



ACCOUNTABILITY OF MINING ENTERPRISES IN LIGHT OF THE EQUITY PRINCIPLE: A STEP TOWARDS SUSTAINABLE DEVELOPMENT

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INTRODUCTION

Economic development and social responsibility date back and have continued to be supplementary to one another with the passage of time. 'Sustainability' signifies a balance between the consequences and goals which in its domain focuses on the environmental, social and economic impacts of business.¹ Lately, the mining industry has made significant advances in mitigating and managing mining activities resulting in negative impacts on the environment, by improving how companies manage their environmental and social impacts, protect the health of their workers, achieve energy efficiencies, report on financial flows and respect and support human rights as well as the environment.² With the prevalence of human insatiability, intergenerational equity as a sustainable development principle deems that it is the responsibility of the present generation to protect and improve the

environment and its resources for the future generations. The equity principle with its nuances, is spilt in the UN Charter and is as an implied principle under the Sustainable Goals which saw the light of the day in the UN General Assembly, 2015. Alongside this principle, other principles corollary to sustainable development principles also lend support to deter the wrong of mining enterprises before hand rather than after the harm done to the environment.

ACCOUNTABILITY OF MINING ENTERPRISES AND NEED FOR A SUSTAINABLE BALANCE

'Accountability' refers to the formal or legal locus of responsibility.³ Accountability in the mining industry is viewed as responsibility of the mining enterprises to reinstate the environment after the mining process. Corporate Social Responsibility (CSR) is one form of accountability of mining enterprises along with the laws already in place for the same. This social responsibility is mostly about balancing impacts on the environment and people⁴ and ensuring that the mining corporations maximise positive impacts through relocation or rehabilitation of indigenous people, local employment and engagement, filling up of mines, encouraging afforestation after excavation and handling

¹ National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011, Ministry of Corporate Affairs, Government of India
<https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf>
accessed 26 January 2020

² Planning Commission of India 'Sustainable Development: Emerging Issues in India's Mineral Sector' (2012) Institute for Studies in Industrial Development (ISID)

<http://planningcommission.nic.in/reports/sereport/se_r/isid_mining%20report1206.pdf> accessed 26 January 2020

³ P Ramanatha Aiyar, *The Law Lexicon* (4th edn, 2017)

⁴ Cecilia Jamasmie, 'Here is why miners should think 'accountability' when talking 'responsibility' (Part I)' *Mining [Dot] Com* (31 December 2014)
<<http://www.mining.com/here-is-why-miners-should-think-accountability-when-talking-responsibility-part-i-56262/>> accessed 26 January 2020



other adverse environmental and social impacts.

In consensus with the sustainable development framework and the standing laws overseeing corporations, undertaking Corporate Social Responsibility is a mandatory compliance. As part of their Corporate Social Responsibility, mining companies need to invest in improving social outcomes by increasing transparency of their operations, by institutionalising systematic public reporting at all stages within a more sustainable developmental framework, by partnering with local communities and improving prospects for employment and entrepreneurship and by consulting local communities during mine planning and post-closure planning and also aligning post closure land use with community aspirations.⁵ Local governments and mining companies work hand in hand when ensuring sustainable management of natural resources and establishing infrastructure provisioning to the communities in the area.

Although, corporate social responsibility is a mode of corporate bodies giving back to the society to nurture further development as instructed in the legal codes. With the dawn of a negative footprint on environment due to mining operations and negligence of companies to keep a check on the same, it is observed to be an inadequate governance mechanism of the regulatory institutions and the government as such. Incorporating corporate social responsibility as an ancillary

to environmental sustainability is a recent trend. The World Bank Environment and Social Framework Group Strategy sets out with a perspective of securing the long-term future of the planet, its people and its resources, ensuring social inclusion and limiting the economic burdens on future generations. Intergenerational equity principle is given importance in the corporate goals for ending extreme poverty and promoting shared prosperity in all its member countries. It has emphasized the importance of economic growth and sustainability including strong concerns for equity.⁶

A CORPORATE SOCIAL RESPONSIBILITY - THE LEGAL AND INSTITUTIONAL STANCE

Corporate social responsibility in India is seen as a philanthropic activity.⁷ This social responsibility is given recognition and is governed under the Companies Act, 2013 supplemented by the Companies (Corporate Social Responsibility Policy) Rules, 2014. Section 135 of the Companies Act, 2013 is the provision that gives legal effect to corporate social responsibility. This provision only provides for civil liability of the corporations. The mining companies are required to comply with the provisions contained in the Mines Act, 1952 and Mines Rules for the welfare of workers employed in mines. Besides the welfare activities, the mining companies are also obliged under Corporate Social Responsibility (CSR) to

⁵ Planning Commission of India (n 2).

⁶ The World Bank Environment and Social Framework, Overview of the World Bank Environment and Social Framework (2018) The World Bank <[http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-](http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf#page=15&zoom=80)

[Framework.pdf#page=15&zoom=80](http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf#page=15&zoom=80)> accessed 26 January 2020

⁷ Handbook on Corporate Social Responsibility, 2013 <<https://www.pwc.in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-in-india.pdf>> accessed 26 January 2020



spend at least two percent of the average net profit of the company made during the three immediately preceding financial years, towards implementation of CSR activities as per the CSR policy.⁸

In addition, Section 9B of Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 as amended in 2015 provides for the establishment of District Mineral Foundation or Jila Khanij Pratishthan (DMF) in every district affected by mining related operations. The DMF is funded by statutory contributions from mining enterprises holding mining leases. The Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) is a welfare scheme that provides the implementation framework for schemes to be undertaken for welfare and development of mining affected areas and the public through the funds collected under DMFs.

Section 20A of the Act also gives directions in this regard to all the States Governments to incorporate the PMKKKY into the rules framed by them for the DMF.⁹ The details of implementation or non-implementation of welfare schemes or programmes as well as activities carried out by mining companies under CSR is not maintained by Ministry of Mines. However, the second proviso to Section 135(5) of the Companies Act, 2013 mandates that if the Company fails to spend such amount as mentioned in Section 135(5), the Board shall, in its report made under Section 134(3)(o), specify the reasons for not spending the amount.¹⁰

When it narrows down to the mining entities, the laxity of the provision comes through. The revenue that the entities make is much greater than that of the penalty imposed in most cases. In cases where its pertaining to illegal mining, the actual profit may not be assessed and the mining companies slip off through this gateway by complying with the pecuniary penalty. Hence, it is necessary to have more stringent penalties on extracting companies for conducting activities detrimental to the people and the environment.

The rehabilitation and resettlement matters concerned with the mining sector, being the duty of the mining companies are reviewed by the National Monitoring Committee in the Department of Land Reserves, Ministry of Rural Development as under National Rehabilitation and Resettlement Policy, 2007 and in addition, the Central Government has also enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to protect people affected by mining activities. The National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 also includes corporate social responsibility in its ambit. It also outlines principles that deal with issues related to business ethics, transparency and accountability, environment, human (labour) rights, equitable distribution of wealth and fair growth and development providing value to consumers.¹¹ These principles have been tailored upon sustainable development

⁸ Press Information Bureau, 'Welfare Schemes or Programmes by Mining Companies' (08 December 2016) Ministry of Mines, Government of India <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=155093>> accessed 26 January 2020

⁹ Ibid.

¹⁰ Ibid.

¹¹ National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (n 1).



principles of intergenerational equity and precautionary principle.

AN IMPEDIMENT TO THE INCORPORATION OF SUSTAINABILITY VIS-À-VIS ACCOUNTABILITY OF MINING CORPORATIONS

The idea behind the backdrops of corporate social responsibility is to hold mining enterprises accountable for their effects on the society and environment. The fundamental approach to widen the corporation's attitude was to include essentials i.e. to make profits, giving back to the people and planet.¹² The efficiency and effectiveness of any legal arrangement are determined by the governance system responsible for administering and monitoring the implementation of the relevant laws. The duality of control and accountability in the extractive sector vests with the States and with the Centre which work in the interest of the public. Transparency and accountability are fundamental, especially for this sector, bearing in mind the equitable distribution of resource-derived profits without being entangled in the rein of corruption which is endemic in the mining industry. On this account, mining companies have not been doing so well as there is no traditional norm in this sectoral governance for sharing information (on behalf of the mining enterprises) with the local communities. Nonetheless, stakeholder engagement is

negligible and can only be seen during approval for environmental clearances. Owing to the social status quo of the local communities, they are often not considered to be a part of the stakeholder circle. Mining companies have failed to make amends for their neglect towards the people and the environment. There have been such shortcomings as an outcome of illegal activities and corruption as observed in the Odisha Mining Scam.¹³ It can be inferred from the report provided by National Aluminium Company Limited (NALCO) that there was no efficient objective assessment of the community needs, no involvement of primary stakeholders, expenditure spread much beyond periphery area, inordinate delays in implementation of projects and lack of accountability and sustainability.¹⁴ Assigning funds for the development of the community and betterment of the environment have resulted in the misutilization and diversion of funds by the local government authorities. Both large as well as small industries are included in this scope. Multinational mining companies like Anglo American, BHP Billiton, Rio Tinto, Vale, Barrick and Vedanta are looking to incorporate dimensions of sustainability examined in light of technological advancement, environment protection and biodiversity, stakeholder engagement, local community

¹² Ananya Chakraborty, 'Environmental Sustainability and CSR in Mining Industry - Focusing on Odisha' (2015) United World School of Law <https://www.academia.edu/15747393/Environmental_Sustainability_and_CSR_in_Mining_Industry-Focusing_On_Odisha> accessed 26 January 2020

¹³ *Orissa Mining Corporation v Ministry of Environment, Forest and Climate Change and Others* (2013) 6 SCR 881.

¹⁴ NALCO, 'Driving the wheel of progress' (2017) 7th Sustainable Development Report - NALCO Foundation <<https://nalcoindia.com/wp-content/uploads/2019/07/sustainable-development-report2017-2018.pdf>> accessed 26 January 2020



development and transparency and accountability.¹⁵

A PATHWAY TO THE EXISTING VOID: A SUSTAINABLE FRAMEWORK

Accountability of mining enterprises is in agreement with the polluters pay principle under sustainable development. This principle states that the absolute liability of the polluter for harm to the environment extends not only to the extent of compensating the victims of pollution, but also includes the cost of restoring the environmental degradation. It enunciates that the responsibility to disprove environmental damage is upon the polluter. The polluter's pay principle has been elucidated by the Apex Court in *Research Foundation for Science, Technology and Natural Resources Policy v Union of India and Another*,¹⁶ where it observed that the polluter pays for the cost of preventing or dealing with any pollution that the process causes and it also noted that this principle does not mean that the polluter can pollute and then pay for it. This principle was also applied in other important cases, *Indian Council for Enviro Legal Action v Union of India*,¹⁷ *Sterlite Industries (India) Ltd. v Union of India*¹⁸ and so on.

Conversely, in India, there is no practice of mining enterprises sharing matters concerning mining activities with the local communities while the industry should actually be paying greater attention to these issues so has to enhance communal

acceptance of their operations. The void exists in the governing and implementation mechanism and this needs to be filled in. A distinct regulation can be incorporated in the law on mine closure formulating and regulating the after-math of mining operations. This should be implemented strictly by the institutional bodies involved as every mining corporation is accountable to the communities in the area and the niche as such. This is a key component in maintaining effective relations with the community to facilitate an unimpeded chain of mining activities. A sustainable development framework has been promulgated to incorporate all these aspects and provide for effective governance.

Internationally, many multinational mining transnationals have formal disclosure policies and publish annual sustainability reports. It has been noted that 'corporate disclosures on sustainability issues is almost a good indicator of underlying corporate performance on these issues.'¹⁹ The initial trigger was set off with an aim to improve environment management practices through better environmental impact assessment and auditing, prevention and control of pollution and the development of integrated environmental management systems. International agencies developed environmental guidelines for governing extracting activities such as the Berlin Guidelines, 1991 which was reviewed in 1999 and the various modules and technical reports published by the United Nations

¹⁵ Planning Commission of India (n 2).

¹⁶ *Research foundation for Science, Technology and Natural Resources Policy v Union of India and Another* (2005) 13 SCC 156.

¹⁷ *Indian Council for Enviro Legal Action v Union of India* (1996) 3 SCC 212.

¹⁸ *Sterlite Industries (India) Ltd. v Union of India* (2013) 4 SCC 575.

¹⁹ H Jansen, M Tyrrell and A Heap, 'Towards Sustainable Mining – Riding with the cowboys, or hanging with the Sheriff?' (2006) Global Portfolio Strategist Citigroup Global Markets.



Environment Programme (UNEP). Further, international organizations like UNEP, the United Nations Commission on Trade and Development (UNCTAD), the International Council on Mining and the Environment (ICME) and the World Bank which in 1998 launched the Business Partnership for Development (BPD) (Natural resources clusters) programme with the objective of managing social issues in the extractive industries²⁰ reflected a comprehensive scheme towards sustainable development in the mining sector. Initiatives taken up made the world mining industry aware that environment management actually espoused the business, rather than a constraint to it.²¹ Gradually, environmental dimension of the familiar hitches broadened to include community relations, social justice, poverty alleviation and good governance as a part of sustainable development concerns. Consequently, the world mining industry, represented by the Mining and Minerals Working Group of the World Business Council for Sustainable Development (WBCSD), 1998, undertook the Global Mining Initiative (GMI) project in order to improve the industry-wide sustainable practices. This generated a world-wide research and consultation study called the

Minerals, Mining and Sustainable Development (MMSD) project carried out by the International Institute for Environment and Development (IIED)²² which brought out a project entitled 'Breaking New Ground: Mining, Minerals and Sustainable Development' published in 2002,²³ covering a wide range of mining-related issues and challenges.²⁴ The GMI also led to the establishment of the International Council on Mining and Metals (ICMM)²⁵ in 2001 which was developed based on the problems identified in the MMSD Project and includes various voluntary principles and standards developed by other international organizations and business associations.

It should be applaudable that both, national and international legislations have been tailored to promote sustainable development in the whole mining process. Only few major companies in India, publish reports on their activities relating to sustainable development because they are reluctant to share information with the community stakeholders as interaction between the companies and them are limited. Transformation of this convention is necessary for transparency in behaviour and accountability on the part of mining companies.

²⁰ ICMM, 'The Mining and Metals Industries: Progress in contributing to Sustainable Development' (2002) Working Paper.

²¹ Planning Commission of India (n 2).

²² IIED, 'Research on Mine Closure Policy' (2002) MMSD Working Paper No. 44 Cochilco - Chilean Copper Commission, MMSD Project of International Institute for Environment and Development (IIED) <<https://pubs.iied.org/pdfs/G00541.pdf>> accessed 26 January 2020

²³ MMSD, 'Breaking New Ground: Mining, Minerals and Sustainable Development' (2002) Report of the MMSD Project Earthscan Publications <<https://www.iied.org/mmsd-final-report>> accessed 26 January 2020

²⁴ Prospectors & Developers Association of Canada (PDAC), 'Sustainable Development and Corporate Social Responsibility: Tools, codes and standards for the mineral exploration industry' *Prospectors and Developers Association of Canada* (Canada, March 2007) <<https://www.pdac.ca/communications/pdac-news/news-article/pdac-news/2007/02/26/february-26-2007-no.-41>> accessed 26 January 2020

²⁵ International Council on Mining and Metals (ICMM), 'ICMM Sustainable Development Framework: ICMM Principles' (2003) <<https://www.iucn.org/sites/dev/files/import/downloads/minicmmstat.pdf>> accessed 26 January 2020



Even though mining has contributed to economic development, avoidable environmental and social damages continue to befall in the mining areas, major reason being the ineffective implementation of the existing mining and environmental laws and regulations providing for corrective and mitigation measures (such as compensatory afforestation, land reclamation and prevention of illegal mining).²⁶ Environmental behaviour of mining enterprises varies with the size of the enterprise. While larger mining companies have concerns for scientific mining, environmental protection and limited socio-economic development, smaller enterprises are more focused on maximum extraction of mineral resources from their lease areas. Mine closure planning and implementation is derelict due to the overriding interests of the mining corporations over the needs of the community and planet. Hence, keeping a check on over-exploitation of mineral resources by mining corporations would entail preservation of these reserves for the future subsequently providing an equilibrium between economic development and sustainability. It is therefore necessary to imbibe sustainable development principles in the mining process and hold the enterprises accountable for not conferring with the same.

CONCLUSION

While industry greed and unethical business practices sweep in to play an important role, illegal mining activities and corruption also follows. The needs of the future generations are compromised due to the exploitation of mineral resources and negligence of mining

enterprises. Only by condemning the bureaucracy involved in the mining process, can there be scope for abiding the core ethic of the accountability process.

The regulatory and governing bodies combined with the industry itself needs to take a stern step in view of applying and following sustainability in mining sector thereby toughening the accountability of mining enterprises. Involvement of the companies, government and community, a tripartite connexion would render the smooth running of mining activities as the dialect would take into consideration the pros and cons of the process and the ensuing decision would maximize the good. Therefore, ensuring that the sustainable development principles are met with at every step during the mining process will there be preservation of the environment for the future significantly uplifting the principle of intergenerational equity. Wealth is by far the fruit bestowed by nature itself and thus, protecting our environment even if it comes down to deterrence on mining enterprises, is a worthy strive.

²⁶ Planning Commission of India (n 2).