



# HPNLU Journal of Environment and Disaster Management (Online)

Volume - III

2022

ISSN: 2583-1429

“PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITY: Assessing its Legal Status and Implementation after thirty Years of UNFCCC”

*Usha Tandon & Amrendra Kumar*

A CRITICAL ANALYSIS OF THE IMPACT OF POLITICAL DECISIONS AND ENVIRONMENTAL JUSTICE: A Case Study for Tamil Nadu

*E. Prema & Vittiyaie Teeroovengadam*

CORPORATE GOVERNANCE AND PROTECTION OF ENVIRONMENT: A Strategy for Green Future

*Girjesh Shukla & Naincy Mishra*

INTERNATIONAL COOPERATION IN DISASTER RISK REDUCTION: Analyzing the Role of India's G-20 Presidency

*Subhradipta Sarkar & Ms. Prerna*

PROCEDURAL ENVIRONMENTAL RIGHTS AS CRUCIAL TOOLS FOR ENVIRONMENTAL JUSTICE: An Indian Perspective

*Chanchal Kumar Singh & Ms. Renuka*

COMPENSATORY AFFORESTATION IN INDIA VIS-À-VIS FOREST (CONSERVATION) RULES, 2022

*Shailesh Kumar Pandey & Priyanshi Dubey*

ENVIRONMENTAL DISPUTE REDRESSAL MECHANISM: A Comparative Analysis of India and Australia

*Alok Kumar & Tijender Kumar Singh*

Navigating Environmental Governance: A Comprehensive Look at Legal and Regulatory Dimensions in Environmental Management

*Dr Chandreshwari Minhas*

ENVIRONMENTAL IMPACT ASSESSMENT OF E-WASTE MANAGEMENT IN INDIA: A Socio-Legal Study

*Sarita Klair & Arun Klair*

ECOFEMINISM: A Journey towards Environmental Justice

*Parul Madan & Priya Wadhwa*

EFFICACY OF CLIMATE CHANGE DIPLOMACY: A Shift from Top down to Bottom up Approach

*Kalyani Acharya and Shubham Singh Bagla*

ANALYSING THE REGULATIONS GOVERNING THE POLLUTION FROM SEABED ACTIVITIES AND ITS IMPLEMENTATION CHALLENGES

*Abhay Singh*

FROM POLICY TO PRACTICE: EXAMINING INDIA'S RENEWABLE ENERGY EFFORTS AND LEGAL FRAMEWORK

*Abhinav Yadav & Mumuksha R Vats*

ENVIRONMENTAL INJUSTICE AND FAST FASHION: Great Challenge for Mindful Consumption and Sustainability

*Aakriti Sikka*

# CORPORATE GOVERNANCE AND PROTECTION OF ENVIRONMENT: A Strategy for Green Future

*Girjesh Shukla\* & Naincy Mishra\**

**[Abstract:** *This paper explores the intricate relationship between corporate governance and environmental protection, focusing on the imperative for a sustainable and green future. Recognizing the environmental vulnerabilities stemming from rapid industrialization, the study delves into the evolving dynamics between corporations and the environment. Examining existing corporate governance frameworks, the paper highlights lacunae and endeavors to propose strategies to align corporate interests with environmental protection. It navigates through environmental laws in India, emphasizing constitutional provisions and international commitments. The study scrutinizes historical environmental disasters, particularly the Bhopal Gas Tragedy, to underscore the profound impact of corporate negligence on present and future generations. Theoretical perspectives, such as stakeholder theory, Sustainable Development Goals (SDGs), and the principles of inter and intra-generational equity, inform the discourse on corporations' role in environmental sustainability. Furthermore, the paper delineates the role of corporate governance, shareholders, and regulatory frameworks, including Corporate Social Responsibility (CSR) initiatives, Business Responsibility and Sustainability Reporting (BRSR), and measures by regulatory bodies like SEBI and RBI. The critique section assesses the existing framework's limitations and advocates for a holistic approach that integrates environmental concerns into corporate decision-making. Finally, the paper proposes practical solutions like optimal resource utilization, taxation policies, carbon trading, and enhancing corporate goodwill to strike a balance between corporate interests and environmental protection.]*

**Keywords:** *Corporate Governance, Environmental Protection, Sustainable Development, Stakeholder Theory, Sustainable Development Goals (SDGs), Environmental Laws, Bhopal Gas Tragedy, Inter-generational Equity etc.*

## I

### Introduction

Man is both a creature and a moulder of his environment. It was discussed in the 1972 Declaration of the UN Conference on the Human Environment that through the rapid acceleration of science and technology, a stage has been reached where man has acquired the power to transform his environment in countless ways and on an unprecedented scale. The 1972 Conference was the first of

---

\* Professor at Himachal Pradesh National Law University, Shimla, India

\* B.A. L.L.B., IX Semester, Student at Himachal Pradesh National Law University, Shimla, India

its kind relating to the alarming need for environmental protection. The Sustainable Development Goals<sup>1</sup> and the Paris Agreement<sup>2</sup> reconfirm that growth and development cannot continue unless all countries attempt to tackle climate change and boost environmental sustainability. There is a need for a transition from the current development pathway to a low-carbon, climate-resilient one, which requires significant efforts and innovation and, above all, a shift in how governments or the private sector make decisions.

The environment is considered one of the company's stakeholders and thus requires as much attention from the company owners. The present work attempts to analyse the importance of the environment and its vulnerability due to the ever-speeding industrial activities worldwide. It discusses the evolving relationship between corporations and the environment, the related provisions in the existing corporate governance framework, and its lacunae. Through this paper, the authors attempted to find ways to harmonise corporate interests and protect the environment.

## II

### **The Protection of Environment: *Erga Omnes***

Section 2(a) of the Environment Protection Act 1986 (*hereinafter* the EPA) defines "environment" to include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.<sup>3</sup> However, it is difficult to define the term 'environment' as this concept includes everything surrounded by an object. After the inception of industrialisation, the concept of development is characterised by building new industries and infrastructures, and with that comes the ever-increasing problem of pollution. As per the EPA, "*environmental pollution*" means the presence in the environment of any environmental pollutant<sup>4</sup> and "*environmental pollutant*" means any solid, liquid or gaseous substance present in such concentration as may be, or lend to be, injurious to the environment.<sup>5</sup> Generally speaking, "*pollution*" is a noun derived from the verb "pollute", meaning to make foul or unclean. Again, with the advent of new technologies and innovations, there is an increase in the ways of creating pollution in the environment.

---

<sup>1</sup>UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *The 17 Goals*, available at - <https://sdgs.un.org/goals> (last visited 16 May, 2023).

<sup>2</sup>UNITED NATIONS, *The Paris Agreement*, available at - <https://www.un.org/en/climatechange/paris-agreement> (last visited 17 May 2023).

<sup>3</sup> The Environment Protection Act, 1986, S. 2(a).

<sup>4</sup>*Id.*, S. 2(c).

<sup>5</sup>*Id.*, S. 2(b).

The right to life is the most fundamental right of every human being. With the increase in the problems relating to environmental pollution, there is a great threat of loss of lives and property of humankind. This was first discussed in the 1972 United Nations Conference on the Human Environment, where a stage has been reached where man has acquired the power to transform his environment in countless ways and on an unprecedented scale.<sup>6</sup> Environmental pollution is not a region-specific problem but has become a global issue. Industrialisation, urbanisation, population explosion, over-exploitation of resources, etc., are some of the most common reasons for environmental deterioration. Moreover, it doesn't only endanger the present generation creating such pollution, but also the future generation who will be forced to live with the repercussions of such acts. That is why, the international community came up with the concept of "sustainable development". It means the development which meets the need of the present without compromising the ability of future generations to meet their own needs.<sup>7</sup> In 2015, all the UN member adopted 17 sustainable development goals (*hereinafter* SDGs) which recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests.<sup>8</sup>

### III

#### **Environmental Laws in India**

The objectives of international agreements would be effective if all the relevant states became parties to them and ensured proper implementation. India is also a signatory to various international environmental treaties and thus, is under an obligation to include them in national laws.<sup>9</sup> That is why, environmental principles such as 'precautionary' and 'polluter pays' were made part of the Indian environmental jurisprudence. Our supreme law, i.e., the Constitution of India, is perhaps the first constitution in the world that contains specific provisions for protecting and improving the environment.<sup>10</sup> Besides, various laws have been enacted occasionally, such as for the protection of

---

<sup>6</sup>BRUNDTLAND, G.H., *OUR COMMON FUTURE: Report of the World Commission on Environment and Development Geneva*, U.N. Doc. A/42/427 (1987).

<sup>7</sup>*Id.*, at 43.

<sup>8</sup>*Supra* note 1.

<sup>9</sup> The Constitution of India, 1950, article. 51 (c) & 253.

<sup>10</sup>Dr Paramjit S. Jaswal *et al.*, ENVIRONMENTAL LAW 40 (2020).

wildlife and forest,<sup>11</sup> prevention of water and air pollution,<sup>12</sup> and laws relating to the setting up relevant tribunals,<sup>13</sup> among others.

At the very outset, the Preamble of the Constitution provides that India is based on a 'socialistic' pattern of society where the state pays more attention to social problems than individual ones. Interestingly, the word 'socialist' was added to the preamble by the Constitution 42<sup>nd</sup> (Amendment) Act, 1976, when there was a wave of environmental discussions at the international level. Further, vide Article 48A of the Constitution, the state must protect and improve the environment and safeguard the country's forests and wildlife.<sup>14</sup> In addition, raising the level of nutrition and the standard of living of its people and improving public health are regarded as among the primary duties of the state.<sup>15</sup> Environmental protection concern has also been highlighted by laying down duties for a citizen under Article 51A(g). Thus, it is not solely the obligation of the state or an individual, but collective action is encouraged.<sup>16</sup>

#### IV

##### **Corporations and the Threat to the Environment**

The widespread prevalence of environmental pollution began with the industrial revolution and has not slowed since then. As the population and the economies have continued to grow, so has the environmental pollution level. As per data, the annual CO<sub>2</sub> emissions have risen to around 37 billion tonnes in 2021 from 6 billion tonnes in the 1950s.<sup>17</sup> Unsurprisingly, the major greenhouse emissions come from the energy sector.

One of the earliest cases which led to the establishment of the basic rules for international environmental law is *US v. Canada*<sup>18</sup>, also known as the 'Trail Smelter Arbitration case'. In this case, the US had charged Canada because a Canadian smelter company operating along the Columbia River was emitting sulphur dioxide, which caused injury to plant life, forest trees, soil, and crop yields in Washington State. A rural community of farmers who resided in the region claimed damages

---

<sup>11</sup> The Wild Life (Protection) Act, 1972; The Forest Conservation Act, 1980.

<sup>12</sup> The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986.

<sup>13</sup> The National Environment Tribunal Act, 1995; The National Environment Appellate Authority Act, 1997; The National Green Tribunal Act, 2010.

<sup>14</sup> The Constitution of India, 1950, article 48A.

<sup>15</sup> *Id.*, article, 47.

<sup>16</sup> *T. Damodar Rao v. SO Municipal Corporation, Hyderabad*, AIR 1987 A.P. 171; *Kinkri Devi v. State*, AIR 1988 H.P. 4.

<sup>17</sup> Hannah Ritchie & Max Roser CO<sub>2</sub> Greenhouse Gas Emissions, Our World in Data(2020) available at - <https://ourworldindata.org/co2-and-greenhouse-gas-emissions> (last visited 17 May 2023).

<sup>18</sup> *Trail smelter case (United States, Canada)*, 3 UNRIAA, 1905 (1952).

against the waste emitted by the smelter. This case was referred to the International Joint Commission, a bilateral tribunal which, in its decision, established the concept of *Trans Boundary Harm* and the “polluter pays” principle to ensure the nation’s sovereignty. The tribunal put a limit on the sulphur fumigation that could be emitted by the smelter and imposed a huge monetary liability on them. Thus, the farmers were not only protected from being harmed by the smoke, but they also received appropriate compensation. It is considered a landmark judgement because there had been no case hitherto decided by an international judicial authority regarding a matter so remote and localised.

In India, environmental issues due to established industries were majorly highlighted when the country faced one of the worst industrial accidents in the history. In 1984, about 45 tons of the dangerous methyl isocyanate gas escaped from an insecticide plant that was owned by the Indian subsidiary of an American firm Union Carbide Corporation (UCC). There were huge casualties to life and property from the exposure to this toxic gas. Later, the investigations established that substandard operating and safety procedures at the understaffed plant had led to the catastrophe.

Not much later, another tragedy marked corporate negligence in the next year when there was the escape of oleum gas from one of the units of *Shriram Foods and Fertiliser Industries* while there was already a writ petition was filed by M.C. Mehta against its establishment in a densely populated area of Delhi. In this case, the Supreme Court was of the view that an enterprise engaged in a hazardous or inherently dangerous industry, if poses a potential threat to the health and safety of the factory workers or nearby residents, owes an absolute and non-delegable duty to the community ensuring that no harm results to anyone due to the hazardous or inherently dangerous nature of the activity which it undertakes.<sup>19</sup> The Apex Court thus came up with the ‘absolute liability’ principle rejecting the old principle of ‘strict liability’ evolved in the case of *Rylands v. Fletcher*<sup>20</sup>.

However, the Bhopal Gas Case (*Union Carbide Corporation v. UOI*)<sup>21</sup>, decided later, reflected a different scenario. The court opined that the observation in the Sriram case regarding the proportionality of the award for damages and the economic capacity of the offender couldn’t be applied in the present case. As observed, it was a ‘*mass tort action*’; thus, damages can be quantified without attaching much importance to individual injuries. It was held that the UCC should pay a sum of U.S. \$470 to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of the disaster.

---

<sup>19</sup>M.C. Mehta v. Union of India, AIR 1987 S.C. 1086, 1099.

<sup>20</sup> (1869) (19) L.T. 220.

<sup>21</sup> (1991) 4 SCC 584.

Why these tragedies pose even more significance because they not only harm the then unfortunate victims but also have a catastrophic effect on the later generations. While deciding a curative petition regarding the compensation granted in the Bhopal Gas case, the court observed that care had to be taken of unborn children of mothers exposed to toxicity, where such children later develop congenital defects.<sup>22</sup> Thus, the rights of future generations are also generally considered while giving relevant compensations.

## V

### **Theorising the Relationship between Corporations and the Protection of the Environment**

In the modern era, the link of corporations with environmental protection is important not only if looked at from the environmental perspective but is also essential for corporate sustainability. It has been observed that companies that set realistic goals with this approach and try to formulate truly sustainable solutions are the ones that help create a more prosperous future for themselves and the planet. This is what the stakeholder theory proposes. It focuses on the effect of the corporate's activity on all its stakeholders, as opposed to just the corporation's shareholders. In this theory, corporates are expected to mitigate or reduce stakeholder conflicts.

Investors do consider the environmental, social and governance efforts (hereinafter ESG) undertaken by the industry. As per the EY Global Institutional Investor Survey, 90% of investors now attach greater importance to ESG performance in their decision-making than before the Covid-19 pandemic, and 92% have made decisions based on the potential benefits of a 'green recovery' over the past 12 months.<sup>23</sup> Sometimes, approaches towards these expectations only require little effort while improving efficiency, for instance, reducing paper needs while facilitating information circulation online.

#### ***Sustainable Development Goals***

The UN sustainable development goals, as discussed above, are aligned to ensure long-term corporate sustainability. Most of these goals conform with the intra as well as inter-generational equity that was made part of the international environmental declarations long back in the 1970s, such as Goal 6, which ensures water availability, Goal 7, providing for energy for all, Goal 12 ensuring sustainable consumption and production patterns, etc. Others provide for sustainable management

---

<sup>22</sup>*Union Carbide Corporation v. Union of India*, CURATIVE PET (C) No.345-347 of 2010.

<sup>23</sup> EY, *Is Your ESG Data Un-Locking Long Term Value?* (2021) available at - [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_gl/topics/assurance/assurance-pdfs/ey-institutional-investor-survey.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/assurance/assurance-pdfs/ey-institutional-investor-survey.pdf) (last visited 18 May, 2023).

for human settlements, marine resources and terrestrial ecosystems, including the protection of forests and biodiversity.<sup>24</sup>

The international principle of *inter* and *intra* generational equity argues for the availability of resources in a way that it is secured for current as well as the future generations. It was reflected in Principle 1 and 2 of the Stockholm Declaration and in Principle 3 of the Rio Declaration. In the case of *K. Guruprasad Rao v. State of Karnataka*<sup>25</sup>, the Supreme Court explained the ambit of *inter-generational equity* and sustainable development. It was observed that right to development includes the whole spectrum of civil, cultural, economic, and social process for the improvement of people's well-being and realization of their full potential.

Another important sustainable development goal is to take urgent action to combat climate change and its impacts.<sup>26</sup> Climate change is a facet that is linked with the company's future as risk related to climate change is a 'material financial risk', including physical, transition, and liability risks.<sup>27</sup> This includes the risk of climate change due to the company's business and the risk to the company because of climate change. To this end, the companies must do the *Environment Impact Assessment (hereinafter the EIA)* of the proposed projects which may significantly affect the environment or use of a natural resource. It is perhaps after the 1972 Stockholm Conference, that environmental assessment became part of the common lexicon among environmental stakeholders as well as the private sector. The main objectives of the EIA are to understand the consequences or impacts of the proposed development on the environment, identify ways in which the development can be improved and provide this information to decision-makers. Thus, it is important in order to ensure that developments are sustainable and do not detrimentally affect people's lives or the natural environment.

Sustainable development is also ensured by the "*precautionary principle*" and the "*polluter pays principle*".<sup>28</sup> The main purpose of the precautionary principle is to ensure that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment, even if there is no conclusive scientific proof linking that substance or activity to such damage. On the other hand, the *polluter pays principle* means that the absolute liability for environmental harm extends to compensate the victims of pollution and the cost of restoring the environmental degradation. In

---

<sup>24</sup>*Id.*, note 8, Goal 11, 14, 15.

<sup>25</sup> (2013) 8 S.C.C. 418.

<sup>26</sup>*Id.*, note 8.

<sup>27</sup> CCLI, *Primer on Climate Change: Directors' Duties and Disclosure Obligations* (June 2021).

<sup>28</sup> *Vellore Citizens' Welfare Forum v. Union of India*, (1995) 5 SCC 647.



*Vellore Citizens' Welfare Forum v. Union of India*, the Court said that these principles are essential features of sustainable development and part of the country's environmental law.<sup>29</sup>

There is unarguably true that society has to prosper, but it should not be at the expense of the environment. In *Citizen, Consumer and Civic Action Group v. Union of India*<sup>30</sup>, the Court observed that while the courts have social accountability in environmental protection, there should be a proper balance between the same and developmental activities essential for progress.

### ***Role of Corporate Governance in Environmental Protection***

The regulatory framework related to ESG cannot be found in a single legislation, but various laws must be referred to for the same. With respect to the environment, the Companies Act, 2013 (*hereinafter* the Act 2013), SEBI Regulations, RBI Rules, etc., contain different provisions. Setting up the foremost liability of the persons managing a corporation, Section 166(2) of the Companies Act 2013 obligates the directors of a company to act in *good faith* to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment.<sup>31</sup> Recently, in the case of *M.K. Ranjitsinh v. Union of India*, the Supreme Court clarified that this section "ordains the director of a company act in *good faith*, not only in the best interest of the company, its employees, the shareholders and the community but also for the protection of the environment."<sup>32</sup> There is no hierarchy between the duties owed to the company and the other stakeholders under the said section. Thus, consideration of matters such as climate risk and environmental protection is not optional for directors of Indian companies but rather obligatory, which may create significant liability risk if ignored.<sup>33</sup> The Act also requires the Board's report to incorporate details on the steps taken by the Company towards the conservation of energy and technology absorption.<sup>34</sup> Over a dozen companies, including Reliance Industries Ltd, ITC Limited, JSW Energy, Vedanta Ltd, and HDFC Bank, have signed up to go carbon neutral in the coming decades. Some companies are also modifying their businesses to hit net-zero emission deadlines.

Another provision gaining importance in the present times is that of Corporate Social Responsibility<sup>35</sup> (*hereinafter* the CSR), under which specific rules<sup>36</sup> have been laid down to mandate

---

<sup>29</sup>*Id.*

<sup>30</sup> A.I.R. 2002 Mad. 298.

<sup>31</sup> The Companies Act, 2013, S.166(2).

<sup>32</sup> 2021 S.C.C. OnLine S.C. 326.

<sup>33</sup>*Id.*

<sup>34</sup> The Companies Act, 2013, S. 134(3)(m).

<sup>35</sup>*Id.*, S.135.

companies with a specific net worth or turnover to annually spent at least 2% of their average net profits of last three financial years on CSR.

SEBI also vide Regulation 34 (2)(f) of the Listing Obligations and Disclosure Requirements) Regulations, 2015 and its BRSR framework (Business Responsibility and Sustainability Reporting, 2021) makes its mandatory for the top 1000 listed companies based on market capitalization, to include in their annual report, a business responsibility report describing the initiatives taken by the listed entity from an ESG perspective.<sup>37</sup> This more particularly includes companies' material ESG risks and opportunities, approach to mitigate or adapt to the same, sustainability-related goals, disclosures such as greenhouse gas emissions and waste management practices, etc.

The risk of climate change, as discussed above, is yet an emerging facet regarding which there are regulations framed by various authorities over several jurisdictions. Most of the foreign courts all over the world have already recognised the directors' liability towards breach of duty for not rendering significant consideration to climate change and its associated risks.<sup>38</sup> In a recently settled case of *McVeigh v. REST*, the Federal Court of Australia held the respondents liable for breach of their duty of care for failing to integrate climate change considerations into its investment strategy.<sup>39</sup> Thus, the companies must also have an adequate climate policy because in its absence, the business's profitability would be difficult to guarantee, and the financing structure would be highly risky.

Further, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 mandate disclosure of management's discussion and analysis of the financial condition of the company, alongside a discussion of various factors such as unusual or infrequent events or transactions, including unusual trends, significant economic changes, known trends or uncertainties, etc. that materially affected or are likely to affect income from continuing operations.<sup>40</sup> These provisions become all the more important for vulnerable companies such as those engaged in the oil and gas business, chemical industries, etc.

---

<sup>36</sup> Companies (Corporate Social Responsibility Policy) Rules, 2014.

<sup>37</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, R. 34(2)(f),

<sup>38</sup> *Gloucester Resources Limited v. Minister for Planning*, [2019] NSWLEC 7; *Milieudefensie et al. v. Royal Dutch Shell plc.*, ECLI:NL:RBDHA:2021:5337; *Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd.*, Tribunal Appeal No. Net 196 of 2016; *Earth Life Africa Johannesburg v. Minister of Environmental Affairs and Others*, [2017] 2 All SA 519 (GP); *Barrick Exploraciones Argentinas S.A. and others v. National Government*, B.140.XLVII; *ClientEarth v. Enea*, IX GC 1118/18; *Lliuya v. RWE AG*, Case No. 2 O 285/15; *Ramirez v Exxon Mobil*, 334 F.Supp.3d 832, 839-841 (N.D.Tex.2018).

<sup>39</sup> *McVeigh v. REST*, N.S.D. 1333/2018.

<sup>40</sup> SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, Sch. VI, Part A, Para. 11(I)(C)(iv).

RBI has also joined Central Banks and Supervisors Network for Greening the Financial System as a member in 2021 to assess the progress of RBI-regulated entities in managing climate risks. RBI keeps on formulating new rules to facilitate environmental protection by the entities. Last month only, RBI came up with a regulatory framework for banks to accept green deposits from customers, and this money will be invested towards environment-friendly projects such as in financing renewable energy projects that fight climate change. These rules aim at preventing greenwashing and helping achieve sustainable objectives.

### ***Role of Shareholders***

Shareholders are often referred to as the owners of a company. They hold stock(s) in the company and possess a right to vote in matters pertaining to the company. When the company does well and makes profits, it is very well reflected in the form of dividends received by the shareholders. However, the role of shareholders is much more than just receiving profits. The company law mandates the presence and voting of the shareholders in certain important matters because if the decision-making is left to the key managerial persons (*hereinafter* as the KMPs) proposing the agenda, there will be an element of biasness and ultimately, no objection can be raised even if the proposed agenda or change is detrimental to the interest of the company. Since environmental protection is a collective action, shareholders must give their whole attention while any idea is being proposed and analyse the short- and long-term environmental effects of the same.

Nevertheless, the shareholders can have recourse to the remedies mentioned in the Companies Act, 2013 if they wish to bring about a desired change in the operations of a company that would possibly result in a better decision ensuring greater environmental benefits: -

- i. To this end, the shareholders have the right to invoke Section 241 of the Act when they are aggrieved by *oppression or mismanagement* of the company. Denying of voting right to a shareholder is an example of oppression. On the other hand, mismanagement occurs when the company is managed in a manner prejudicial to the public interest or interests.
- ii. The Act also provides for a '*class action suit*' under Section 245 for the minority shareholders representing a common interest. It can be invoked by whenever there is any prejudicial or abusive conduct committed by the Board of Directors (*hereinafter* as the BOD) or the KMPs.
- iii. Sometimes, even one shareholder with a minority shareholding, can bring a cause of action to sue the BOD on behalf of the company itself. This is called a '*Derivative Action*' which is not incorporated per se in the Act but the courts in India as well as in other countries have recognized it as a claim. In fact,

in a recent case of Madras High Court, a derivative action was held to be included in Section 241 of the Act.<sup>41</sup>

In the recent times, this shareholder activism, measured by the number of environment-related shareholder proposals submitted by them to their company, has led to induce firms to disclose climate change risks voluntarily. On average, the extent of climate-risk disclosure increases by approximately 4.6% for each submitted environment-related proposal.<sup>42</sup> Thus, shareholders play a big role in bringing this kind of desired change in the company's functioning. Critique on the Existing Framework

In economics, a term called the 'Triple Bottom Line' is often used which suggests that the companies should commit to give as much attention to the social and environmental concerns as they give to profits. It conceptualises three elements: profit, people and the planet.<sup>43</sup> It is important to understand that the environmental concern should go hand in hand with the profit-making attitude with which a company is set up. Thus, a company's positive efforts towards the planet are not necessarily assessed by its investments in big environmental projects, but in its choice of environment-friendly alternatives if and when required.

The present law on corporate governance in India contributes much to environmental concerns. However, nothing suggests the absolute mandate of consideration towards these aspects. For example, despite being mentioned as one of the stakeholders in Section 166(2), the environment is not taken seriously by the directors as they hardly care about any repercussions, most probably because there aren't any, as such.

Nevertheless, there may be other ways to harmonise corporate interests and protect the environment. Therefore, resorting to solutions that will encourage the corporate personnel to consider this issue without compromising the profits of the company might be helpful in the present times: -

1. Optimal utilisation of natural assets – Before setting up an entity for business purposes, the owner tries to find a place to fulfil the business needs for raw materials, water and power supply, etc. If there is mismanagement in utilising the nearby resources and over a period of time, all such raw materials or natural resources are used, the company will be forced to relocate the company setting up all its

---

<sup>41</sup>*Valluvar Kuzhumam Pvt. Ltd. v. APC Drilling & Construction Pvt. Ltd*, M.A.N.U./T.N./9215/2022.

<sup>42</sup>Caroline Flammer, Michael W. Toffel, et. al, *Shareholders are Pressing for Climate Risk Disclosures. That's Good for Everyone* (Apr. 22, 2021), available at : <https://hbr.org/2021/04/shareholders-are-pressing-for-climate-risk-disclosures-thats-good-for-everyone> (last visited May 16, 2023).

<sup>43</sup>Kelsey Miller, *The Triple Bottom Line: What It Is & Why It Is Important* (Dec. 8, 2020) available at - [The Triple Bottom Line: What It Is & Why It's Important \(hbs.edu\)](https://hbs.edu) (last visited May 14, 2023).

capital at another place. That is why there is a need to optimise such resources or natural assets. This is one of the major principles of corporate governance. Optimising resource use will help companies in reducing costs, maintain their operations, secure supply chains, and mitigate risks associated with resource scarcity or depletion.

Many jurisdictions have environmental regulations and compliance requirements in place to protect natural resources. Companies must adhere to these regulations to avoid legal consequences, penalties, and reputational damage. Optimally utilising natural assets demonstrates a commitment to compliance and sustainability, ensuring alignment with regulatory frameworks. Moreover, by optimising the use of natural assets, companies can drive innovation in sustainable practices, resource-efficient technologies, and eco-friendly solutions. This can provide a competitive edge, as environmentally conscious consumers increasingly prefer products and services from companies that demonstrate environmental responsibility.

2. Taxation policies or Incentivization–Today, countries are implementing different tax measures such as carbon taxes and green tax incentives. These measures encourage low carbon investment and consumption choices. Carbon taxes impose a cost on greenhouse gas emissions, typically based on the amount of carbon dioxide (CO<sub>2</sub>) or its equivalent emitted by a company. By taxing carbon emissions, companies are incentivised to reduce their emissions to avoid or minimise the tax burden. This financial incentive encourages companies to adopt cleaner technologies, improve energy efficiency, and invest in renewable energy sources, ultimately reducing environmental impact.

Companies often need to examine their energy consumption, production processes, supply chain, and waste management systems to reduce carbon emissions. This scrutiny can lead to more streamlined operations, waste reduction, and energy conservation, resulting in cost savings for the company. Many European nations, such as Sweden, Finland and Norway, introduced a carbon tax in the 90s. Interestingly, the revenue generated from these taxes is used to fund renewable energy development and energy efficiency programs.

3. Carbon trading in a Carbon market–Carbon market is one where carbon emissions allowances are traded. In carbon trading, government sets the total carbon emission target which to be reduced periodically (generally, over a year) according to the environmental capacity and allocates or sells allowances to enterprises. Companies that can reduce emissions at a lower cost than the market price of allowances can sell their surplus allowances, while companies facing higher abatement costs can purchase allowances to meet their emission obligations. This flexibility promotes emission reductions at the least cost across the market, incentivising companies to find the most efficient ways to reduce

emissions. Thus, the profits of the company, as well as regional economic growth, can be ensured while improving the environment.

Carbon trading can facilitate international cooperation on emissions reductions. Countries or regions with carbon trading systems can link their markets, allowing the trading of allowances across borders. This promotes collaboration and cost-sharing among countries, facilitating emissions reductions on a global scale.

4. Value addition to the 'goodwill' of the company – In today's business landscape, stakeholders, including customers, investors, employees, and communities, are increasingly concerned about environmental issues and sustainability. Companies which demonstrate a commitment to environmental protection through sustainable practices, reduced carbon emissions, conservation efforts, or responsible sourcing are more likely to gain stakeholder trust and support, which can enhance their reputation, attract investors, and foster long-term relationships with customers.

## VI

### Conclusion

Recently, the World Meteorological Organization said in its report that there is a two-third chance of global temperatures exceeding the 1.5-degree Celsius warning limit, and 2023-2027 will be the warmest five years ever recorded as greenhouse gases and El Nino have combined to send temperatures soaring. This is contrary to what was agreed in the Paris Agreement 2015, to cap global warming at well below 2-degree Celsius above levels measured between 1850 and 1900. If the environment-related concern is not taken up urgently, the consequences are not unknown to anyone.

Development is indispensable for any society, but it should not be entertained at the cost of the environment. The present law on corporate governance addresses environmental concerns in many ways. However, no law can ever be effective unless the people sitting in the Board room for decision-making take the environmental concern seriously. Therefore, an understanding of related future risks and opportunities is necessary. Finally, ways that can harmonise corporate interests along with the protection of the environment, such as optimal utilisation of natural assets, taxation (rebate) policies or incentivisation of companies, carbon or emissions trading, etc., will be of more help to address this concern and would provide a win-win situation for the companies as well as the government in fulfilling the ultimate objective of equitable and sustainable development.

The HPNLU Journal of Environment and Disaster Management is online journal owned by the Himachal Pradesh National Law University, Shimla, 16 Mile, Shimla-Mandi National Highway, Ghandal, District Shimla, Himachal Pradesh-171014 India.

JEDM invites research articles, notes, and comments etc. for its annual publication. All submissions are peer reviewed before acceptance for publication.

The views expressed in the entries are those of the contributors. Editors and the HPNLU, Shimla do not subscribe or endorse views expressed by the respective contributors. The JEDM does not own any responsibility for infringement of any right of other or error, if any, and authors shall be solely liable for the same.

Authors may consult website of the University for style and guidelines for submission: <http://hpnlu.ac.in/>

MODE OF CITATION: III HPNLU JEDM. L. REV. <pg. no.> (2022)

All queries regarding JEDM may be addressed to:

Editor

The HPNLU Journal of Environment and Disaster Management

Himachal Pradesh National Law University, Shimla

16 Mile, Shimla-Mandi National Highway, Ghandal, District Shimla Himachal Pradesh-171014. (India)

Website: <http://hpnlu.ac.in>

E-mail: [editorjedm@hpnlu.ac.in](mailto:editorjedm@hpnlu.ac.in)

Tel No.: 0177-2779803; Fax: 0177-2779802