

JUDICIAL INTERPRETATION OF CSR IN INDIA: AN ANALYSIS

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What is CSR?

The World Business Council for Sustainable Development (WBCSD) defines CSR as “the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.”¹

According to Bowen,² —CSR refers to the obligations of businessmen to consistently follow and abide those policies to make decisions or to adopt those relations which are in accordance to terms of the objectives and values of our society.

According to the United Nations Industrial Development Organisation (UNIDO)³, “Corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (Triple-Bottom-Line Approach), while at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be a strategic business management concept, and charity, sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that.”

From the above definitions, it can be concluded that:

- The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses.
- CSR should address the well-being of all stakeholders and the society at large.

However many jurist are against the concept of social responsibility of corporate. Harvard economist Theodore Levitt put it succinctly, “government’s job is not business, and businesses job is not government”.⁴ In light of this controversy, the judicial authorities have time and again recognized the responsibility of corporate sector towards society. The Michigan Supreme Court in the case of *Dodge v. Ford Motor Company*⁵ held that Henry Ford owed a duty to the shareholders of the Ford Motor Company to operate his business to profit his shareholders, rather than the community as a whole or employees.

Indian Judiciary and CSR

The case of *Kunal Singh vs. Union of India*.⁶ Wherein, the Supreme Court observed thus: Section 47 (Equal Opportunities Protection of Rights and full Participation Act, 1955) 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 Equal Opportunities Protection of Rights and full Participation 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.

Bhopal Gas Disaster⁷

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 isocyanides 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.

Vedanta's case in India⁸

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 committee⁹ 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: water¹⁰. 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 aluminum 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.

The Unilever Company¹¹

In the year 2001 the Unilever Company has dumped 300 metric tones 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 holders. 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.

Conclusion

One of the basic principle of economics is that let the demand & supply decide the price of the product. Similarly, in the stock market the investors decide the price of the share & the fate of the company. If any company is showing an irresponsible attitude towards the society, the investors in the long run will show the company true picture by rejecting such company in the stock market. The point is that investor itself plays the role of checks & balances in the stock market. Since the socially irresponsible companies are likely to be rejected by investors in the long run, the companies automatically respect such opinion & act responsibly for surviving in the long run. Therefore bringing the mandatory CSR model may affect the balance of the market where automatic checks & balances are already present to ensure efficient & responsible functioning of the companies But there is a positive outcome of this provision is that of the rule of “Let investors Decide” will be taken positively and there will be a progressive growth of the society as explained above.

(Endnotes)

- 1 Available at, <http://www.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx>, accessed on 4th Feb. 2014
- 2 Bowen, H. R, 1953 Social responsibilities of the businessman New York: Harper & Row
- 3 [http://www.unido.org/what-we-do/trade/csr/what-is-csr.html#pp1\[g1\]/0/](http://www.unido.org/what-we-do/trade/csr/what-is-csr.html#pp1[g1]/0/), accessed on 1st Dec. 2015
- 4 T. Levitt, *The Dangers of Social Responsibility*, Harvard Business Review, vol. 36, no. 5, pp. 41-50, 1958.
- 5 *Mich 204 Mich. 459, 170 N.W. 668*, 1919
- 6 2003 (4) SCC 524
- 7 Union Carbide Corp.vs.Union of India, 1991SCC(4) 586
- 8 Judgement deliver on 18/04/2013
- 9 Available at, http://www.moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf, accessed on 4th Feb. 2014
- 10 <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.
- 11 Available at, http://www.unilever.com/investorrelations/understanding_unilever/corporateresponsibility/, accessed on 5th Feb. 2014