

THE AMALGAMATION OF CORPORATE SOCIAL
RESPONSIBILITY IN ENVIRONMENTAL LAWS

Shawon Priya Binu *

Abstract

This Article investigates whether Corporate Social Responsibility (CSR) can be incorporated under the realm of Environmental law. It discusses the hazardous business activities by some Bangladeshi and international business enterprises. Further, this Article explores the definition of CSR and approaches taken by certain countries under their respective public policies. This Article unveils international legislation, including the legislation of Bangladesh and how this legislation treats the concept of CSR. This Article focuses on the position of the United Nations (UN), with regard to establishing environmental rights as fundamental ones, and how the UN's approach has affected many countries' views on environmental rights. The position of the World Trade Organization (WTO) regulations and international trade agreements in enforcing CSR are also scrutinized in this Article. This Article conclusively illustrates that the concept of CSR is treated like a business expenditure rather than an obligation to protect the environment. Finally, this Article analyzes several legal hypotheses to determine that environmental legislation has greater scope to enact well designed regulations to obligate corporations to adopt CSR in order to protect the environment.

INTRODUCTION301

 I. HAZARDOUS BUSINESS PRACTICES302

 II. COMPREHENDING CSR.....306

 III. INCORPORATION OF CSR IN LAW311

 IV. FEASIBILITY OF CSR IN LAW.....321

CONCLUSION.....327

INTRODUCTION

Generally, there is no international or national legal framework for Corporate Social Responsibility (CSR)—it is based on the voluntary

* LLM in International Commercial Law, North South University, and LLM in International and European Business Law, Jean Moulin University, Lyon III. LLB from the University of London. All my hard work is dedicated to my mother.

undertakings of corporate institutions. This allows said institutions to escape what could be an established accountable system. Macdonald explained accountability as “a moral or institutional relation in which entitlements are accorded to one agent (or group of agents) to question, direct, sanction or constrain the exercise of power by another.”¹ For an effective discharge of action, accountability is irreplaceable; one cannot be held liable for their questionable activities if there is no accountable system. Legal responsibilities bring accountability for the protection of environment, and corporations working under the guidance of law is irrefutably beneficial for the environment and for society. Non-sustainable business practices can be a catastrophe for the State, the people, the environment and even the business itself. The purpose of this Article is to scrutinize the scope of CSR under the shade of legislation. An illustration of hazardous business practices by internationally celebrated corporations have been analyzed in this Article because Bangladesh is one of their major manufacturing sources. Many arguments are presented from the perspective of Bangladesh. Non-environmentally friendly business practices in Bangladesh have caused severe environmental damage. This Article discusses the impact of non-sustainable business practices of certain industries and the possibility of holding companies and industries liable for their business practices under the obligation of CSR.

Under the heading of “Comprehending CSR,” a detailed discussion of the concept of CSR is given, including whether it has any definition. Although multiple countries have attempted to address CSR related concerns, none have created actual obligations under law. A wide range of systems for CSR are discussed in this section of the Article, from the United States, to the European Union, to Vietnam, and how society, business enterprises and the State perceive these obligations. This Article further focuses on the laws enforced in Bangladesh and India, as well as E.U. directives and the ambit of the WTO regulations and Treaty Agreements. Finally, this Article suggests some recommendations with concrete examples.

I. HAZARDOUS BUSINESS PRACTICES

In a recent study it was found that “[t]he fashion industry produces ten percent of all humanity’s carbon emissions and is the second-largest consumer of the world’s water supply.”² According to a WTO report, Bangladesh is the second largest exporter of readymade garments in the

1. Mallika Tamvada, *Corporate social responsibility and accountability: a new theoretical foundation for regulating CSR*, 5 INT’L J. CORP. SOC. RESP. 2, 7 (2020).

2. *These facts show how unsustainable the fashion industry is*, WORLD ECON. F. (Jan. 31, 2020), <https://www.weforum.org/agenda/2020/01/fashion-industry-carbon-unsustainable-environment-pollution/> [<https://perma.cc/2PMB-XVMK>].

world, if the combined export figures of the E.U. are divided by country.³ Therefore, many companies in the fashion industry are investing in Bangladesh for their business.

Have the laws of Bangladesh been able to hold these companies liable for the pollution it causes in the State? Has there been proper scientific research on how much pollution these companies are responsible for in the State? What kind of CSR obligations do these companies maintain to negate the environmental damages?

It is well acknowledged that the fashion industry has a substantial negative social and environmental footprint, mainly due to high product volume, worker exploitation, and massive use of natural resources and hazardous products.⁴ Narayanganj, one of the vibrant cities of Bangladesh, is called an industrial city because of its growing establishment of a textile industry. It was found in a field survey that sixty percent of people are at a health risk because of the usage of the toxic substances in this industry.⁵ It is claimed that everyday 120 to 125 tons of waste are generated in this area; however, only the government authority (the Pourashava authority) is responsible for waste management in this area.⁶ Additionally, the leather industry is another big player in impacting the environment with their activity. In an environmental impact assessment, it was found that a physic-chemical factor made by the Environmental Impact Value (EIV) was negative.⁷ It is claimed that the wastewater is generally discharged with disregard for proper procedure, and it affects the quality of the surface and ground water.⁸

It was reported:

The air quality is degrading in [sic] an alarming rate.⁹ Those who live near the tanneries face severe problem for sound pollution. Fish culture becomes wiped out near the tannery area due to discharge of untreated waste water into the water body. Growth of trees reduces and sometimes the soil loses its fertility.¹⁰

3. Sheng Lu, *WTO Reports World Textiles and Apparel Trade in 2019*, FASH455 GLOB. APPAREL & TEXTILE TRADE & SOURCING (Aug. 3, 2020), <https://shenglufashion.com/2020/08/03/wto-reports-world-textiles-and-apparel-trade-in-2019/> [<https://perma.cc/WV3E-RF62>].

4. Mariachiara Colucci et al., *An empirical investigation of the drivers of CSR talk and walk in the fashion industry*, 248 J. CLEANER PROD. 2, 2 (2019).

5. Md. Masud Alom, *Effects on Environment and Health by Garments Factory Waste in Narayanganj City, Dhaka*, 4 AM. J. CIV. ENG'G 81, 4 (2016).

6. *Id.* at 3.

7. Abul Hasnat et al., *Assessment of Environmental Impact for Tannery Industries in Bangladesh*, 4 INT'L J. ENV'T SCI. & DEV. 217, 219 (2013).

8. *Id.*

9. *Id.*

10. *Id.*

The supplying companies of the fashion brand companies play a pivotal part in fulfilling corporate social responsibilities. Often the fashion brand companies can influence the management process, and the role of the supplying companies is comprised of several distinct but interconnected functions and activities. The disclosure of the CSR policies of supplying companies is a deciding factor in shifting the business as a whole towards sustainable business practices.

One of the biggest fashion companies in the market is H&M Group, which states on their company website that China and Bangladesh are their largest production markets for clothing.¹¹

The company's "Sustainability Department devised a CSR policy based on the Seven Commitments," which are:¹²

- To provide fashion for conscious customers;
- To choose and reward responsible partners;
- To be ethical;
- To be climate smart;
- To reduce, reuse, recycle;
- To use natural resources responsibly;
- To strengthen communities.¹³

Additionally, the company claims that twenty-seven percent of H&M's electricity comes from renewable resources, and it protects the environment of countries such as Bangladesh. H&M suggests it is replacing polyurethane, known as vegan leather, with a water based substitute that their research and development department is testing the durability of and coming up with solutions to make it longer-lasting.¹⁴ The company also purportedly "contributes to [the] promotion of responsible behavior in the whole industry by co-founding ZDHC (Zero Discharge of Hazardous Chemicals), that is a group of eighteen that work actively to protect the environment and eliminate the use of harmful chemicals in the textile and clothing industry by 2020."¹⁵

However, all these policies are found to be a paper tiger because there is no mechanism to measure how much damage the company is creating in its manufacturing countries. The supply companies are not obligated to report anything about their environmental damages. It is claimed that they utilize an "Index Code of Conduct," which measures responsible

11. *Supply Chain*, H&M GRP. (Apr. 10, 2020), <https://hmgroup.com/sustainability/leading-the-change/supplier-list.html> [<https://perma.cc/3WEB-YY8W>].

12. Paulina Książak, *The CSR Challenges in the Clothing Industry*, 3 J. CORP. RESP. & L. 51, 60 (2016).

13. *Id.*

14. *Id.*

15. *Id.* at 62.

behavior of the supplying companies. H&M also maintains the Sustainable Impact Partnership Program (SIPP) for training initiatives and for tracking compliance of their suppliers. H&M rewards their suppliers who showcase distinguishable compliance with their sustainability initiatives. However, the suppliers self-report their progress.¹⁶ What is the parameter to measure environmental damages of that country, how would they compensate it?

Another dominating company, Primark, which includes environmental sustainability in its CSR policy, claims that it provides cleaner production and sustainable cotton programs. However, the company does not reveal information about where the cotton comes from and the firm does not buy raw cotton by itself. This makes the policy claims of environmental sustainability questionable.¹⁷

Apart from the garments industry, the leather industry is also found to have mismanaged corporate social policies. One noteworthy example is the Hazaribagh tannery industry. It was found that the nearest river, which flows into the Buriganga River, was heavily affected by metal; an environmental evaluation concluded that “the mean concentration of the metals in all water samples exceeded the water quality standards.”¹⁸ It was claimed that 196 tanneries of Hazaribagh directly discharged hazardous, untreated sewage on a regular basis, corrupting the water of the Buriganga.¹⁹ In one survey, 83.9% of respondents (workers in the tannery industry) responded that large firms are the main source of this waste.²⁰ The reasons cited for the mismanagement are the unwillingness of the companies to invest, outdated technology, and so on.²¹ Since they are not legally bound to do so, no steps were taken by the companies to protect the environment in the vicinity and no protection was given to the workers to safeguard their health from toxic chemicals used in this industry. It was found that,

40.2% of respondents mentioned faulty drainage systems as the main cause of disease spread, while 29.5% cited the emission of toxic chemicals. In terms of diseases afflicting

16. Brianna Wren, *Sustainable Supply Chain Management in the Fast Fashion Industry: A Comparative Study of Current Efforts and Best Practices to Address the Climate Crisis*, 4 CLEANER LOGISTICS & SUPPLY CHAIN 1, 5 (2022).

17. Mikhail Aridov et al., *CSR in the Textile Sector: European Fashion Firms and the Bangladesh Safety Accord*, 2 J. EUR. MGMT. & PUB. AFFS. STUDS. 23, 25 (2014).

18. Mohammad Amir Hossain Bhuiyan et al., *Source Apportionment and Pollution Evaluation of Heavy Metals in Water and Sediments of Buriganga River, Bangladesh, Using Multivariate Analysis and Pollution Evaluation Indices*, 187 ENV'T MONITORING & ASSESSMENT 1, 6 (2014).

19. Joydeb Garai, *Environmental Aspects and Health Risks of Leather Tanning Industry: a Study in the Hazaribag Area*, 12 CHINESE J. POPULATION RES. & ENV'T 278, 279 (2014).

20. *Id.* at 280.

21. *Id.* at 282.

these workers, the findings reveal that 30.3, 22.3, 10.7, and 11.6% of respondents were suffering from skin diseases, jaundice, respiratory infections, and wounds/injuries, respectively.²²

Although, in 2003, the government of Bangladesh directed the tannery industry to resettle to the Savar area from the Hazaribagh area,²³ several news reporters showed that in the past two decades, nothing much has changed in the waste management system in this industry. The tannery owners opined that “the leather industrial city [in Savar] is ‘incomplete’ and ‘environmentally unfriendly.’”²⁴ The news report sheds light on the fact that this relocation project to safeguard the environment, including the river water of the Buriganga, has been futile “since no measures have been taken to treat the solid wastes generated by the tanneries,” and “the once clean and clear Dhaleshwari River water is now getting polluted—in a similar manner the water of the Buriganga River was polluted by tanneries at Hazaribagh.”²⁵ The pollution has risen to a certain level that the parliamentary standing committee on environment recommended to close the Bangladesh Small and Cottage Industries Corporation Tannery Industrial Estate for the moment.²⁶ However, the recommendation did not bring about any impactful changes in waste management hence the committee finally insisted on cutting off the energy source of the factories.²⁷ Despite, these recommendations, no effective measures were taken by the concerned authorities; the environment, biodiversity, and the welfare of the human lives in the vicinity of this industry are left to be taken care of by their destiny.

II. COMPREHENDING CSR

The concept of Corporate Social Responsibility has been developing since the early 1970s, but there is no single, commonly accepted definition of CSR. On the contrary, private, governmental, and civil society organizations have different perceptions of CSR.

22. *Id.* at 280.

23. Sohel Hossain Patwary, *Hazaribagh tannery-era ends today*, DAILY SUN (Apr. 5, 2017), <https://www.daily-sun.com/printversion/details/217549/Hazaribagh-tanneryera-ends-today> [<https://perma.cc/8CGZ-BNEP>].

24. Abul Kashem & Rafiqul Islam, *Savar Tannery Estate: Complete yet incomplete after 19 years*, THE BUS. STANDARD (Feb. 1, 2023), <https://www.tbsnews.net/economy/savar-tannery-done-much-be-done-after-19-years-276577> [<https://perma.cc/4L24-ATUY>].

25. *Id.*

26. Sajidul Haque, *Recommendations to stop pollution by Savar tanneries ‘fall on deaf ears’*, BDNEWS24.COM (July 30, 2022), <https://bdnews24.com/bangladesh/45fbmm1ygw> [<https://perma.cc/Y4X3-JT8V>].

27. *Id.*

The CSR policies of a company may cover:²⁸

- a) The operation of the business responsibly in relation to internal stakeholders;
- b) The role of the business in relation to the state, locally and nationally, as well as to inter-state institutions or standards;
- c) Business performance as a responsible member of the society in which it operates and the global community.

The third perspective concerns different aspects of society, but it may involve the relationship between businesses with the people and the environment. It also concerns both the environment in which businesses operate and to which they export.

The ideology of CSR initially emerged from academic literature,²⁹ and numerous arguments were presented during the early rise of CSR. Keith Davis viewed it as a distraction from economic goals whereas William C. Frederick believed resources of businesses should be used for another aspect of society.³⁰ CSR was first defined in the 1970s, and an extensive line was drawn between the definition of CSR and corporate social responsiveness. CSR assumes business entities hold responsibilities towards society and the environment; in contrast, corporate social responsiveness advocated for the responsive posture of society. Certainly, consumer pressure plays a significant role in corporations benevolently using their resources for the prosperity of society, and citizen's perspectives towards CSR is of interest to policy makers and governments. The Belgian President of the European Commission hosted consecutive events promoting CSR in Europe.³¹ Simultaneously, the concept of CSR was embraced by other countries, including the United Kingdom. Initially, the U.K. struggled to find common ground between American capitalism and European interventionism.³² Still, there was encouragement from the Crown to hold corporations responsible to society and the environment. CSR was endorsed by the Government through public policies that helped CSR penetrate all sectors of the British economy.³³ CSR reporting is voluntary in the United States. The environment is the least of corporations' concerns compared to issues like

28. Aridov et al., *supra* note 17, at 26.

29. Archie B. Carroll et al., *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, 12 INT'L J. MGMT. REV. 86, 87 (2010).

30. *Id.*

31. Susan Ariel Aaronson, *How The Europeans Got a Head Start on Policies to Promote Global Corporate Responsibility*, 9 CORP. ENVT'L STRATEGY 356, 359 (2000).

32. *Id.* at 361.

33. *Id.*

community relations, health, and safety.³⁴ Compared to the E.U., American public policies are affected by different national concerns, from religion to non-governmental organizations' influence, the CSR policies offer different treatment.³⁵ In consequence, the European Commission's approach to CSR are more robust in nature; a detailed analysis will be put forward in this Article regarding the E.U.'s standpoint on CSR.

Vietnam is one of the distinguished names in international trade, they are the largest export market for the United States, and their export revenue to the United States surged 230% in recent years.³⁶ Similarly, the E.U. is one of the largest international investors, and Vietnam was the largest trade partner of the E.U. in the Association of Southeast Asian Nations (ASEAN) in 2020.³⁷ Despite being an important trade country in the world, they are at the dawn of their CSR development.³⁸ As they are growing in business, the government's goals include not only creating a business friendly ambience but also constructing a legal structure for CSR. However, CSR codification is only limited to labor law and environmental law; there is no distinct CSR legislation.³⁹ It seems that the local businesses are not actively gathering knowledge of CSR. In a study of the Vietnam Business Council for Sustainable Development, 63% of the respondents did not have any detailed understanding of sustainable development and CSR.⁴⁰ Crude oil, textiles and garments, and leather and footwear are the fundamental exporting sectors, and they are vital to the domestic economy, thus the perspective of consumers, and exporting and importing business partners can influence the further development of CSR.⁴¹

The World Bank proposes (i) mandating, (ii) facilitating, (iii) partnering, and (iv) endorsing are the four activities the government or

34. Veronika Bashtovaya, *CSR reporting in the United States and Russia*, 10 SOC. RESP. J. 68, 71 (2014).

35. Jonathan P. Doh & Terrence R. Guay, *Corporate Social Responsibility, Public Policy, and NGO Activism in Europe and the United States: An Institutional-Stakeholder Perspective*, 43 J. MGMT. STUDS. 48, 50 (2006) (discussing influences on U.S. public policy).

36. *Vietnam-Country Commercial Guide*, INT'L TRADE ADMIN., U.S. DEP'T. COMM. (Apr. 27, 2023), <https://www.trade.gov/knowledge-product/exporting-vietnam-market-overview> [<https://perma.cc/Y6TF-PLFS>].

37. *EU trade relations with Vietnam. Facts, figures and latest developments*, EUR. COMM'N (Feb. 27, 2023), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/vietnam_en [<https://perma.cc/F6MW-EMY5>].

38. My Nguyen & Minh Truong, *The Effect of Culture on Enterprise's Perception of Corporate Social Responsibility: The Case of Vietnam*, 40 PROCEDIA CIRP 681, 681 (2016).

39. *Id.* at 684.

40. *Id.*

41. NAKIB MUHAMMAD NASRULLAH & MIA MAHMUDUR RAHIM, *CSR IN PRIVATE ENTERPRISES IN DEVELOPING COUNTRIES: EVIDENCES FROM THE READY-MADE GARMENTS INDUSTRY IN BANGLADESH* 181 (2014).

public sectors can endorse to further CSR although Vietnam's government considers CSR as a public policy area within the protection of labor law and environmental law.⁴² Notably there is a definite policy of CSR, the Vietnam Agenda 21, which effectuates public policy goals. It aims to regulate companies which disrespect the Environmental Police and impose certain fees on the emission of polluted wastewater.⁴³ On the whole, Vietnam's attempt to establish a legal framework has still not turned into a reality as is also the case in many other states. CSR legislation is essential, however, to preventing reckless business activities that might harm society as a whole.

The Australian Parliament also does not define CSR under any legal realm, rather Australia's Corporations and Markets Advisory Committee specified,

in essence, the focus of the issue of corporate social responsibility is on the way in which the affairs of companies are conducted and the ends to which their activities are directed, with particular reference to the environmental and social impact of their conduct. A responsible company, like a responsible individual, is one that acknowledges and takes responsibility for its actions.⁴⁴

Traditionally, CSR used to be considered a philanthropic act. According to Thomas and Nowak, "a common theme in the Australian literature is the need for corporations to move away from the 'pat-a-poor-person' philanthropic approach to CSR."⁴⁵ In contrast, Batten and Birch found that "there is considerable hesitation in funding long-term community involvement."⁴⁶ In a Parliamentary committee report, it was found that "despite evidence that Australian companies have shown a greater engagement with the corporate responsibility agenda over the past decade, the committee also heard that by international standards, Australia lags in implementing and reporting on corporate responsibility."⁴⁷ The committee viewed that "although it is not appropriate to mandate the consideration of stakeholder interests into directors' duties, or to mandate sustainability reporting, there is a need to seriously consider options to encourage greater uptake and disclosure of corporate responsibility activities."⁴⁸ Ursa Golob and Jennifer L. Bartlett have drawn a comparison between the Australian and Slovenian CSR

42. *Id.* at 187–88.

43. *Id.* at 188.

44. Royston Gustavson, *Australia: Practices and Experiences*, in GLOBAL PRACTICES OF CORPORATE SOCIAL RESPONSIBILITY 464 (Samuel O. Idowu & Walter Leal Filho eds., 2008).

45. *Id.*

46. *Id.*

47. *Id.* at 465.

48. *Id.*

reporting systems, and according to their research, the Australian CSR reports accommodates ample issues. Some companies have embraced guidelines of GRI (Global Reporting Initiative is an independent international organization aiming to assist the businesses in taking accountability for their impacts) and the World Business Council for Sustainable Development (WBCSD) for CSR reporting.⁴⁹ Following their argument, they concluded that the Australian CSR management system is more dependent on meeting social obligations and community partnerships.⁵⁰

The European Commission refers to CSR as “the responsibility of enterprises for their impact on society.”⁵¹ The Commission further stressed that companies can become socially responsible by (i) integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations; and (ii) following the law.⁵²

It is noteworthy that there are several external factors which generally push the enterprises towards CSR; certainly, these are economical, legal and social. They take shape in different kinds of stakeholders in an enterprise.⁵³ For instance, economic shareholders include the institutional investors, the banks, customers, and the final consumers. The legal stakeholders include regulators, legislators, citizens, and environmental organizations which claim to seek regulatory mechanisms. Finally, the social stakeholders include the neighbors, the local community, the general people with voting rights.⁵⁴ These stakeholders generally provide the license to operate the corporation, although one can argue that in a corporation, the management has control. However, one major aspect that cannot be ignored is that a corporation cannot be operated only by valuing the profit interest of the shareholders. It is indisputable that a company can operate in the community where it is established only as long as the government of the state has accorded them the license to operate. However, as it is the general perception that a company is established with the intention to generate profit for the shareholders, oftentimes many hazardous business activities are ignored.

49. See *About GRI*, GLOB. REPORTING INITIATIVE (Feb. 26, 2024), <https://www.globalreporting.org/about-gri/>; see also Ursa Golob & Jennifer L. Bartlett, *Communicating About Corporate Social Responsibility: A comparative study of CSR reporting in Australia and Slovenia*, 33 PUB. RELS. REV. 2, 7 (2006).

50. Golob & Bartlett, *supra* note 49, at 4.

51. Kletia Noti et al., *Corporate and Social Responsibility (CSR) and Its Implementation into EU Company Law 21* (Policy Dept. for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies Nov. 2020).

52. *Id.* at 21–22.

53. Christopher McCrudden, *Corporate Social Responsibility and Public Procurement* (Univ. of Oxford Fac. of L. Legal Stud. Rsch., Working Paper No. 9, 2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=899686 [<https://perma.cc/5B6V-72FB>].

54. *Id.*

It is an excruciating truth that states and their authoritative bodies mostly leave the responsibility of guarding the environment to the voluntary activities of the company. Often in a common law business culture, the companies feel responsible to the market and to customers, and the companies often include sustainable business policies to protect their goodwill in the market. However, as the businesses are not compelled to do so by state regulation, it is easier for them to bend the policies according to their convenience. Terminologies such as “integration of social and environmental concerns into business operations” can be subject to several interpretations depending on the culture in which they are to apply, which causes uncertainty among the companies drafting policies. However, properly drafted legal environmental standards can trigger innovations that lower the total cost of a product or improve its value. Such innovations allow companies to use a range of inputs more productively, from raw materials to energy to labor, thus offsetting the cost of diminishing environmental impact and ending the stalemate.⁵⁵

From the previous discussion, it is evident that both the EU registered companies H&M and Primark⁵⁶ have a dominant manufacturing presence in Bangladesh. The CSR definition given by the EU Commission does not provide protection to the countries where products of the companies are being produced. As fashion brand companies, these companies should be compelled to meet obligations to protect the environment and compensate the damages caused by them. The environmental damages caused by the fashion industry have been previously discussed. It is evident that the policies adopted by these companies mostly do not affect the ground reality. The companies must be compelled with an accountable system which could report their corporate social responsibility towards the protection of the environment.

III. INCORPORATION OF CSR IN LAW

Since the gradual shift of government-controlled industries to an era of private corporate industries, it is compelling to have regulation to protect the environment. There are several stages of requisite transformation for environmental regulation. First, state regulation is increasingly concerned with setting overall directions, goals, and environmental performance requirements, leaving details of implementation to be sorted out through *inter alia* co-regulation, negotiated agreements, and informed consumer choice. Second, governments increasingly employ private sector managerial methods and entrepreneurial ethics, and use markets and competition in the provision

55. *Id.*

56. H&M GRP., *supra* note 11, at 23.

of public services. Third, there has been a substantial move toward public transparency and accountability since the late 1980s.⁵⁷ Apart from some certain exceptions primarily under international environmental laws, corporations bear no duties. Technically, there is no mechanism to oblige corporations under international laws, and lack of political intention and corporate lobbying is a hindrance to transform this into reality.⁵⁸ It is the environmental treaties which binds the signing states to address the natural person or corporations with national legislation to protect the environment.⁵⁹ Tseming Yang and Robert V. Percival put it as “elements of national environmental law are uploaded into international agreements and international legal norms are turned downloaded into national and regional systems.”⁶⁰ CSR is rarely accepted or adopted as a legal regulation throughout the world. Instead, company policy self-regulates the harm they might cause to the environment. The first requisite discussed above requires the state to set a standard protection for the environment of the state.

In Bangladesh, The Bangladesh Environment Conservation Act of 1995 and 1997 (Environment Conservation Act) set the standard for environmental protection in the state. However, the laws do not enforce CSR as a legal obligation for companies. The law requires companies or industries to obtain an Environmental Clearance Certificate, and that would be sufficient for the industries to continue with their work.⁶¹ The law additionally prohibits the usage of certain chemicals and products such as polyethylene.⁶² The procedure for obtaining the Clearance Certificate under this Act is questionable, however, as it “[p]rovide[s] that the Director General may, without issuing a Location Clearance Certificate at the first instance, directly issue Environmental Clearance Certificate if he, on the application of an industrial unit or project, considers it appropriate to issue such certificate to the industrial unit or project.”⁶³ This section of the Environment Conservation Act does not provide any specific requirements for the entities to fulfill to obtain the clearance certificate and is solely based on the discretion of the Director General. Clearance Certificates play a pivotal role in allowing industries

57. STEPAN WOOD & BENJAMIN J. RICHARDSON, ENVIRONMENTAL LAW FOR SUSTAINABILITY 7–8 (2006).

58. Karin Buhmann, *Public Regulators and CSR: The ‘Social Licence to Operate’ in Recent United Nations Instruments on Business and Human Rights and the Juridification of CSR*, 136 J. BUS. ETHICS 699, 772 (2015).

59. Ilias Bantekas, *Corporate Social Responsibility in International Law*, 22 B.U. INT’L L.J. 309, 334 (2004).

60. Tseming Yang & Robert V. Percival, *The Emergence of Global Environmental Law*, 36 ECOLOGY L.Q. 615, 623 (2009).

61. The Bangladesh Environment Conservation Act, 1995, § 12.

62. *Id.* § 6A.

63. The Environment Conservation Rules, 1997, § 7(4) (Bangl.).

to use the chemicals they want and issuance of such important certifications should not be released without having satisfied some set of standard criteria. The legislation further explains some reporting requirements:

Environmental Impact Assessment report prepared on the basis of terms of reference previously approved by the Department of Environment, along with the Layout Plan (showing location of Effluent Treatment Plant), Process Flow Diagram, design and time schedule of the Effluent Treatment Plant of the unit or project, (these are applicable only for a proposed industrial unit or project).⁶⁴

Generating an Environmental Impact Assessment report should be done in a more practical manner; such an assessment requires field reports and health reports. It is indisputable that the laws are not well designed to prevent industries from using hazardous business practices. Moreover, the law fails to recognize the responsibility of companies towards the environment. The industries are not obliged to consider the damages they may cause to the environment or to consider the breaches of human rights.

Although Bangladesh did not include the right to environmental well-being as a fundamental right, there has been a long debate about the incorporation of environmental rights as human rights. The question is why should environmental rights be treated as human rights? There can be several answers for this, however. In my opinion, the most appropriate reasoning which addresses human rights is the recognition of the environmental impacts that directly influence the life, health, and property of individual humans rather than on other affairs or the environment in general.⁶⁵ Considering environmental rights as human rights not only protects the health of individuals, but it will also secure a higher standard of environmental quality.⁶⁶ Most importantly, governments will be directly accountable for their failure to regulate and control environmental nuisances, including those caused by corporations, thereby establishing the rule of law. Although in previous years there have been several attempts by the United Nations' Human Rights Committee (HRC) to establish environmental rights as human rights,⁶⁷ none of those attempts were successful. However, in March 2021, the HRC adopted a resolution that calls for "a human-rights-based approach

64. *Id.* § 7(6)(d)(ii).

65. Alan Boyle, *Human Rights and the Environment: Where Next?*, 23 EUR. J. INT'L L. 613, 614 (2012).

66. *Id.*

67. *Id.* at 617.

to conserving and restoring natural spaces.”⁶⁸ Sixty-nine states signed a resolution in support of the recognition of the right to a healthy environment and a commitment to proceed with the process of formalizing this recognition.⁶⁹ In July 2022, the General Assembly of the U.N. acknowledged that a clean, healthy, and sustainable environment is a universal human right, and this right has been included in the international legal framework along with other fundamental rights such as “social, economic, cultural, civic and political rights that form the backbone of the United Nations system.”⁷⁰ Additionally, 150 countries have agreed to recognize this in their national laws.⁷¹ This will leave no space for state authorities to avoid legal responsibilities of protecting a sustainable environment, and it will open the window for more legal claims. This will consequently demand more accountability from business entities. The recognition of environmental rights is not limited to the General Assembly. Other organs of the U.N., such as the Environment Program Finance Initiative, funded a report finding that investing for sustainability impact can coincide with achieving an investor’s financial goals.⁷² It has been emphasized that investors need to value social and environmental impacts, but the report discusses that it is a lack of proper public policy that prevents business entities from making a beneficial impact on social and environmental responsibilities.⁷³ The acceptability of a sustainable, clean, and healthy environment as a human right is an indicator that the world understands the importance imposing legal obligations on corporate entities. Consequently, there are already 155 states which recognize some form of a right to a healthy environment.⁷⁴ It is evident that the world is marching towards a sustainable era where environmental rights will fundamentally be a right of the people.

With regard to Bangladesh, there is no official body to regulate the usage of these industries’ chemicals and no obligations are imposed on

68. Arnold Kreilhuber, *New UN resolution reinforces link between human rights and the environment*, UNITED NATIONS ENV’T PROGRAM (Apr. 8, 2021), <https://www.unep.org/news-and-stories/story/new-un-resolution-reinforces-link-between-human-rights-and-environment>.

69. *Id.*

70. Katy Thompson & Pradeep Kurukulasuriya, *Historic UN resolution recognizes healthy environment is a human right*, UNITED NATIONS DEV. PROGRAMME (July 28, 2022), <https://www.undp.org/blog/historic-un-resolution-recognizes-healthy-environment-human-right>.

71. *Id.*

72. *A Legal Framework for Impact A legal framework for the consideration of sustainability impact in investor decision-making*, UNITED NATIONS ENV’T PROGRAM FIN. INITIATIVE (Feb. 2, 2023), <https://www.unepfi.org/legal-framework-for-impact/>.

73. *Legal Framework for Impact: The rationale for investing for sustainability impact*, UNITED NATIONS ENV’T PROGRAM FIN. INITIATIVE (Mar. 29, 2022), <https://www.unepfi.org/industries/investment/legal-framework-for-impact-the-rationale-for-investing-for-sustainability-impact/>.

74. Kreilhuber, *supra* note 68.

these industries to manage their waste. As a result, the rivers and public places become a dumping ground for many companies. In a research study, it was posited that domestic companies in countries receiving greater amounts of foreign investment are more likely to be influenced by foreign policies.⁷⁵ Relatively, it can soften the approach of governments towards foreign investors. Previously, I described the damage industries are causing to the standard of living for people vis-à-vis the environment, however, the approach of the laws are ignorant towards the strict adaptation of the principle of CSR in Bangladesh.

The Indian Parliament incorporated CSR in the Company's Act 2013.⁷⁶ The Act views CSR as an expenditure of a company rather than an obligation of a company to maintain and promote sustainable business practices.⁷⁷ Section 166(2) of the Companies Act 2013 states that a director of a company shall act "in the best interests of the company, its employees, the shareholders, and the community and for the protection of the environment."⁷⁸ The regulation obligates companies to set up a CSR committee so that it can internally monitor and give assurance of compliance with the mandates, and they are compelled to record in the company's annual report information about the company's CSR compliance.⁷⁹ The law also requires companies to spend two percent of average net profits made during the three immediately preceding financial years in pursuit of their CSR policies.⁸⁰ Initially, Indian companies spent \$1.3 billion, and later, between 2017 and 2018, it accelerated to \$1.8 billion although it is debated in different studies whether the companies are compensating.⁸¹ While it is important to seek remedy from the companies for damages, it is also important to restrict and regulate them for sustainable business practices. However, in this context, CSR in India is largely concerned with companies contributing a minimum amount of money towards social activities, thereby equating CSR with corporate philanthropy.⁸² In addition, to make the most of it, the money collected from companies, the state should build a proper mechanism to utilize it to benefit environmental sustainability.

75. Wendy Chapple & Jeremy Moon, *CSR in Asia: A Seven Country Study of CSR Web Site Reporting*, 44 *BUS. & SOC'Y* 415, 420, 438 (2005).

76. The Companies Act, 2013, § 135 (India).

77. Umakanth Varottil, *Analysing the CSR Spending Requirements Under Indian Company Law*, in *ANALYSING GLOBALISATION OF CORPORATE SOCIAL RESPONSIBILITY AND ITS IMPACT ON CORPORATE GOVERNANCE* 231, 238 (Jean J. du Plessis et al. eds., 2018).

78. The Companies Act, 2013, § 166(2) (India).

79. Vikrant Shirodkar & Namita Shete, *The Impact of Domestic CSR on the Internationalisation of Emerging-Market Multinational Enterprises: Evidence from India*, 61 *MGMT. INT'L REV.* 799, 808 (2021).

80. Varottil, *supra* note 77, at 232.

81. Shirodkar & Shete, *supra* note 79, at 809.

82. Varottil, *supra* note 77, at 232.

The European Commission adopted CSR by implementing Directive 2014/95/EU, which mandates the Commission to produce a set of non-binding guidelines to assist companies in carrying out disclosure of non-financial and diversity information through certain undertakings and groups.⁸³ It is essentially legislation that places upon such companies certain reporting and transparency obligations. Companies falling within its scope (large public-interest companies with more than 500 employees) are required to include non-financial statements in their annual reports. Specifically, the directive requires companies to disclose their business model, policies (including due diligence processes), outcomes, principal risks and risk management, and Key Performance Indicators (KPIs) relevant to the particular business, in four areas: environment, social and employee matters, respect for human rights, and anti-corruption and bribery. In addition, for some companies (typically listed ones), diversity reports are to be put in place. Companies are advised to follow international laws created by the International Labor Organization (ILO) or Organization for Economic Cooperation and Development (OECD), to set CSR policies. However, the directive does not set a standardized framework.⁸⁴ Hence, companies are left to decide their own role in contributing to a greener planet, peace, and prosperity. International bodies such as the European Commission, the U.N., the WTO and others are undoubtedly impactful on companies to implement sustainable policies for businesses. However, as long as there are no direct legal obligations for companies or the state to fulfill, social responsibilities and sustainability will be difficult to achieve.

In 2005, the European Commission implemented the EU Emission Trading System (EU ETS), which encouraged other countries such as China, Canada, and many others to adopt the international carbon market.⁸⁵ Although these trading systems are not a direct instruction to companies, nonetheless it is one system to mitigate pollution such as global greenhouse emission. The EU ETS requires “a cap on the carbon emission from energy-intensive sectors within the EU.”⁸⁶ Despite the participation of the above-mentioned countries, only 20–25% of global greenhouse gas emission is covered.⁸⁷

83. Council Directive 2014/95, of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, 2014 O.J. (L 330) 1, 2.

84. Noti et al., *supra* note 51, at 24.

85. *International Carbon Market*, E.U. COMM’N (Feb. 9, 2023), https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/international-carbon-market_en [https://perma.cc/44BW-227C].

86. Christoph Böhringer et al., *Trade in Carbon and Carbon Tariffs*, 78 ENV’T & RES. ECON. 669, 670 (2021).

87. *Id.*

As mentioned above, China is one of the countries which has adopted the carbon market policy,⁸⁸ and China is an essential participant because it is one of the biggest manufacturing countries in several sectors such as garments and electronic cars.⁸⁹ Therefore, the Chinese government has prepared itself to “comprehensively strengthen the response to climate change that aims to peak carbon dioxide emissions before 2030 and achieve carbon neutrality before 2060,”⁹⁰ and consequently, they have created the world’s second largest carbon market.⁹¹ Nonetheless, carbon trading is considered to be carbon financing, which is not regulated by any legislation, leading to uncertainty.⁹² Trade without considering sustainability is predominantly a short sighted vision both from the perspective of the business and policy makers.

In the WTO, where trade agreements are negotiated, CSR has also been a crucial issue.⁹³ The WTO principles aim to distinguish between companies which comply with social and environmental standards and those that do not.⁹⁴ Social and environmental criteria apply to both domestic and foreign companies.⁹⁵ It is noteworthy that the WTO regulations are an obligation for WTO member states only, and business activities of private enterprises are not accountable to the WTO regulations.⁹⁶ However, there are cases where the actions of private entities were accountable to WTO measures,⁹⁷ for instance, in circumstances where the state had “induce[d] or encourage[d] a private party to act in a certain manner, this action may nonetheless be imputable to the WTO Member concerned.”⁹⁸ The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is

88. Bo Chen & Rui Wu, *Legal and Policy Pathways of Carbon Finance: Comparative Analysis of the Carbon Market in the EU and China*, 24 EUR. BUS. ORG. L. REV. 41, 44 (2023).

89. STATISTA, Share in World Exports of the Leading Clothing Exporters in 2022, by Country, <https://www.statista.com/statistics/1094515/share-of-the-leading-global-textile-clothing-by-country> [<https://perma.cc/N4RG-3CJR>]; STATISTA, Projected Production of Electric Vehicles and Plug-in Hybrid Electric Vehicles in Selected Countries between 2018 and 2023, <https://www.statista.com/statistics/270537/forecast-for-electric-car-production-in-selected-countries> [<https://perma.cc/HLR7-7Y3B>].

90. Chen & Wu, *supra* note 88, at 44.

91. *Id.*

92. *Id.*

93. See JORIS OLDENZIEL & MYRIAM VANDER STICHELE, TRADE AND THE NEED TO APPLY INTERNATIONAL CORPORATE SOCIAL RESPONSIBILITY (CSR) STANDARDS 1 (2005), <https://www.somo.nl/wp-content/uploads/2005/11/Trade-and-the-need-to-apply-CSR-standards.pdf> [<https://perma.cc/6369-4J5L>].

94. *Id.*

95. *Id.*

96. Christian Vidal-Leon, *Corporate Social Responsibility, Human Rights, and the World Trade Organization*, 16 J. INT’L ECON. L. 893, 901 (2013).

97. *Id.* at 901–02.

98. *Id.* at 902.

irrelevant to human rights and labor rights; therefore, it automatically outcast the issues relevant to CSR. Hence, this calls for scrutiny of the Technical Barriers to Trade (TBT) Agreement. Article 2.2 emphasizes health safety, environment, and national security.⁹⁹ Article 3 of the TBT Agreement compels the local government bodies and the non-governmental bodies to prepare, adopt and apply technical regulations. Article 3.4 specifies that “parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such local government bodies to act in a manner inconsistent with any of the provisions of Article 2.”¹⁰⁰ The definition of non-governmental bodies does not coherently mention commercial private bodies, but does not exclude them. Thus, there remains the question of whether WTO regulations can be applied to push the member states to induce private entities to adopt CSR policies. Such approaches bring more ambiguity for corporations as they are neither obliged directly by legislation, nor any definite directions by WTO regulations. On the other hand, it can be established that Article 3 of the TBT does not permit member states to get away with the actions of the private entities. According to Article 3, member states are bound to protect human health and the environment if the activities of any governmental or non-governmental bodies threaten it.

Besides, several countries have been promoting sustainable business practices in their trade agreements. Prima facie, it is noticeable that the countries concentrate on the sustainability of business practices. The Free Trade Agreement between the European Union and Vietnam explicitly mentions the responsibilities of the parties to respect “development in international fora, including the ILO, the Asia-Europe Meeting, the United Nations Environment Programme and under multilateral environmental agreements” in Article 13.14(1a).¹⁰¹ In Article 13.13 the parties agreed upon joint responsibility to “review, monitor, assess the impact of the implementation of this Agreement on sustainable development through their respective policies, practices, participative processes and institutions.”¹⁰² This compels the individual parties to design law and policies which are protective of environment and human health. However, the question remains how effective these promises are? Do they only exist on paper or is there any proper implementation? It was surveyed and found twenty-five Vietnamese firms voluntarily withdrew

99. Agreement on Technical Barriers to Trade art. 2.2, Dec. 4, 1979, 1186 U.N.T.S. 276 [hereinafter TBT].

100. *Id.* art. 3.1.

101. Free Trade Agreement Between the European Union and the Socialist Republic of Viet Nam art. 13.14, E.U.-Viet. Dec. 6, 2020, 2020 O.J. (L 186) 3, 136.

102. *Id.* art. 13.13.

CSR policies.¹⁰³ Safeguarding the environment, labor rights, and human rights are generally under the realm of labor rights law and environmental protection, but there is no effective existing CSR legislation in Vietnam to bind the enterprises.¹⁰⁴

In Article 12.1 of the Free Trade Agreement between the European Union and the Republic of Singapore, the two parties accorded that economic development and environmental protection are interdependent.¹⁰⁵ The parties agreed to address issues related to environmental aspects of trade by respecting the regulations of the WTO, the United Nations Environment Programme and other environmental agreements.¹⁰⁶ In spite of these treaty agreements, it is essential to scrutinize how the companies are executing CSR policies. In a survey, it turned out that 63% of participant companies reported about awareness of CSR while 36.3% expressed that they did not comprehend the concept of CSR.¹⁰⁷ Along with this, it was recognized that the Singaporean companies were less committed towards CSR in comparison to several other countries; for instance, Australia and New Zealand.¹⁰⁸

The Bilateral Investment Treaties (BIT) on foreign direct investment are often found to be promoting the involved parties to apply rigorous policies.¹⁰⁹ The U.S. Model BIT 2012, Article 12(2) states that

[t]he Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party ‘shall’ ensure that it does not waive or otherwise derogate from or offer to waive or otherwise derogate from its environmental laws in a manner that weakens or reduces the protections afforded in those laws, or fail to effectively enforce those laws through a sustained or recurring course of action or inaction, as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.¹¹⁰

103. Nguyen & Truong, *supra* note 38, at 685.

104. *See id.* (explaining that although Vietnam does have legal standards for labor rights and environmental protection, enterprises often break and ignore those standards).

105. Free Trade Agreement Between The European Union And The Republic Of Singapore art. 12.1(2), EU-Sing., Apr. 11, 2019, 2019 O.J. (L 294) 3, 98.

106. *Id.* art. 12.1(1).

107. MuiHean Lee, et al., *Bridging the Gap: An Exploratory Study of Corporate Social Responsibility among SMEs in Singapore*, 24 J. PUB. RELS. RES. 299, 304 (2012).

108. Martin Loosemore, et al., *A comparison of corporate social responsibility practices in the Singapore, Australia and New Zealand construction industries*, 190 J. CLEANER PROD. 149, 154 (2018).

109. Tarcisio Gazzini, *Bilateral Investment Treaties and Sustainable Development*, 15 J. WORLD INV. & TRADE 929, 945 (2014).

110. *Id.*

If we scrutinize the previous U.S. Model BIT 2004, it shows that the treaty has been drafted in more stringent language considering that the BIT 2004 impelled “the parties shall strive to ensure” that protection of environmental, human rights, and labor rights are not lowered. In contrast, the language of the 2012 Model BIT is much more strict.

Similarly, Article 11 of the Canadian Model BIT and Article 3 of the BIT between Mexico and Switzerland uphold a quasi-principle in regards to the relation between sustainability and trade. Article 11 of the Canadian Model BIT states that

[t]he Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party ‘should’ not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor.¹¹¹

Article 3 of the BIT between Switzerland and Mexico specifies that

[t]he Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, neither Party should waive or otherwise derogate from, or offer to waive or derogate, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If either Party considers that the other Party has offered such an encouragement, it may request consultations.¹¹²

Decisively, the WTO regulations discourage activities of business entities which may harm the environment and human health. Nonetheless, these regulations are not directly imposed on companies and companies are not obliged to ensure environmental protection from their hazardous business practices.

The International Labor Organization carried out research work observing approaches taken by states to incorporate CSR as an important factor in the corporate world.¹¹³ The research explained how the European Union and Canada are making CSR policies an integrated part of trade and investment. The growing inclusion of CSR in trade agreements and bilateral treaties is a remarkable indication that there is necessary consideration of CSR. Despite these efforts, the assessment

111. *Id.*

112. *Id.* at 946.

113. Rafael Peels et al., *Corporate Social Responsibility (CSR) in International Trade and Investment Agreements: Implications for States, Business, and Workers*, 8 (Int’l Lab. Off., Working Paper No. 13, 2016).

demonstrates that CSR policies are soft in terms of obligation and precision.¹¹⁴ It pointed out the significance of the fundamental principle of treaty law, which compels states to be accountable and to act in good faith, so states cannot entirely escape CSR policies. In its penultimate analysis, the implications for the state, corporations, and workers were specified. Finally, it shed light on the role of the ILO. The paper claimed the ILO has considerable involvement in international trade agreements, and the European Union's directions to its business entities to consider CSR regulations when enacting business agreements indicates that the ILO has a powerful impression on private and public businesses.

Emphasis was put on the Accord on Fire and Building Safety in Bangladesh and the ILO Better Factories Cambodia Programme, which asserts, “[t]he distinction between the strictly legal and the purely voluntary seems to be getting blurred, not least as accountability and reporting mechanisms are tightened.”¹¹⁵ This research work of the ILO acknowledged that CSR is a benevolent act of businesses, but it claims that the distance between legal obligations and accountable CSR policies has been decreased with the active involvement of organizations like the ILO as institutions like the European Union Commission directs companies to draft their CSR policies under the guidance of the ILO.

IV. FEASIBILITY OF CSR IN LAW

The above discussed legal framework fails to recognize the impact of sustainable business activity on the environment. In an era of accepting the right to environment as a human right,¹¹⁶ states are compelled to implement legal frameworks which would impel industries and companies to use sustainable business practices. To ensure sustainable business practices, it is necessary to have screening through Environmental Impact Assessments (EIA), thus making it certain that an authoritative body is aware of the damages caused by the non-environmental business practice. EIAs have been adopted by several countries such as Mexico in its 1988 General Law of Ecological Balance Environmental Protection; and China in its Basic Environmental Protection Law, which enhances its application in its Environmental Impact Assessment 2003.¹¹⁷ The Rio Declaration on Environment, Principle 17 treated EIAs as a national instrument that a competent national authority would utilize to assess activities which might have

114. *Id.*

115. *Id.* at 24.

116. *Human Rights and the Environment*, ICELAND HUM. RTS. CTR. (Apr. 18, 2021), <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-in-relation-to-other-topics/human-rights-and-the-environment> [https://perma.cc/964G-Z4BU].

117. Yang & Percival, *supra* note 60, at 628.

detrimental effects on the environment.¹¹⁸ Unlike the Indian legal framework which binds companies to pay two percent of their average profit, companies should be compelled to pay the exact amount needed to remedy the damages they cause. In spite of the importance of EIAs, they are less effective compared to environmental laws in general. Therefore, amalgamation of CSR into environmental laws should be an adaptation of general environmental law.

Environmental laws evidently define the duties to compensate the harm. Three questions are to be answered: (i) is there any state liability, (ii) what is the definition of environmental damage, and (iii) what are suitable methods to pay the damages? There are three ways a state can be inflicted with liability: fault (negligence), strict liability (it will be presumed that the state is liable, but they will have defenses), and absolute liability (that is, no defensive argument will be accepted even in the case the damages are caused by an act of God).¹¹⁹

With respect to the second question, the definition of environmental damage may vary from state to state, yet environmental damages should be considered under the definition provided by international environmental law.¹²⁰ Bowman described damages as “a reduction in the value of an appreciated good.”¹²¹ Following this definition, a narrative can be drawn that negative effects on natural resources can constitute damages.¹²² Robert Bartz interpreted environmental damage as

a significant adverse effect on a biotic conservation resource (animal, plant fungi, microorganism) or an abiotic conservation resource (soil, water, climate) that has an impact on (1) the value of the conservation resource in whole or part, (2) on the conservation resource as an ecosystem component, or (3) on the sustainable use of the conservation resource or the ecosystem with which the resource is associated.¹²³

Finally, it is essential to consider the definition of restoration or methods of paying to remedy environmental damages. Restoration means “any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured

118. *Id.*

119. Max Valverde Soto, *General Principles of International Environmental Law*, 3 ILSA J. INT'L & COMPAR. L. 193, 203 (1996).

120. *Id.* at 204.

121. Robert Bartz et al., *Proposed Definition of Environmental Damage Illustrated by the Cases of Genetically Modified Crops and Invasive Species*, 24 CONSERVATION BIOLOGY 675, 677 (2009).

122. *Id.*

123. *Id.* at 679.

natural resources and services.”¹²⁴ The Permanent Court of Justice viewed it as

the essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequence of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or if it is not possible, payment of a sum, corresponding to the values which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it- such are the principle which should serve to determine the amount of compensation due for an act contrary to environmental law.¹²⁵

Conjugating CSR and environmental laws will not only protect the individual’s rights, but it will also create more accountability from corporations to the concerned stakeholders of CSR.

The concept of CSR includes the responsibility of companies to the people; therefore, companies should contribute to scientific research for replacing hazardous chemicals, and establishing a CSR legal framework. All of these should be viewed as a legal duty legislation should incorporate as environmental law instead of considering CSR as a corporate expenditure. An accountable system should be built to supervise the implementation, execution, compliance, and the effectiveness of the legislation.

One of the biggest concerns of any company is its consumers, and it is the consumers’ pressure which often leads big companies to be concerned about the social and environmental impact of their business practices. In Bangladesh, the government can introduce programs to raise awareness among the people about consumption of environmentally friendly produced products.

It is evident that the stakeholders discussed above might have different interests to fulfill through an enterprise, which can often drive corporations in different directions. It has been argued that social stakeholders play a big role in corporate social responsibility,¹²⁶ and companies could be forced to respect these social demands. For example, the neighbors may complain about an odor, and national and international organizations may demand usage of less hazardous chemicals, which could lead to several informal sanctions if the industries or companies fail

124. Kévine Kindji & Michael Faure, *Assessing Reparation of Environmental Damage by the ICJ: A Lost Opportunity?*, 57 QUESTIONS INT’L L. 5, 16 (2019).

125. Soto, *supra* note 119, at 193.

126. See Garai, *supra* note 19, at 282.

to perform. I have previously discussed the life-threatening impacts of hazardous chemicals in Narayananj, and if the government takes initiative to inform its people about the importance of a healthy environment, a drastic behavioral change will impact the performance of the polluting companies with respect to CSR. It is argued by many scholars that “environmental laws were all designed to operate on the basis of pre-pandemic presumptions about human behavior.”¹²⁷ Therefore, the government’s initiative to create social awareness will be pivotal in forcing companies or industries to focus more sincerely on CSR, and often social actors have a more direct influence on companies or industries as they might be fearful of losing goodwill, which will eventually impact the company’s profit. Professor Hooghiemstra viewed it as corporate communication, pointing out that companies can use communication as a model of reporting about CSR activities and illustrating public relations have a substantial relationship with corporate social responsibility.¹²⁸ Birkigt and Stadler observed that “the image of a company is a projection of its identity,” and this opinion was supported by Van Riel.¹²⁹ One significant example is the Australian state of Victoria where the authoritative body introduced an environmental improvement plan by legislation.¹³⁰ The legislation requires polluting companies to engage in dialogue with local communities in the shadow of the law. Such development in the law required companies to establish more effective internal management and planning and eventually to target better improved environment.¹³¹ Such initiative under the shadow of law has empowered the communities and given them the role of environmental watchdogs. They act as a surrogate regulator.

Additionally, the legislation can include provisions for corporations to disclose environmental information as the community has a right to information. If the companies are compelled to disclose information about their inventories by legislation, it would effectively force companies to estimate their emission and usage of hazardous substances. This information might be acquired by social actors including communities and non-profit organizations, and evidence shows that communities that are well informed can use information to ensure tight performance even if there is no strict legislation.¹³² One can argue that

127. Arden Rowell, *COVID-19 and Environmental Law*, 50 ENV’T L. REP. 1, 1 (2020).

128. Reggy Hooghiemstra, *Corporate Communication and Impression Management – New Perspectives Why Companies Engage in Corporate Social Reporting*, 27 J. BUS. ETHICS 55, 57 (2000).

129. *Id.* at 59.

130. Garai, *supra* note 19, at 8.

131. *Id.*

132. Archon Fung & Dara O’Rourke, *Reinventing Environmental Regulation From the Grassroots Up: Explaining and Expanding the Success of the Toxics Release Inventory*, 25 ENV’T MGMT. 115, 119 (2000).

inserting a legal obligation into the above-discussed practice between companies and social actors can slow the process; however, I am of the opinion that lack of legislation and legal obligations for companies to associate with the social actors will create a loophole, which can easily be taken advantage of by powerful industries.

Norman Bowie argued that “corporations ought to seek profit while nevertheless obeying a moral minimum.”¹³³ He further argued that parliamentary legislation has a major role in correcting market failures, and corporations might counter it by using political influence to set the environmental agenda. Bowie argued that business has a special obligation “to avoid intervention in the political process for the purpose of defeating or weakening environmental legislation.”¹³⁴ Companies can use their power to influence public opinion and try to influence people directly. Therefore, an accountable mechanism should be established to administer the above-mentioned practice between industries and social actors or communities. For instance, public participation can be rooted more deeply by allowing community members to lodge complaints against the hazardous business practice of the industries. Effectively, it will place the burden of responsibility on community members and make them feel more included in the system.

Additionally, many have this dominant view that corporations and the environment are two separate courses for discussion; however, I am of the opinion that environmental protection can increase economic growth of the corporation and eventually can benefit the State. One significant example is China, in which the economic growth and the social sustainability was gravely impacted due to environmental harm.¹³⁵ CSR policies and establishing CSR as a duty to protect the environment does bring enterprises and the environment together. In research, it was found that an enterprise which has disclosed its position in CSR to mitigate and to avoid harm has produced a better goodwill for their enterprises.¹³⁶

Maripaz Muñoz Prieto articulated the following four things which motivates the company to be accountable towards the environment.¹³⁷

1) Legal requirements, here the companies are obliged to comply with the existing legislations.

133. Joe DesJardins, *Corporate Environmental Responsibility*, 17 J. BUS. ETHICS 825, 828 (1998).

134. *Id.*

135. Lopin Kuo et al., *Disclosure of Corporate Social Responsibility and Environmental Management: Evidence from China*, 19 CORP. SOC. RESP. & ENV'T MGMT. 273, 274 (2012).

136. *Id.* at 275.

137. Maripaz Muñoz Prieto, *Legislation, Regulations, and Reflections on Environmental Accounting as a Reflection of the Incorporation of Social Responsibility in Companies*, 9 LAWS 1, 5 (2020).

2) Economic requirements, he explained “the increasing regulations may force managers to control their environmental risks more accurately in the face of the threat of sanctions, fines, or the administrative-criminal process, but also to reduce production costs and possibilities of accessing certain markets.”¹³⁸

3) Environmental or internal management reasons: a company designed policies to monitor their environmental management system.¹³⁹

4) Stakeholder or social image demands: maintenance of the goodwill of the company before their consumers, business partners and other stakeholders.¹⁴⁰

Research was undertaken by Harvard Business School economist and strategy professor Michael Porter, the hypothesis of the research was strict but flexible environmental regulation can enhance business performance.¹⁴¹ Five reasons were suggested, if properly crafted regulation was implemented.¹⁴²

It was recommended that:¹⁴³

- First, regulation signals companies about likely resource inefficiencies and potential technological improvements.
- Second, regulation focused on information gathering can achieve major benefits by raising corporate awareness.
- Third, regulation reduces the uncertainty that investments to address the environment will be valuable.
- Fourth, regulation creates pressure that motivates innovation and progress.
- Fifth, regulation levels the transitional playing field.

This hypothesis met with great success in political debate and as I have mentioned above, it is a dominating view that environmental protection is always detrimental to economic growth; his idea of enhancing the business performance created an impact in the political debate even in the United States. In previous discussions, I have analyzed that Bangladesh is one of the dominating countries in the world in the fashion industry; the State has facilitated these industries to boost their profit margin; while these companies increase their profit margin by

138. *Id.*

139. *Id.*

140. *Id.*

141. Stefan Ambec et al., *The Porter Hypothesis at 20: Can Environmental Regulation Enhance Innovation and Competitiveness?* 3 (Res. for Future Discussion Paper No. 11-01, 2011), <https://media.rff.org/documents/RFF-DP-11-01.pdf> [<https://perma.cc/U3CP-BZS3>].

142. *Id.* at 6.

143. *Id.* at 3.

exploiting the environment and the community, the regulators have showed less interest in restricting them under strict environmental regulation.

Considering the approach taken by Professor Michael Porter, his hypothesis was able to persuade the business community to accept environmental regulations to benefit different members of the company.¹⁴⁴ It was strongly established that well-designed regulation will lead to a ‘win-win’ situation. He suggested that environmental regulations will not only protect the environment but also increase the profits and competitiveness through improvements of the products, improving the production process or by improving the product quality.¹⁴⁵ One can argue, whether environmental regulations have a better position to hold in a corporation compared to its managers? How does it directly influence the growth of the profit in a business? The research work argued that environmental regulation can help firms to identify inefficiency of costly resources. However, Porter and van der Linde insisted that innovation does not just mean technological change and innovation can take place in various forms which includes “a product’s or service’s design, the segments it serves, how it is produced, how it is marketed and how it is supported.”¹⁴⁶ I am of the opinion that the State should encourage better environmental regulations, which includes the CSR, not only to protect the environment from the hazardous business practice, but also to accelerate the business of the corporate industries which will eventually boost the economy of the country in a more sustainable manner.

CONCLUSION

This Article has discussed the environmental impacts of the hazardous business practices of companies with regard to the environment. First, the research work discussed scientific evidence available to conclude that business practices of some industries are causing substantial damage to the environment, including facts about the ineffectual company policies of some international enterprises to safeguard the environments of exporting countries. The companies have no control over their supplying companies, and they can produce products by polluting the environment while international companies choose to purchase products from them. It is evident from the discussion that although these renowned companies purport to be environmentally friendly, they do not have full control of the policies of the supplying companies in countries like Bangladesh.

144. *Id.*

145. *Id.* at 10.

146. *Id.*

Along with this, this Article examined the available definitions of CSR in the European Union, Vietnam, United States, and United Kingdom and how these countries encourage and advocate for CSR in public policy. Regardless of these efforts, people in general, many employees, and other stakeholders of the companies still do not have accurate knowledge of CSR. Globally, CSR is treated as a benevolent activity, thus there is no definition of it and each state is designing their policies as is convenient to them.

The later part of this research examined the position of Bangladesh's environmental legislation, the position of CSR in Indian law, and European CSR policies. It discussed the Indian Company's Act 2013 and its approach towards CSR. The European Union's approach to CSR was also reviewed to determine its position in conserving the environment from hazardous business practices. The research work confronted the debate of environmental rights as a form of human rights, and it was found that many countries have positively adopted the principle of environmental rights as a fundamental right. One cannot ignore the significance of international trade and trade agreements for this reason. This Article explored the WTO regulations and articles of treaty agreements between Singapore and the European Union and between Vietnam and the European Union. These agreements solicit sustainable business practices although due to a lack of executive policies, the outcome is not fruitful. Additionally, the existing WTO regulations may not advocate for CSR since it is the states who are held accountable by the regulations while private corporations are not liable under the WTO regulations. This piece further examined the possibility of WTO regulations holding private companies liable.

Finally, it discusses the necessary steps to be taken by authoritative governmental bodies to incorporate CSR in their environmental laws with Bangladesh's circumstances as an example. These recommendations are applicable to any jurisdiction. Case studies of China and Australia were included to showcase the prosperity in sustainable business practices. The hypothesis of Professor Potter was offered to help and boost the corporations in regards to profit maximization. I also scrutinized the role of social actors in pressing corporate enterprises to fulfill corporate social responsibilities. Conclusively, I argue that environmental protection and profitable businesses can exist in tandem.