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INDUSTRIAL CORPORATE ENVIRONMENTAL RESPONSIBILITY An Indian Perspective

*C.M. Jariwala**

I Introduction

The subject of industrial corporate environmental responsibility has yet to attract a serious attention of law academics, industries, and public in general. Except a few industries, rest of them is concerned to get maximum profit, and appease the stakeholders who the corporates consider as their prime responsibility. Further in order to enjoy the fruits of industrial development, the government and people, in general, hardly respond to the enforcement of the responsibilities. This has given a leeway to the industries and has caused irreparable damage to the Indian environment. Furthermore, the industrial environmental law has yet to be added as a separate subject in the law curriculum and the faculty expertise has to be developed in this area. The present subject therefore has yet to gain the ground. An attempt has been made in this paper so that the environmental law scholars may exploit this barren land.

There are conflicting claims and interests on the issue of industrial corporate environmental responsibility. On the one hand, the corporate houses, in order to maintain their credibility in the market, have to concentrate on the industrial process to get substantial return. Furthermore, India's effort to become a leading world power has geared up industrialization at the cost of environment. On the other hand, the industrial houses are saddled with three important responsibilities: (i) the international obligations; (ii) the constitutional fundamental obligation and duty; and (iii) the responsibilities imposed under different laws, rules and government orders and notifications. Thus the corporate houses remain in a confused situation. In order to know the real position, it becomes necessary to answer certain questions. What are the responsibilities of the industrial houses? How far these responsibilities secure industrial corporate environmental-friendly action? Have they internalized in their conduct the responsibilities so that a holistic approach is adopted? If not, what are the

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sanctions in case of non-fulfilment of the duties? What sanctions have been generally enforced? What more is needed in this regard? These are some of the questions which have been examined in the paper.

The corporate houses in many cases look to their financial status and in this goal they put the fulfilment of responsibilities as their last priority. Further, many big corporates, with their political clouts, pressurize the government to keep the responsibility in hibernation. This, in turn, has frustrated the intention of the constituent authority and law makers. In this negative approach, the judiciary has played an important role. However, there were times when the courts made the industrial corporates accountable on one hand and took a soft stand against their actions on the other hand. The present study will highlight the success and failure of the judiciary, and the course of actions required in the administration of industrial environmental justice. The discussion closes with a bird's eye view of the general scenario. An attempt is also made to find out as to what is needed now in the existing degraded environment.

II International Obligations: A Bird's Eye View

It is necessary to know the international obligations which are the binding force for the States to internalize them in their domestic laws and in turn to be followed by the corporates as well. India, being a party to the international decisions, is bound to implement them. The history of international environmental responsibility starts particularly with the Stockholm Declaration, 1972. Principle 1 begins for the first time with the right and duty relationship - right to quality environment and a solemn responsibility to protect and improve the environment for the present and future generation. Principle 8 envisages that the economic and social development is to be employed for improving the quality of life. The Conference has put an important emphasis on natural resources¹ requiring its use for the common good of mankind and the benefit of the present and future generations. The World Charter for Nature, 1982 for the first time provides for example: co-operation in conserving natural resources; establishment of standards and methodologies for the products and manufacturing processes compatible with nature; and implementation of international and national responsibilities in this regard.²

The Rio Declaration on Environment and Development, 1992 is another milestone in the development of international environmental law. It envisages creation of *new level of cooperation among, not only the States, but also key sectors of societies and people*. The right to environment has been explained to mean right to 'a healthy and productive life in harmony with nature'. However, a new right also finds a place in the Declaration - right to development. These rights have a corresponding duty of sustainable

¹ Principles 2, 3, 5 and 6.

² General Principles 21 and 23.

development which must meet the needs of present and future generations.³ The authorities are required to see that the polluter pays for the cost of pollution. In the last Principle, i.e. Principle 27, a duty is imposed on people to cooperate in good faith and in a spirit of partnership to fulfil the objectives in the Principles embodied in the Rio Declaration. It may be pointed out that the Rio Declaration provides for two conflicting rights - right to environment and right to development. Once the right to development is recognized by the international community then it will put the right to environment at risk. The fact is that, under the umbrella of right to development, the multinationals and national corporates have adversely degraded the environment.⁴

In the twenty-first century, the industrial development has also brought in challenges, such as the ozone layer depletion and climate change. There are international conventions and protocols which try to ensure that the ozone layer is not further depleted and the climate change is controlled. The Convention for the Protection of Ozone Layer, 1985, has identified five main substances which have potential to modify the properties of ozone layer and accordingly they are regulated or prohibited in the industrial process. The Framework Convention on Climate Change, 1992, for the first time brings to the day light the concern of the international community for the climate change. The Parties to the Convention are subjected to certain duties which include; combat climate change and adverse effects thereof; take precautionary measure to prevent or minimize the causes of climate change; promote relevant social economic and environmental policies and scientific, technological developments related to climate system; emission of greenhouse gases within the prescribed limit, etc. But these duties have been diluted by the concepts of 'common but differentiated responsibilities'; 'basis of equality'; 'respective capabilities'; 'subject to development priorities'; to the extent feasible'. Such lee-ways have brought in the North-South Conflicts, and has left Parties to implement their obligations according to their own convenience.

Furthermore, the international environmental law has also taken into cognizance the adverse effects of hazardous substances and wastes, resulting into conventions and protocols, regulating hazardous substances like chemicals and pesticides, nuclear energy, hazardous wastes, including radioactive wastes. The generators, carriers, exporters and importers of the hazardous waste are under international responsibility to handle and manage the process in an 'environmentally sound manner'.⁵ In case any

³ Principles 1 and 3.

⁴ Convention for the Protection of Ozone Layer, 1985. The report on Seven Asian Countries reveals a low level of corporate responsibility, see Chappel & Jeremy Moon, *Corporate Social Responsibility in Asia : A Seven Country Study of Corporates Social Responsibility in Corporate Social Responsibility* 171, Vol. 3 (2007).

⁵ Convention on the Control of Trans-boundary Movement of Hazardous Waste and their Disposal, 1989 (The Basel Convention). See also Convention on the prior Informed consent Procedure for certain Hazardous Chemicals and Pesticides in International Trade, 1998; Convention on Persistent

damage is caused in the process, the Protocol on Liability and Compensation for Damage Resulting from trans-boundary Movements of Hazardous Waste and their Disposal, 1995 provides a strict liability, no fault based liability, contributory liability and preventive measures. Any person, liable to compensate the loss, shall establish and maintain, during the prescribed time limit of liability, insurance, bonds or other financial guarantees covering their liabilities. In case of nuclear installations, the Convention⁶ gives priority to nuclear safety. The radioactive waste has also attracted international concern resulting in the Code of Practice relating to its international movement which envisages safe management and disposal thereof and also to minimize the amount of radioactive wastes.

It may be pointed out that the industrial projects, in many cases, had adverse impact on environment and, therefore, it is necessary that there should be an on-going impact assessment procedure for the pre and post-project activities. The 1991 Convention⁷ requires each State party to carry out environmental impact assessment and submit a report in that connection. In case of significant adverse impact, people participation is also required before any procedure is adopted. The Convention identifies 17 activities, having adverse impact on environment, requiring special treatment. The environmental impact assessment is further regulated by the Protocol of 2003⁸ which provides for a detailed mechanism to assess the impact. It includes, careful screening of plans and projects, monitoring, submission of environmental report and public participation⁹ in the procedure. The Protocol in Annex I and II provides a list of 107 plans and projects which require special treatment in assessing their impact of environment.

The industrial accidents have also attracted world's attention and in 1992, the family of nations took cognizance of the industrial accidents, and came out with a Convention on the Trans boundary Effects of Industrial Accidents, 1992. It enumerates the precautionary measures to be adopted, including emergency preparedness and implementation of on-and off site contingency plans. In case an accident takes place, the State involved is required to follow the industrial accident notification system provided therein. The Convention, instead of providing for responsibility and liability of the industrial installation in such a case, leaves the matter for the Member States to 'develop law in this area'. The international regime could have provided basic principles to be followed by the law of the concerned States instead of giving them liberty to operate as and when and how one likes.

Organic Pollutants, 2001.

⁶ The Convention on Nuclear Safety, 1994. See particularly articles 9, 10, 11 and 15.

⁷ Convention on Environmental Impact Assessment in Trans boundary Context, 1991.

⁸ Protocol on Strategic Environmental Impact, 2003.

⁹ See also for public participation and information, Convention on Access to Information, Public Participation in Decision - Making and Access to Justice in Environmental Matters, 1998 (Aarhus Convention).

Apart from the above international environmental law obligations, there are other Voluntary Compacts and Code of Conduct for a responsible environmental behaviour. In these documents the important one which broadly cares for the sustainable development is: the UN Global Compact, 2003 which has been endorsed by not less than 1700 business organization and countries. It highlights the adoption of precautionary principle; promotion of greater environmental responsibility and diffusion of environmental friendly technology. Those who are signatories to the Compact are required to report the follow up action. The International Chamber of Commerce Business Charter for Sustainable Development, 1991 adds some more principles which include, for example, making environmental management as the highest corporate priorities; making employees environmentally aware and to concentrate on environmentally sound operations and products. The Environmentally Responsible Business Conduct also find a place in the Organization for Economic Cooperation and Development - Guidelines for Multinational Enterprises, 2000. These guidelines are more explicit and concentrate on good environmental practices which can ensure economic cost; compliance with legal position¹⁰; improved energy and resource conservation; and finally, go for the sustainable development, bringing societal benefits. The coalition for Environmentally Responsible Economics Principles, 1989 further introduces new principles of transparency, accountability, reporting and impact assessment requirements.¹¹ It may be pointed out that the above Principles and Codes are voluntary and, therefore, the question is: How far shall they be a part of the industrial corporate function? They being the backbone of a healthy environment with sustainable development, it is time that the States and corporations must internalize them in their functioning. All these developments bring home the question: How far these responsibilities have been translated in action in India? The following discussions try to answer the above question.

III Constitutional Responsibility

The Constitution of India, from the very beginning, has taken notice of the welfare of the people of India and improvement of public health.¹² With this, it has also allowed sustainable development in business and industrial process.¹³ However a specific concern for environmental pollution found a place in the Constitution (Forty-second Amendment) Act, 1976 and also through the judicial dynamism which require the

¹⁰ Similar provision about the conferment with law of the land also finds place in the UN Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights, 2008.

¹¹ This has also been advocated by Agenda 21, Strengthening the Role of Business and Industry, Ch. 30 (1992) and World Summit on Sustainable Development, Plan of Implementation, Chapter 1, 2, 2002.

¹² See for example, articles 23, 24, 25, 39(e) and (f), 42, 47 and 48A.

¹³ See articles 19(6), 302 and 304 (b).

environmental role players to abide by the constitutional environmental *Triveni Sangam*—right, duty and obligations.¹⁴

The constitutional law, being the basic and supreme law, is binding on not only the State and its functionaries but also all other persons, including, the corporations. There are corporations created by or under the statute - State corporations or private corporates. These entities have to abide by the constitutional mandates. There are, at the same time, certain fundamental rights which are guaranteed to 'any person' and 'citizens' as well. The Supreme Court of India has allowed the fundamental rights, guaranteed to persons or citizens to be enjoyed by natural as well as artificial persons.¹⁵ There are authorities on corporate social responsibilities who have also been advocating the concept of 'corporate citizenship'.¹⁶ The above discussion supports the stand that a corporation may also claim fundamental rights.

The above discussion raises two questions: The first one is—can the polluting industries, involved in illegal acts, claim the fundamental rights? There are industries in whose cases the Supreme Court named such industries' rouge industries.¹⁷ In such cases a confusion has been created by the judiciary as to whether such activities, are included in the expression 'trade or business' and in turn can they claim the fundamental right to carry on any trade or business.¹⁸ In this connection it may be pointed out that all industries cause pollution but the degree and quantum will differ in each case. For example, the chemical industries in the *Indian Council for Enviro legal Action* case were involved in causing hazardous pollution; whereas the Tata Groups

¹⁴ See articles 48A, 51A(g) and also see article 21 wherein the judicial dynamism has given birth to fundamental right to environment.

¹⁵ *Charanjit Lal v. Union of India*, AIR 1951 SC 41; *Cooper v. Union of India*, AIR 1970 SC 1318; *Bennett Coleman and Co. v. Union of India*, AIR 1973 SC 106. See H.M. Seervai, *Constitutional Law of India*, 2006; particularly page 709 where he says that there is nothing incongruous in a corporation being a citizen.

¹⁶ See, for example, Andrew Crane & Dirk Matten, *Corporate Social Responsibility* 57, 159, (2007); Jeanne M. Logsdon and Donna J Wood, "Business Citizenship: From Domestic to Global Level of Analysis" 155-163, 12(2) *Business Ethics Quarterly* (2002); A Mohan, "Corporate Citizenship : Perspective from India", 2 *Jour. of Corporate Citizenship* 107-11, 2001; Maintosh M., et al., *Corporate Citizenship: Successful Strategies for Responsible Companies*, 1998; Tichey N.M., et al (Eds.), *Corporate Global Citizenship: Doing Business in the Public Eye*, 1997.

¹⁷ *Indian Council for Enviro Legal Action v. Union of India*, AIR 1996 SC 1446, 1468. See also the case of Asbestos Industry where the industrial process causes health hazards including cancer *Consumer Edu. and Res. Centre v. Union of India*, AIR 1995 SC 922; *Burabazar Fire Works v. Commissioner of Police*, AIR 1998 Cal. 121.

¹⁸ *Covarji v. Excise Commr.* AIR 1954 SC 220; *State of Bom. v. Chamarbaugwala*, AIR 1957 SC 699. See the contradictory view - *Krishna Kumar v. State of J & K*, AIR 1967 SC 1368; *Fatechand v. State of Maharashtra*, AIR 1977 SC 1825; However in subsequent cases the court tries to come down to the position that the State has the inherent right to impose total prohibition or reasonable restriction under article 19(6); *P.N. Kaushal v. State of Maharashtra*, AIR 1978 SC 1437; *State of Gujarat. v. Vora S. Kadharabhai*, AIR 1995 SC 2208.

have different story to tell of being a most environmental friendly corporations.¹⁹ In both the cases it is the industrial activities initially permitted by the State authorities. In such cases the question is: How to allow or not to allow the application of articles 19(1)(g) and 301? Moreover, there will be another question: if such trade or business is not treated as such, the question is : How can Parliament and State Legislature enact law on this subject under the concerned items of the appropriate Lists in the Seventh Schedule to the Constitution of India? In such confusion the better course will be to allow the State to decide to take or not to take action under article 19(6) or 302 or 304(b). It is interesting to note that the courts have imposed total prohibition on nefarious business activities.²⁰

The second question is whether the fundamental rights can be enforced against a corporation? The Supreme Court of India, in its concern to provide a wider protection to the fundamental rights has given a liberal meaning to the expression 'other authorities' provided under article 12 of the Constitution. This has resulted in allowing the enforcement of fundamental right even against a corporation, company or society.²¹ The effect of such liberal treatment is that the right to environment, carved out of the provisions of article 21²², will be safeguarded against even the polluting corporation²³, bringing in turn a corresponding corporate environmental discipline and responsibility. In catena of cases of the industries, a large number of environmental litigations have been attracted and the courts, in many cases, have enforced the said fundamental right and put a check on their industrial activities causing pollution.²⁴

Apart from the above discussions on rights and responsibility, articles 48A and 51A(g), dealing with the environment, deserve special attention. These articles were

¹⁹ See S. Elan Kumaran, et al, "Transcending Transformation : Enlightening Endeavour at Tata Steel", in Andrew Crane & Dirk Matten (Eds.), *Corporate Social Responsibility*, Vol. 3, 182, 2007; See also Runa Sarkar, "Corporate Environment Behaviour A Comparative Study of Firms in India Steel and Paper Industry" in Peter Utting and Jennifar Clapp (Eds), *Corporate Accountability and Sustainable Development* 174 (2008).

²⁰ *Sushila Saw Mills v. State of Orissa*, AIR 1995 SC 2484; *M.C. Mehta v. Union of India*, AIR 1988 SC 1037; See also AIR 1987 SC 965.

²¹ *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487; *Food Corporation. of India Worker's Union v. Food Corporation. of India*, AIR 1996 SC 2412; *All India Sanik School Employees' Association v. Sainik Schools Society*, AIR 1988 SC 88.; *Zee Telefilms Ltd v. Union of India*, (2005) 4 SCC 649 where a society was not given a cover of other authorities by a majority of 3:2 a restricted approach in the fundamental right jurisprudence. *Mysore Paper Mills Ltd v. Mysore Paper Mills Officers' Assoc.*, (2002) 2 SCC 167; *Rohtas Industries Ltd v. Bihar S.E.B.*, 1984 Suppl. SCC 161.

²² *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1985 SC 652. *Subash Kumar v. State of Bihar*, AIR 1991 SC 420; *Consumer Edu. and Res. Centre v. Union of India*, AIR 1955 SC 922.

²³ See, for example, *Indian Council for Enviro-legal Acton v. Union of India*, AIR 1996 SC 1446; *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2755; *Consumer Edu. and Res. Centre v. Union of India*, AIR 1955 SC 922.

²⁴ For detailed discussions on industries see C.M. Jariwala, *Environmental and Justice*, particularly, pp. 110-146 (2004).

inserted by the Constitution (Forty Second Amendment) Act, 1976²⁵ to honour the Indian commitments at the Stockholm Conference, 1972. Article 48A imposes an unenforceable fundamental obligation on the State to protect and improve the environment. In view of the expanded meaning of 'the State' the fundamental obligations shall also be the obligations of a corporation or company. It is noteworthy that the judiciary, by reading article 48A, has given birth to the right to environment without taking any help of the Fundamental Rights chapter in this matter, thus making the unenforceable part enforceable.²⁶ This, in turn, will bring responsiveness in the polluting industries. Furthermore, this fundamental obligation becomes meaningful in the light of enormous environmental responsibilities imposed on corporations under different environmental legislations, attracting sanction in case of non-compliance.²⁷

There is also a duty, termed as 'primary duty'²⁸, to improve public health. The industrial pollution hazards not only cause harm to human body but also result in death of living beings and degrade the environment in general. Being the primary duty, the Supreme Court has taken a stand that it shall be performed regardless of financial constraints with the State.²⁹ Article 47, according to the Supreme Court, comprehends hygienic environment to live, a part of the right to life under article 21. Thus the State has to provide Medicare to the pollution victims at the time of occurrence of such activities and also aftermath³⁰ and it shall be later on reimbursed from the polluting agency.

The other important provision in the environmental responsibility is article 51A(g). It imposes a fundamental duty on every citizen of India to protect and improve the natural environment. The Fundamental Duties chapter, according to the Report of the Committee for Operationalizing of Fundamental Duties, 1999, basically codifies such values as have been 'a part of the Indian tradition, mythology, religions and practices'³¹, and 'those have to be internalized in the conduct of every citizen'. The Report also deals with a 'respect for environment'.³² It may be pointed out that environmental pollution is a serious threat to the very survival of the human race. In this crisis, the fundamental duty towards environment will bring environmental concern in all citizens, resulting in environment friendly actions. It may be pointed out that the expression 'every citizen' will mean, in the light of previous discussion, to

²⁵ See for detailed discussion, C.M. Jariwala, "The Constitution 42nd Amendment and the Environment", in S.L. Agarwal (Ed.) *Legal Control of Environmental Pollution* 1 (1980).

²⁶ *L.K. Koolwal v. State of Raj.*, AIR 1988 Raj. 2.

²⁷ *N.D. Jayal v. Union of India*, AIR 2004 SC 867. See also *Animal and Environment Legal Defence v. Union of India*, AIR 1997 SC 1071; *K.M. Chinnappa v. Union of India*, AIR 2003 SC 724.

²⁸ See article 47.

²⁹ *Rattlam Municipality v. Vardhi Chand*, AIR 1980 SC 1622.

³⁰ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715; *M.C. Mehta v. Union of India*, AIR 1998 SC 2340.

³¹ Report of the Committee for Operationalizing of Fundamental Duties, 1999 at 12.

³² *Id.* at 16.

include even a corporation or company. In the light of such interpretation, it will be a fundamental duty of all corporations and companies to honour their fundamental commitments: not only to safeguard the environment but also to bring degraded environment to its 'natural' status.

It may be pointed out that article 51A(g) puts more emphasis on environment as compared to article 48A as the, fundamental duty is towards the 'natural environment' and not just 'environment' provided in article 48A. However, the question remains: Is there anything as natural environment in the present polluted world? Furthermore, in the light of the principle of intergeneration equity, it is a duty of every one to see that the future generation is not deprived of the fruits of environment which the present generation is enjoying. In today's world the fact is that we have hardly anything as natural environment, but it is a man-made polluted environment with some natural fragrance.³³ The duty is not limited to environment but it extends to protect and improve the forests, lakes, rivers and wild life and also to have compassion for living creatures. Though all these components are part of the environment, but it seems that the constituent authority wanted to put a special emphasis on them to attract an extra care in handling them.

The provisions of article 51A(g) are not enforceable, however, the Supreme Court, not toeing the aforesaid constitutional philosophy, has taken a stand to make the dormant and hibernating fundamental duty a responsive one. In this regard, the Supreme Court, time and again, has held that the courts must enforce fundamental duties and should not depend on policy makers³⁴ to activate them. The judiciary has further gone ahead and issued necessary directions.³⁵ Once the environmental responsibility becomes enforceable, the question will arise as to whether there is any constitutional or legal sanction for non-compliance of the responsibility. The answer is that, there is no constitutional sanction as such; however, the Indian environmental laws and other laws have provided sanctions and remedies for the non-fulfilment of environmental duties and obligations.

IV Legal Responsibility

In India there are many laws which directly or indirectly deal with environment. The Tiwari Committee estimated that there were about 200 legislations directly or indirectly dealing with environment.³⁶ These legislations, starting with the Indian Penal Code, the umbrella legislation -- the Environment Protection Act, 1986, down to the Green Tribunal Act, 2010 impose a duty on all natural and artificial persons not to

³³ *Virendra Gaur v. State of Harayana*, (1995) 2 SCC 577 580-1, wherein the court has taken into cognizance the two environments.

³⁴ See *Virendra Gaur v. State of Harayana*, (1995) 2 SCC 577, 580-1.

³⁵ *Sachidananda Pandey v. State of W.B.*, AIR 1987 SC 1109.

³⁶ Report of the Committee for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection, 3.1 (1980).

put the environment and its components at risk. There are duties imposed in the environmental laws, under the directions of the appropriate authorities and also under the delegated legislations. The salient norms provided in the legislations include, duty to follow the prescribed standard for pollution; to supply information to the appropriate authorities as and when required; to establish and operate the industry with the consent of the required authorities; not to interfere with the authority at the time of inspection or taking sample so as to judge the standard of pollution so caused; to provide timely reports, to comply with procedural standards, etc. These duties are provided with criminal and monetary sanctions in case of their non-compliance. Taking the stock of only those laws directly dealing with environment,³⁷ the penal sanction ranges from three months to seven years imprisonment. The sanction of fine ranges from ₹10,000/- and ₹5,000/ per day of its continuance to Rupees One Lakh. However, the National Green Tribunal Act, 2010 enhances the fine to Rupees Ten Crores with an additional fine of ₹25,000/- per day in case of continuance of the offence. Will a small industry bear such a huge burden, is a question only time may answer. It may be pointed out that the industrial process will always have impact on environment. Some may adopt environment friendly approach and the other, may cause irreparable and irreversible damage. Once they have been given license legally or through corrupt practice to run the industries, and also the fundamental right, their claim cannot be denied to them as they have the fundamental right to move the court against any restriction on their activities. The result will be that till such time the industries are booked, they will have freedom to continue to operate at their sweet will. At present, a large number of industries, unexposed of any judicial sanction, are keeping the environment at ransom. It is time that the people of India must rise and nail their nefarious environmental activities.³⁸

There are cases when industries handling hazardous substances met with an accident resulting in death or injury to the workmen or people in the nearby vicinity. In such cases the main sufferers were the economically weaker section of people who remained in great hardship due to long pending settlement process for relief and compensation. In this regard, the Public Liability Insurance Act, 1991 provides for mandatory public liability insurance for the installation and handling hazardous substances to give relief to the victims of an accident. The liability of the industry is on the principle of no fault, a strict liability. The Act makes it mandatory, on every owner handling such substances, to take out the insurance policy for an amount not less than the amount of the paid-up capital of the undertaking and not more than the amount exceeding fifty crore rupees, as may be prescribed. The liability does not end here; section 4(2c) further requires the owner to remit an amount not exceeding the amount

³⁷ The Water Act, 1974; The Air Act, 1981 and the Environment Act, 1986.

³⁸ Neil Gunnigham talks about positive role of the environmental community, Neil Gunnigham, *et al*, "Social License and Environmental Protection: Why Businesses Go beyond Compliance", 29 *Law & Society. Inqy.* 318 (2004).

of premium to be credited to the Environmental Relief Fund. Any non-compliance of such provisions also attracts maximum penalty of seven years imprisonment and a fine of Rupees one lakh.

The environmental accident is also regulated through the Disaster Management Act, 2005. The term 'disaster' means any catastrophe, mishap, calamity or grave occurrence due to natural or man-made causes and which is beyond the coping capacity of the people of the affected area. The Act also takes care of 'damages to, or degradation of, environment'. The Act provides for disaster management which will include: prevention of danger, reduction of risk, preparedness, arrangement for relief rehabilitation and reconstruction. Four tier authorities - national, state, district and local are provided with certain responsibilities to manage the disaster or likelihood of any disaster. The Act adopts a lenient approach against any offence - maximum two year imprisonment and undefined fine. It is too early to find its success; however, the provisions of the Act raise certain questions: Will the multi-window system be promptly responsive to handle any disaster? Will the different authorities get sufficient funds to meet the disaster? The Central Government has been given exclusive supervisory power in disaster management. How best it can look after the functioning of the district and local authorities? The Act envisages national and state plans which the industries, where the disaster has taken place or where there is likelihood of such disaster, has to comply with the management plans. And lastly, a national disaster response force is also provided in the Act for the purpose of specialist response to threatening disaster situation or disaster.

In all the above legislations there are interesting provisions which deserve special attention. Where a company has committed an offence then the penal provisions will not apply in its case if that company shows that the offence was committed without knowledge of the person directly in charge of, or was responsible to the company for the conduct of business; and further that he exercised all due diligence to prevent the commission of such offence. A similar exemption is provided in favour of the government department.³⁹ If one looks to the environmental case law and reports of the pollution boards, one will find that the corporates are the prime polluters of environment followed by the government. The aforesaid exemptions, it is submitted, will provide side lanes and by-lanes to them to go scot free, in spite of the fact that they committed the offence. This was held in relation to Mr Anderson in the case of *Union Carbide Corporation* but later on the Supreme Court,⁴⁰ set right its previous order. The question remains: Should they be allowed to walk out without any liability simply by saying, 'we had no knowledge what happened'? The very nature of industrial

³⁹ See for example, section 16, Act of 1991, section 16, Act of 1986; section 40, Act of 1981; section 47, Act of 1974.

⁴⁰ See *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248. The multinational Corporations have their own story to tell. See United Nations Conference on Trade and Development; The World Investment Report 264-65 (2005).

processes is such that they are bound to affect the environment, as such the owner or user should not be allowed to take the plea of innocence. Further, the question is: Can we put well settled polluter pays principle and principal of 'no fault' or strict liability at ransom on such grounds?

Apart from the above criminal sanctions, the environmental laws also give power to the pollution boards to issue directions in case of non-compliance of the legislative duties, which may include, closure, prohibition or regulation of any industry or operation or process or stoppage or regulation of water or electric supply or any other services.⁴¹ The reports of pollution board do not show any serious action undertaken under such provisions, a pity! But the question remains: Should the board be given such a power at its discretion or it may be left to be handled by the judiciary, a judicious act? Moreover such action, if taken, will always attract jurisdiction of the Court. Will it not be proper to say that the board must confine its power to move the court for restraining persons from causing pollution⁴²? Apart from the above legislative corporate environmental responsibilities, there are rules made under the above legislations which also impose responsibilities and liabilities on the owner, occupier, exporter, importer, seller and buyer. For example, the Environment (Protection) Rules, 1986 impose responsibilities on industries and industrial processes to follow the prescribed standards for the discharge of environmental pollution.⁴³ In order to regulate the dealings in the hazardous waste, the Government of India framed the Hazardous Wastes (Management, Handling and Trans-boundary Movement) Rules, 2008. The handling of wastes may include, export and import of the wastes, and treatment, storage, disposal, packing, labelling; or transportation thereof. There is large number of responsibilities imposed on the occupier handling hazardous wastes.⁴⁴ The occupiers are responsible for safe and environmentally sound handling of hazardous wastes generated in their establishment. While handling the wastes, the occupiers are required to take all adequate steps to contain contaminates, and prevent any accident, and to provide training and required information to persons working on the site in the establishment. The occupier shall take firstly the authorization from the state pollution control board before starting any process. No occupier shall store the hazardous wastes for a period exceeding ninety days, and shall keep the record of the stored wastes. Those persons, who are dealing in recycling, reprocessing or reuse of the wastes, have to follow certain prescribed procedure as laid down under rule 8. The Rules, 2008 also regulate the import and export of hazardous wastes. For any trans-boundary movement of such goods, all persons have to take prior permission from the Ministry of Environment and Forests otherwise it shall be declared as illegal traffic. No import

⁴¹ See section 5, Act of 1986; section 31A, Act of 1981 and section 33A, Act of 1974.

⁴² See section 22A, Act of 1981; section 33, Act of 1974.

⁴³ Schedule II to the Rules, 1986.

⁴⁴ See rules 4, 5, 6 and 7.

shall be permitted except for recycling, recovery or reuse. Further, there are thirty wastes which are prohibited for import and export.⁴⁵

The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 identify 684 industries, producing hazardous chemicals which come within the legal control of these Rules. Further Schedule 3, Part I, divides the hazardous chemicals in four groups for different treatments. The Rules provide for the general and specific responsibilities. The occupier, during the industrial activity, has to follow certain prescribed norms and take adequate steps to prevent accidents. No occupier shall undertake any industrial activity relating to hazardous chemicals unless it has been approved by the competent authority. The occupier is required to prepare and keep up to date an onsite emergency plan to cope up with any major accident.

The industrial activities have depleted the ozone layer. It is a serious matter which may, apart from other ill effects, bring climate change. In order to regulate the above activities, the Ozone Depleting Substances (Regulation and Control) Rules, 2000 identify substances which deplete the ozone layer. The sale, purchase, manufacture, consumption, export and import of such substances are subject to regulation under these Rules. Any person, dealing in production of ozone depleting substances, is required to get registered with the competent authority, and he shall not produce them beyond a prescribed quantity.⁴⁶ Further the Rules, in order to restrict its use in future, provided that no person shall expand or establish any manufacturing facility for any ozone depleting substances.⁴⁷ However, this restriction will not apply if it is used as a feedstock in manufacturing other chemicals, having negligible emissions, if any.⁴⁸ It is the duty of the occupier to maintain records about dealing with such substances and file reports as and when required to the appropriate authority.⁴⁹

Other than the aforesaid Rules framed by the Government of India, the Act of 1974 and Act of 1981, dealing with water pollution and air pollution respectively, authorize the State governments to make rules to carry out the purpose of the relevant Acts.⁵⁰ In exercise of the power, the State governments of thirteen States have made rules in this regard. The States have adopted variant approach. This raises the question: Will the different approach do justice with the Indian environment?

Furthermore, from time to time the Central Government and state governments have issued notifications. Following are some of the select notifications issued by the Government of India.

⁴⁵ Schedule VI to Rules, 2008.

⁴⁶ Rule 3.

⁴⁷ Rule 9.

⁴⁸ Rule 9(2A).

⁴⁹ Rule 14.

⁵⁰ S. 54, Act of 1981; section 64, Act of 1974.

The Environment (Protection) Rules, 1986, require the Government of India, before giving clearance to any industry in certain sensitive environment zones, to invite objections against imposition of prohibition on the location of certain industries. The Central Government, by Notification, has been given power to prohibit location of industries in the Murud-janjira region and Doon Valley.⁵¹ In order to protect these regions, certain boundaries are earmarked for the non-industrial process or operation. The Annexure to the Notification of Feb 1, 1989, categorizes the industries under three categories: Green, where a no objection may be issued for the above activities provided they come under the prescribed categories of industries and do not undertake any of the restricted processes; in the Orange, the industries, may be permitted with proper environmental control; and the Red industries cannot be permitted in the Doon Valley if they come within the three conditions laid down therein. There were also Notifications relating to the Eco-mark (1991) - to earmark the eco-friendly products; the Environment Impact Assessment (1994-97) - to assess the environmental viability of a proposed project; and the Environment Audit (1993) - to provide transparency in the environmental related activities. All these Notifications have one common aim to protect and improve the Indian environment.

V Judicial Contributions: A Resume

It was in the year 1980 that the atmospheric pollution, attracted a serious attention of the judiciary⁵²; wherein the Supreme Court of India came down heavily on the inaction of the local authority. Thereafter the environmental case law started increasing the docket of the Supreme Court and high courts, and by 1998 the graph of disposal of such cases by the Supreme Court reached to the highest number.⁵³ This highest and moderate frequency continues till date. In this jungle of the case law, industries and industrial pollution have also attracted the attention of the judiciary time and again. The followings are some of the select areas worth discussing.

A Whose Responsibility?

It is the settled law that the personality of a corporation is different from those who are a part of the corporate process and also those who are looking after its day to day functioning. Further, there are beneficiaries of a corporation who enjoy certain benefits in view of their position with and in the corporation. In this multidimensional relationship with corporate houses, a question comes: Who should be accountable for the consequences of the industrial process of a corporation polluting the environment?

⁵¹ The Gazette of India, No. 465, July 28, 1989 and No. 56, Feb 1, 1989.

⁵² *Ratlam Municipality v. Vardhichand*, AIR 1980 SC 1622.

⁵³ See for detailed data and statistics, C.M. Jariwala, *Environment and Justice*, 2004, and also C.M. Jariwala, "The Directions of Environmental Justice : An Overview", in S.K. Verma and Kusum (Eds.), *Fifty years of the Supreme Court of India Its Grasp and Reach*, 470-71 (2000).

There are no two opinions about the responsibility of a corporation itself.⁵⁴ The Supreme Court discussed this question of responsibility at length in the *Oleum Leak* case.⁵⁵ In this case there was a leakage of *oleum* gas from one of the units of Sriram Foods and Fertilizers Industries. It was alleged that the leakage affected a large number of persons inside and outside the factory and also caused death of an advocate. There were reports of the expert committees wherein they unanimously pointed out that there was negligence on the part of the management of the industry and also pointed out some defects and drawbacks in its structure and design. So the question before the Supreme Court was: Who was personally responsible for all this? As regards the Chairman and the Managing Director, Sriram took the stand that they were not directly involved in the day to day functioning of the units of Sriram; as such they cannot be held personally responsible for it. A further plea was taken that if it is accepted otherwise then no qualified professional will accept the employment in its units. The Supreme Court did not accept the plea and made them personally responsible except that they prove that the leak was a result of an act of God, or *vis major* or sabotage or they exercised all due diligence to prevent such an escape.⁵⁶ If it was so, the Court ruled that in such a case, the victims would be entitled to be indemnified by Sriram.⁵⁷ Same plea was also taken for the operator and officer in charge of the units. The apex court also did not spare them except in the above exceptional situations.

It is reported that there were 263 persons working in various units as executives, supervisors, staff and workmen. Should they be made personally responsible? The Supreme Court, while fixing the responsibility in the present case, did not give any ruling in this regard. However, the Supreme Court⁵⁸ and the Punjab and Haryana High Court⁵⁹ have taken the stand that functionaries are not responsible for the conduct of the day to day business of a company, are not accountable for any act of the company. The courts have provided further norms to make them responsible if they 'knew really what is going on in his firm'.⁶⁰ It may be pointed out that mere fact that a person, who is employed by a corporation, cannot be accountable for any action in which he is not involved in any manner in its day to day functioning. In this connection it may be pointed out that a corporation may go scot free by adopting the aforesaid excuses,

⁵⁴ *M.C. Mehta v. Union of India (Sriram Gas Leak)*, AIR 1987 SC 965; *M.C. Mehta v. Union of India (Kanpur Tanneries)*, AIR 1988 SC 1037; *Union Carbide Corporation v. Union of India*, AIR 1990 SC 273; *Indian Council for Enviro Legal Action v. Union of India (Bichhri)*, AIR 1996 SC 1446.

⁵⁵ *M.C. Mehta v. Union of India*, AIR 1987 SC 965; AIR 1987 SC 982 and AIR 1987 SC 1086.

⁵⁶ Can this position stand in the light of the doctrine of absolute liability propounded in this very case?

⁵⁷ *Id.* at 985. See also *U.P. Pollution Control Board v. Mohan Neckins Ltd.*, AIR 2000 SC 1456; *Dwarka Cement Works v. State of Guj.*, 1992 (1) Guj. L. Her. 9.

⁵⁸ *U.P. Poll. Cont. Board v. Modi Distillery*, (1987) 3 SCC 684.

⁵⁹ *H.S. Board v. Bharat Carpets*, 1993 Cr. L.J. 283 (P & H).

⁶⁰ *G.L. Gupta v. D.N. Gupta*, AIR 1971 SC 28, *Abdul Moid v. State*, 1977 Cr. L.J. 1325.

however, the corporates must remember that if they continue with their environmental irresponsible behaviour, they will have to pay heavy cost in future even resulting their closure.

B Quantum of Responsibility

Coming to the quantum of responsibility, the corporations in many cases were ordered to be closed down, resulting into a great loss to the corporations, employees and scarcity in the goods produced by them.⁶¹ The Supreme Court also fixed certain amount of compensation⁶² or damages⁶³, looking to the injuries caused to the human beings. The amount is generally determined on the basis of three broad criteria: death; major injury - making a person permanently disabled; and minor injury. In some cases⁶⁴ the amount of compensation was further enhanced to repair and regenerate the degraded environment, and also to provide medical facilities for the present and future victims.⁶⁵ This raises a question: Is monetary compensation a real answer to environmental pollution? Will not it allow the Corporation to pay and pollute? Furthermore, generally the quantum of compensation is based on the quantum prescribed in the traffic accident cases. But the question is: Has the traffic accident any comparison with the environmental accident? An environmental accident has far reaching consequences not only on the human being but also on plants, animals, soil and other components of environment and even on the future generation.

In the environmental litigations the courts at time also required the opposite party to pay the cost of the litigation to the petitioners⁶⁶ and also to pay pollution fine.⁶⁷ It is interesting to note that the courts, in their environmental judicial activism, have gone to the extent of even recovering the cost of pipelines and drainage to carry trade effluents to a distance of 28 km; thus shifting the municipal body's responsibility on the industries.⁶⁸ Apart from these charges the Gujarat High Court further required to pay a

⁶¹ *Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 922; *M.C. Mehta v. Union of India*, AIR 1997 SC 734; *M.C. Mehta v. Union of India*, AIR 1988 SC 1037.

⁶² *M.C. Mehta v. Union of India*, AIR 1987 SC 965; *Union Carbide Corporation v. Union of India*, AIR 1990 SC 273; *Indian Council for Enviro-legal Action v. Union of India*, AIR 1996 SC 1446.

⁶³ *M.C. Mehta v. Kamal Nath*, AIR 2000 SC 1515; AIR 2000 SC 1997. See also *Re Bhavani Rivers-Sakhti Sugars Ltd.*, AIR 1998 SC 2578; *K. Muniswamy v. State of Kant*, AIR 1998 Kant. 287.

⁶⁴ *Indian Council for Enviro-Legal v. Union of India*, AIR 1996 SC 1446; *M.C. Mehta v. Kamal Nath*, AIR 2000 SC 1997.

⁶⁵ See particularly *Union Carbide Corpt. v. Union of India*, AIR 1992 SC 248, 309.

⁶⁶ *Indian Council of Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446; *Re: Bhavani River: Shakti Sugar Ltd.*; AIR 1998 SC 2578; *M.C. Mehta v. Union of India*, AIR 1987 SC 965.

⁶⁷ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

⁶⁸ *Pravin Bhai Patel v. State of Guj.*, 1995 (2) Guj Rep. 1210. A stand further approved by the High Court in subsequent cases - *Deepak Nitrate Ltd. v. Ajit Padwal*, 1997 (1) Guj & Her. 1062; *Taruben Gamit v. Central Pulp Mills*, 1997 (2) Guj. & Her 1007.

lump sum amount at the rate of 1 per cent of their one year's gross turnover for socio-economic uplift. Was such dynamism justified?

Furthermore, whenever the industrial houses transgressed the constitutional and legal responsibilities, the courts ordered for the closure of their industries and issued directions for their translocation⁶⁹ and also protected the interests of those who became unemployed.⁷⁰ Wherever, the industrial pollution affected the health of victims or the workers, the court ordered to set up a hospital at the expense of the corporation⁷¹ and to take Medicare or health insurance coverage of the employees.⁷² It may be pointed out that the Supreme Court, in view of the grave consequences of environmental pollution, has come down heavily on the polluting industries and it unsettled⁷³ a settled law which was in operation since 1868.⁷⁴ The Apex Court gave a go by to the theory of strict liability and brought in its place the concept of absolute liability. The Court laid down that if an industry is involved in any hazardous or inherently dangerous activity and such activity results in any harm, 'the enterprise must be absolutely liable to compensate for such harm, and it should be no answer to say that it had taken all reasonable care and the harm occurred without negligence on its part'.⁷⁵ The Apex Court, while fixing the quantum of responsibility, also observed that, 'The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it and then only such compensation must have a deterrent effect'.⁷⁶ The *M.C. Mehta's* ruling has been further simplified in the year 1996 on two grounds: one, the enterprise has enough resource to discover and guard against any environmental disaster; and two, it has foreseen the damage risk. The effect of the hard stand was that the multinational corporations, having worked under the *Ryland's* umbrella, ventilated their apprehension that such a stand would discourage them from trading on the Indian soil.

This brings us to the question of criminal corporate environmental responsibility. In the previous discussion, it has been pointed out that the development graph of criminal liability law has been from a minimum to highest peak. But the hard reality is that, it has yet to be effectively imposed.⁷⁷ It is because the victims primarily want

⁶⁹ *M.C. Mehta v. Union of India*, (Kanpur Tanneries), AIR 1988 SC 1037; *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1466; *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248; *M.C. Mehta v. Union of India*, AIR 1996 SC 2231; *M.C. Mehta v. Union of India*, (Taj Trapezium), AIR 1997 SC 734.

⁷⁰ *Consumer Edu & Res. Centre v. Union of India*, AIR 1995 SC 922.

⁷¹ *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248, 309.

⁷² *Consumer Education and Res. Centre v. Union of India*; *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1466.

⁷³ *M.C. Mehta v. Union of India*, AIR 1987 SC 965.

⁷⁴ *Rylands v. Fletcher*, (1868) LR3 HC 330.

⁷⁵ *Id.* at Para 58. See also *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248.

⁷⁶ *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446.

⁷⁷ Even in European countries there are rare cases of corporate environmental criminal responsibility, contd...

compensation; and secondly, the criminal proceedings are long drawn process with hardly any benefit to the victims. The fact is that the industries are one of the main culprits for degrading the environment. There were 'rogue industries'⁷⁸ which were involved in a 'chemical war'⁷⁹ causing irreversible damage to the environment and still the judiciary could not enforce and administer criminal sanction in their cases⁸⁰, frustrating the will of the elected representatives of the people. Thus expectation of the high pitch of punishments practically remained on the statute books. This shows that the corporate criminal environmental responsibility has become simply a part of corporate vocabulary which has yet to take serious roots. In such a said scenario the question is: Is not there a need for effective fast track environmental criminal courts? In this regard it is interesting to point out that the Rio Resolutions of the XV International Congress of Penal Law, 1994 under section 1, Recommendations Part II, Para 11, recommended that, 'Criminal sanction should be utilized only when civil and administrative sanctions and remedies are inappropriate'. Thus the Recommendations suggest the implementation of criminal sanction as a last resort⁸¹ putting it in the list of last priority.

The corporate environmental responsibility has been made further effective by the Supreme Court through evolution of two principles which have become settled principles of the Indian environmental law.⁸² The one is the 'polluters pay principle' wherein those industries, which pollute the environment, shall pay for the consequence of their polluting activities. The other is, 'the precautionary principle' which requires the controlling agencies to become functional and take action immediately without waiting for any scientific results if the industry is involved in an act of serious and irreversible damage to the environment. This is necessary because the scientific results are not only uncertain but also at time contradictory. In this case, the court further ruled that the onus of proof of environmentally begin action should lie on the polluting industry.

Apart from the above development in the corporate environment responsibility jurisprudence, there are other notable contributions of the judiciary, which, for example, include: the expansion of the right to environment,⁸³ extending it, for

see Michael Faure and Gunter Heina (Eds.), *Criminal Enforcement of Environmental Law in the European Union*, 43 (2005).

⁷⁸ *Indian Council for Enviro-legal Action v. Union of India*, AIR 1996 SC 1446.

⁷⁹ *Pravin Bhai Patel v. State of Guj.*, 1995 (2) Guj L. Rep. 1210.

⁸⁰ *Union Carbide Corporation. v. Union of India*, AIR 1992 SC 248; *M.C. Mehta v. Kamal Nath*, AIR 2000 SC 1997 - wherein the court had to withdraw the criminal sanction imposed by it in the previous case in view of technical flaw.

⁸¹ Such an approach is not followed by the Council of Europe; See the Convention on the Protection of the Environment through Criminal Law, 1998.

⁸² *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446; *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 SC 2715; *A.P. Poll. Con. Board v. Nayadu*, AIR 1999 SC 812.

⁸³ See for details, S.P. Sathe and Sathya Narayan (Eds.), *The Changing Dimension of the Right to* contd...

example, to the rights to pure waters, quality of air, sustainable development, right to greenery, noise-free atmosphere - right to remain in peace. The other supplementary rights which were also evolved include the right to information, and right to know about the status of environment, and pollution and right to environmental education.⁸⁴ Thus the judiciary has developed a full-fledged environmental right jurisprudence and saddled the industrial houses with large number of corresponding duties. Furthermore, the courts have exposed the unexposed eco-rapers and brought to the day light their nefarious activities.⁸⁵

VI What Comes Out?

At the international level, the international environmental law deserves appreciations as it has taken into consideration meaningful exercises in the industrial corporate environmental responsibility - a cradle to grave approach. However, the question, as to what extent the Member States and the corporate world have effectively followed or will follow them, remain still unanswered in a positive manner. The North-South fight, the lee way of 'common but differentiated responsibility', 'to the extent feasible' and many more vague concepts and principles, the shifting of venues of the trans boundary corporations, and over and above all these, the lack of international accountability and sanction have not allowed the international efforts to reach to their desired goals. The exercise of the world community in this regard, it may be pointed out, has, instead of providing a binding law, been used as parties convenience law. Unless the liberalised approach is reformed, nothing much can be effectively achieved. In this situation a welcome approach is adopted by the corporates themselves in forming an international platform and adopting some principles and environmentally safe code of conduct.

The Constitution (Forty Second Amendment) Act, 1976 has brought a complete *triveni sangam* of the environmental right, duty and obligation. But the pity is that these additions were non-enforceable. However under articles 19(6), 302 and 304(b), the State is authorised to impose reasonable restrictions and even total prohibition on the environmental-unfriendly activities. But the fact remains that the government has yet to play its due role in this matter. In this situation, the judiciary deserves appreciation for providing teeth to the non-enforceable provisions of articles 48A and 51(A)(g).

There are large number of environmental laws including rules taking care of environment right from the installation of industry down to the disposal of its products and wastes and management of any disaster. These provisions are backed by criminal sanction which has diluted it by exceptions in favour of defaulting company and government department, a way to escape for the eco-rapers. The monetary fine, though gradually increased, has to be yet to be enforced. Further, the governmental

Environment in India, in Liberty, Equality and Justice Struggle for a New Social Order, 267-280 (2003).

⁸⁴ C.M. Jariwala, *Environment and Justice*, (APH Publishing Corporation, 2004).

⁸⁵ *Id.* at 75-76.

notifications have provided meaningful mechanism to combat pollution menace. But no serious study is undertaken to point out as to how effectively they have been implemented. However, looking to the existing state of affairs of the Indian environment, can it not be said that not much fruitful result is coming out. In this sad scenario, the government must come forward and enforce the legislative intent in a right spirit. On the side of corporate houses, they must come together to build a common environment caring approach.

The environmental pollution has attracted a large number of litigations and the judiciary has made positive contributions in enforcing the constitutional and legal environmental responsibilities of the industrial corporates. The courts, while fixing the responsibilities, have made responsible all those who were involved in handling, supervising and taking policy decision with respect to the industrial process causing pollution beyond the prescribed standard and further they were required to make good—the degraded environment. The judiciary not only ordered the rogue industries to be closed down but also took into the account the injury caused to human health, and ordered for preventive action to be taken for any future polluting activities. Further, the judiciary, in its concern for the protection of environment went to evolve environment - friendly principles and even gave a go by to a long established principle. Thus the courts have developed a full-fledged industrial corporate environmental jurisprudence resulting in corresponding responsibilities on the industrial corporations and have made them responsive in this regard. But how many, who were or are not dragged to the court, will come out of their hibernation of profit earning world—still remains a question.

So from here where do we now go? The financiers, bankers, government, stake holders, consumers, employees and, the public, in general, must rise and make them responsive else the corporate houses will have to face public revolt in years to come to close down their industries, a sad day for all of them. With this, a literacy campaign must start to educate all the role players about the industrial corporate environmental responsibilities and the law schools, in particular, cannot lag behind in this social responsibility. The corporate houses also must rise to the occasion and resolve: Let everyone live in a healthy liveable environment.

THE WTO, TUNA AND DOLPHINS Has the environment Lost Another Battle?

*Surya P. Subedi**
*James K.R. Watson***

'Environmental interests have lost some battles,
but have won the war in the WTO.' — *John H. Jackson*¹
'The environmental interests lost important battles
that leave the war far from won.' — *Sanford E. Gaines*²

I Introduction

On 13 June 2012 the World Trade Organisation (WTO) adopted a report issued by its Appellate Body ruling that United States rules regarding the labelling of tuna products needed to be brought into compliance with global trade rules.³ It marked the conclusion of another phase in a dispute that had been raised under the GATT and one that has been simmering for more than 20 years. However, the case is also interesting in that arguments were raised directly relating to privileges under the GATT 1994 and under the Technical Barriers to Trade (TBT) Agreement. This made the case a test in relation to the handling of trade and environment concerns through a dispute process in the WTO relating to the TBT Agreement.

The case originates in Mexico's long held belief that the USA has been deliberately discriminating against its tuna products, previously prohibiting them from gaining dolphin friendly labelling and impacting their sales on the US market illegitimately. At issue was the USA's dolphin safe labelling requirements for tuna products, these were

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¹ M.W. Weinstein, "Greens and Globalisation: Declaring Defeat in the Face of Victory", *NY Times*, 22 April 2001, S4, p.18.

² S. Gaines, "The WTO's Reading of the GATT Article XX Chapeau: A Disguised Restriction on Environmental Measures", 739 *22 Journal of International Economic Law* 2001.

³ WTO, United States - Measures concerning the importation, marketing and sale of tuna and tuna products, WT/DS381/AB/R, Appellate Body Report, 16 May 2012.