareness Campaign (*hereinafter* NEAC) conducted by the Ministry of Environment and Forests every year since 1986, which aims at the creation of environmental awareness at the national level.<sup>102</sup> There have also been a number of initiatives taken towards reversing deforestation, reversing the growth of industrial and motor vehicle pollution, introducing environmental education and population education at all levels amongst others. However as seen in the earlier instance, these broad policies are plagued by a number of lacunae which have made the realisation of the desired goals a distant dream. Even amongst the Indian corporations, irrespective of the charges levied earlier in the paper, there is a relative positive trend. Despite the criticism it has generated in the Dhamra Port project, the Tata Group is the leader in CSR activities, which is vocally committed to 'to be a good corporate citizen.'<sup>103</sup> This essentially emanates from the business philosophy of the late Mr. J.R.D. Tata:

*"I believe that the social responsibilities of our industrial enterprises should now extend, even beyond serving people, to the environment. This need is now fairly well recognized but there is still considerable scope for most industrial ventures to extend their support not only to human beings but also to the land, to the forests, to the waters and to the creatures that inhabit them. I hope that such need will be increasingly recognized by all industries and their managements because of the neglect from which they have suffered for so long and the physical damage that the growth of industry has inflicted, and still inflicts, on them."*<sup>104</sup>

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*, 77.

<sup>103</sup> Tata Code of Conduct, available at <http://www.tata.com/aboutus/articles/inside.aspx?articid=NyGNnLHkaAc=> (Last visited on January 15, 2009). (Clause 8 of the Tata Code of Conduct declares, "A Tata company shall strive to provide a safe, healthy, clean and ergonomic working environment for its people. It shall prevent the wasteful use of natural resources and be committed to improving the environment, particularly with regard to the emission of greenhouse gases, and shall endeavour to offset the effect of climate change in all spheres of its activities. A Tata company, in the process of production and sale of its products and services, shall strive for economic, social and environmental sustainability").

<sup>104</sup> J.R.D. Tata, *Foreword* to R.M. LALA, *THE CREATION OF WEALTH: THE TATAS FROM THE 19TH TO THE 21ST CENTURY*, xxv, xxviii (2004).

Even other companies like the Reliance Industries Limited<sup>105</sup> and Indian Oil Corporation<sup>106</sup> have announced its commitment to creating, maintaining and ensuring a safe and clean environment for sustainable development. This stated commitment is definitely a step in the right direction, though its real time performance is yet to be assessed.

## V. CONCLUSION

The underlying thought conveyed by this paper is that issues like protection of the environment cannot be left untouched for another generation, as every passing moment is pushing the world into a deeper morass. This damage has come through human intervention in many different forms, and hence its remedy also has to come in the form of human actions in different forms. Although most people would expect such action to come from public authorities like governments and international organisations, we have through this paper shown how this may not be possible. The modern world is a complex place where a number of different institutions interact to produce any result, and this calls for a collaborative effort from different public as well as private players. Although long thought to be exclusively within the domain of public planning, there is now an increased consciousness regarding the role of private corporations in that field. Thankfully, most corporations have positively responded with well thought-out CSR policies, and are beginning to make the little changes which are so crucial if viewed in the larger perspective.

However despite all rhetoric, we have seen how a number of these corporations have been less than sincere in fulfilling their promises, as they mostly consider these efforts to be without any economic worth. At this point, we would like to point out that it is not indeed the case, as without a healthy environment, all economic gains would be reduced to a naught. It is high time that these important non-state actors realise their real role and respond beyond the rhetoric. This is particularly true in respect of Indian Inc. as it is answerable to possibly the largest body of stakeholders anywhere in the world, and it is its duty not to trade off the environment for a few pieces of nickel. In conclusion as an expression to sum up the thought that possessed us as we wrote this paper, we shall reproduce a short

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<sup>105</sup> Environmental Policies of Reliance Industries Limited, available at [http://www.ril.com/downloads/pdf/business\\_petroleum\\_refiningmktg\\_hse\\_epolicy.pdf](http://www.ril.com/downloads/pdf/business_petroleum_refiningmktg_hse_epolicy.pdf) (Last visited January 15, 2009).

<sup>106</sup> IOC: About us, available at <http://www.iocl.com/Aboutus/Environment.aspx> (Last visited January 15, 2009) (The environment management systems of all Indian Oil refineries, pipeline Installations and major marketing installations/terminals are certified to ISO-14001 standards, and all refineries are accredited for Occupational Health & Safety Assessment Series (OHSAS-18001)).

extract of the epic speech delivered by the Great Red chief Seattle when the White settlers demanded to purchase wide expanses of native land:

*“How can you buy or sell the sky, the warmth of the land? The idea is strange to us. If we do not own the freshness of the air and the sparkle of the water, how can you buy them... This we know; the earth does not belong to man; man belongs to the earth. This we know. All things are connected like the blood which unites one family. All things are connected.”*<sup>107</sup>

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<sup>107</sup> Ted Perry version Chief Seattle Speech, available at <http://www-formal.stanford.edu/jmc/progress/fake2.html> (Last visited on February 25, 2009).

