

Corporate Social Responsibility for inclusive social development and Judicial contribution in India

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Abstract

A company is the property of shareholders is an exploded myth. According to the new socio-economic thinking, a company is a social institution having duties and responsibilities towards the community in which it functions and gains profits. Basically, CSR policy not only make profitable and worth but also earn a goodwill in the eye of investors. Energy efficiency and waste recycling prevents unnecessary spending of money while helping in conservation of the environment. As an important organ of society, company has a debt to the society and the community in which it has progressed. It is also necessary if a company has caused some loss to the public surrounding to its entity, it is its obligation to make up, contribute and compensate adequately for such loss, whether technical or environmental, as a part of its CSR.

Keywords: Company, Constitution, corporate responsibility, Environment, Supreme Court

INTRODUCTION

The ever-widening gaps between the rich and poor and corporate interests in social concerns were necessitating fresh demands for more corporate responsibility in India. Because of this reason terms like corporate social responsibility got prominence. Business leaders realized the importance of participation in community development to ensure their license to operate and increasingly started to profess and practice social responsibility. The judgments delivered by the supreme court of India has substantially wider than the House of Lords ruling by the Britain's court. the law is meant to serve the people to live them in better ways, in this process few individual liberty or freedom may be jeopardized. This can be viewed in the human rights perspective. Obviously, the Hon'ble Supreme Court of India is referring to Corporate Social Responsibility when it talks of duties and responsibilities towards the community. The supreme legal document, the Constitution of India under Art. 297 vests natural resources in the Union of India and Art. 39(b) requires distribution of resources to subserve the common good, commercial practice in the oil and gas industry. And a proviso to the clause 135(5) of the Companies Bill states that if the company fails to make the required CSR spending, it shall specify the reasons for the same .

In 1970s, India began to adopt industrial pollution control measures, and the first set of environmental regulations began to emerge (Sawhney 2004). However, implementation and enforcement of environmental laws have not been comprehensive. Gradually, environmental concerns joined the social development agenda, culminating in the establishment of The Ministry of Environment and Forests in the wake of the Bhopal disaster in 1984. The Environmental Protection Act was enacted in 1986, followed by a number of related environmental regulations. As these are not implementing by the enforcement authorities the Supreme Court of India has rightly observed while dealing with Indian Council for Enviro Legal Action v. Union of India, that: Even though, it is not the function of the court to see the day-to-day enforcement of the laws, that being the function of the executive, but because of the non-functioning by the enforcement agency, the courts as of necessity have had to pass

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orders or direction to the enforcement agencies to implement the law for the protection of the fundamental rights of the people.

Furthermore, former Prime Minister of India Dr. Manmohan Singh, recently, in addressing a Conference on Economic Growth in Asia and Changes of Corporate Environment, said we must build a climate that attracts investment and encourages and rewards innovation, and establish fair and effective regulatory institutions and also legal processes. Above all, we have the responsibility to ensure probity, transparency and accountability in processes of governance. In response to transformational changes of this century, the Prime Minister while expressing his government's commitment for many commercial and corporate laws to make them relevant to the challenges that lie ahead, particularly for ensuring distributive equities and empowerment of the marginalized sections of the Indian society he emphasized the role of corporate social responsibility which is intrinsically linked with the concept of sustainable development. He said "Corporate governance including responsible conduct towards all the stakeholders, within the corporation as well as outside is also seen as good economics besides desired moral behaviour. Corporate Social Responsibility (CSR) is therefore increasingly being seen as a fundamental dimension of the Social Contract between human beings and therefore sought to be subject to public disclosure and scrutiny.

Concept and meaning of CSR (Corporate Social Responsibility)

The term is a broad and dialectic one, but may be simply understood as a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment. The Corporate Social Responsibility often referred as the Business responsibility, is about companies managing the business processes to produce an overall positive impact on society. CSR can be explained as: Corporate means—organized, Social, means everything dealing with people, the society at large, responsibility —means accountability between the two. From the above, CSR could be defined as the process of business operations carried out while ensuring compliance with legal requirements, as also linked to ethical values to an extent. CSR means open and transparent business practices that are based on ethical values and respect for employees, communities and the environment. It is designed to deliver sustainable value to the society at large as well as to the shareholders. The concept of CSR is based on the idea that besides public authorities, companies also should take on responsibilities of social issues. The idea of being a socially responsible company means to go beyond legal compliance and to invest in human resources and the environment.

Evolution of the conceptualization of CSR

To some it conveys the idea of legal responsibility or liability; to others, it means socially responsible behavior in an ethical sense; Social concerns began to infiltrate management education after the Second World War, with social responsibility first emerging as an academic topic in the 1950s. Bowen [SR -1953] was a pioneer in delineating the social responsibilities of 'businessmen,' stating that corporate social responsibility refers to the obligations of businessmen to pursue those policies, to make those decisions or to follow those lines of action which are desirable in terms of the objectives and values of our society. This was a landmark initiative to define the concept and earned Bowen the designation 'Father of corporate social responsibility' (cf. Carroll 1999, p. 270). Eventually, the 1980s and 1990s saw the concept of corporate social responsibility evolve theoretically and receive much empirical attention and complemented the growing trend of theoretical focus on the environmental dimension.

Concept of Corporate Social Responsibility under UDHR

The generally accepted view is that the Universal Declaration of Human Rights states that "every individual and organ of society" has the responsibility to strive to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance . Further the international principle of permanent sovereignty over natural resources adopted by the UN General Assembly in Resolution 1803 provides the responsibility on the corporate sector.

Corporate Accountability towards societal development

In the context of Development, Corporate entities one among the classical four arms of the society - encompassing big or small enterprises in all fields whether delivering products or services to the society who play a crucial role. If society is unable to purchase market goods, then where those should be sold by the capitalists. If society is healthy and able to purchase, then the business will take growth. Critical viewpoint along regulatory lines is raised by the corporate accountability theory (cf. Swift 2001, Zadek et al. 1997), which states that firms are answerable to society for the consequences of their actions. Stakeholder interactions and corporate environmental reporting are popular tools for realizing corporate accountability. Waldman et al. (2004) mean while applied the transformational leadership theory to highlight the role that the top management team can play in relation to CSR activities within a firm. The Johannesburg Declaration on Sustainable Development says that the private sector has 'a duty to contribute to the evolution of equitable and sustainable communities and societies', and that there is a need for private sector corporations to enforce corporate accountability.

Entry of Multi-National Companies to India, CSR and impact of Globalization

The second rationale for the idea of CSR in India as well as Asia would yield different outcomes deals with the region's globalization-related activities. The globalization of the economy and the subsequent international expansion of corporate activities have proved to be a double-edged sword for Asian countries with an urgent need to maximize the benefits viz., creation of employment opportunities, and economic development of these nations, while minimizing the negative impacts like environmental degradation. Multinational corporations (MNC) often move their manufacturing operations to Asian countries where the economies are in dire straits, the governments offer lucrative subsidies to attract foreign direct investments, and the regulatory framework is weaker comparatively with US and European Nations. Sawhney (2004) points out that environmental regulations in India lag behind and similar regulations in Organization for Economic Co-operation and Development (OECD) countries by almost a decade. the empirical evidence has shown that MNCs in India and other emerging markets do not necessarily have stricter environmental standards than their local counterparts.

The role of Judiciary in implementation of CSR

Corporations do not just move to fill the vacuum created by the state's abdication of social responsibilities in the neoliberal era, they in fact help create that vacuum. And it is a vacuum in which notions like social entitlements are things of the past. Surely, socially disadvantaged groups such as the tribal communities of Dantewada district, subject to displacement destroying their social cohesion, constant threat, and subjugation cannot so easily demand social entitlements. They find themselves at the mercy and the goodwill of government and corporate bodies, the very organizations largely responsible for their present plight. Besides, from the Shell's case of Nigeria at US Supreme Court to Vedanta case in India the Judiciary is playing vital role in reminding the corporate world of its CSR towards the society where from it is being existed. Though there have been instances of moral turpitude in judiciary also but by and large the general public still puts some faith in judiciary which has been from time to time justified by the proactive stance taken by various judges. RTI and Public Interest Litigations have illustrated that society can expect appropriate support for Development from this arm (Corporate) of the society.

On 22 September 2011 the Madras High Court while dealing with Bears Cave Estate vs. The Presiding Officer, Labour Court, Salem. W.P.No.802 of 2009; referred the case of. Kunalsingh vs Union of India Wherein, the Supreme Court observed thus: Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation. Section 47 is casting statutory obligation on the employer to protect an employee acquiring disability during service. Further it held that, the principles behind suffering a person with disabilities are that providing equal opportunities cannot be left only for the mercy by the Government in relation to its

servants alone. It is high time the principles behind the Disabilities Act, 1955 must be extended in relation to private employments also and it must be made as part of Corporate Social responsibility of every employee.

In National Textile Workers Union vs. P.R. Ramakrishnan the Apex Court held that the traditional view that a company is the property of the shareholders is an exploded myth. According to the new socio-economic thinking, a company is a social institution having duties and responsibilities towards the community in which it functions. In Birla Zauri Agro Chemical Ltd., Goa Case, In this case, the Goa High Court ordered the closure of the company's operations because the effluents of the company were polluting the sea.

Multinational or foreign companies a case reference to Bhopal Gas Disaster

In the worst industrial disaster in human history, in the year 1984, on the horrific night of December 2nd and 3rd from the Union Carbide plant in Bhopal, Madhya Pradesh, India, more than 40 tons of the deadly gas, methyl iso cyanate escaped from the pesticide factory. Approximately half a million people were exposed to the gas and 20,000 have died to date as a result of their exposure. More than 1, 20,000 people continue to suffer from severe health ailments because of the accident and its contamination. In 2001, the US-based gigantic Dow Chemical purchased Union Carbide, thereby acquiring its assets and liabilities. However, it has been steadfastly refusing to clean up the site, provide safe drinking water or compensate the victims, or even disclose the composition of the gas leak. Dow, like UCIL earlier, claims that it has no liability of the past. The Dow Chemical Company, with annual sales of \$28 billion boasts in its web site: it is committed to the principles of Sustainable Development and its approximately 50,000 employees seek to balance economic, environmental and social responsibilities.

The case of Unilever Company at Kodaikanal, TN

In the year 2001 the Unilever Company has dumped 300 metric tons of mercury at Kodaikanal, Tamil Nadu. As a contrast to the above activity the Unilever website states, "We are committed to conducting our operations with integrity and with respect for the interests of our stake holder. We are also committed to making continuous improvements in the management of our environmental impacts and to working towards our longer-term goal of developing a sustainable business.

Vedanta's case in India

Vedanta is involved in bauxite mining and refining in Eastern India. These operations came under the scanner of the Saxena committee, appointed by the government of India in 2010. In an attempt to win bauxite mining rights on Niyamgiri hills in Odisha, Vedanta funded two Environment Impact Assessments in 2002 and 2006, a concession in line with government's flexible laws to enable the entry of corporate mining. Saxena committee found these reports to be thoroughly deficient as they failed to take into account the impact of mining on the most crucial resource of the region: water. Saxena committee, while recommending the rejection of Vedanta's proposed lease, noted "Given that there have been several deliberate attempts on the part of Vedanta Alumina Limited to conceal information and falsify it in order to get the project approved.

The Saxena committee found Vedanta's operating aluminium refinery to be in illegal occupation of 26 hectares of forest land and in blatant violation of pollution regulations and only 3 of the 14 mines that supply bauxite ore to the refinery have environment clearances, and it is in violation of the MoEF condition of sourcing bauxite from mines with environmental clearance and EPA. With the recommendation of the Saxena committee and in the face of fierce resistance of the Dongria Kondhs and other inhabitants of the region, the central government was forced to reject Vedanta's requisition to mine in Niyamgiri hills.

Conclusion

As of now, India is still not ready for a substantive law for the enforcement of CSR. However, certain judicial pronouncements are a positive indication that the country is slowly getting ready for such a law. Legal compliance will be hard to achieve, whether within the CSR fabric or not, but extracting legal compliance from CSR has the advantage of bringing to light a range of workplace and wage issues that companies are required by law to attend to. Sustainable CSR programmes mean a cohesive mix of economic, legal, ethical, and philanthropic tenets. Getting multinationals to comply with local laws is not an easy task but in today's changed business scenario, there is an increased focus on giving back to society and creating a model which works long term and is sustainable and it is imperative that the best practices for inclusive growth are shared with the stakeholders. Corporate Social Responsibility is nothing but what an organization does to positively influence the society in which it exists. We have to remember Milton Friedman's famous quote that "the business of business is business". It reinforces the view that all CSR is driven by business interests, and it is best left to the judgement of a corporate as to what makes good business. The best technique to match up to the challenges brought about by globalization is to anticipate the future commitments under international treaties and obligations.

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19. <http://sanhati.com/excerpted/2754>,Niyamgiri hills are essentially composed of Bauxite. Being a highly porous rock, Bauxite has a large water retention capacity. Therefore, Niyamgiri hills form an aquifer for fresh water which feeds five rivers in the region. Mining on the hills will destroy this semi-perennial water source and even affect communities living hundreds of kilometers away.