

A Study of Corporate Social Responsibility, Mass Tort And Environment Protection

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Abstract

The corporations have weaved a bilateral fibre for itself in the percipience of the critiques worldwide. The research paper highlights the corporate social responsibility that lies with the corporations examining it under two different tabs. The first part of the paper provides a critique on some Industrial disaster wherein the right to health and Clean Environment which forms an integral part of the responsibilities those vests with industries towards the social stratum were violated at large. The paper further examines the scope of right to environment and the role of industries giving special reference to the liability that has been brushed off by the industry owners. The first part concludes with a note of conflict. A critical analysis has been done to examine the liability of the parent company and states whether or not they have adequately fulfilled their responsibility after the tragedy. The second part highlights the social mandates that the industries are ought to follow. Witnessing the current status quo the paper relies on primary as well as secondary data to divulge the concern of these industries in segregation of global poverty and poor health stipulations. It brings in light the laxity of Private enterprises in maintaining societal mandate or the organizational capabilities to nourish the underprivileged or provide health care to the ailing citizens midst the territorial boundaries of developing and under developed nations. The research paper concludes by providing paradigms and methodology to the issues such as setting the bench mark of the corporate social responsibilities that a industry should contribute for the protection of the environment and the consequence of non-fulfilment of the same. It also proposes an effective redressal mechanism that can be incorporated for the interpretation of existing legislations.

Keywords: - Corporate Social Responsibility, Accountability, Industries, Bhopal Gas Tragedy, Social Economic Mandates, Negligence of Private Enterprises, Developing and Under Developed Nations, Redressal mechanism.

"Can we learn from this lesson, or can mankind educate itself only by disaster and tragedy?"
Sen. Paul Douglas, on the acceptance of the Senate's 1962 drug bill¹

Introduction

It is an undisputed fact that the term Corporate social responsibility is nowhere defined in a perfect manner in any of the lexicons. Few people tried propounding a complete definition however, none succeeded. Till date such a definition has not been coined this clearly depicts every dimension of this Term. McWilliams & Siegel (2001) define CSR as "actions that appear to further some social good, beyond the interests of the firm and that which is required by law " and similarly Carroll's (1991) tried propounding a model of 'Pyramid of Corporate Social Responsibility ' taking

¹ Harvey Teff & Colin R. Munro, *Thalidomide: The Legal Aftermath* 111 (1976), quoted in R. Harris, *The Real Voice* 215 (1964).

philanthropic requirements as grounds. The term is often used synonymously for other terms such as Corporate Citizenship and is also linked to the concept of Triple Bottom Line Reporting (TBL), which is used as a framework for measuring an organisation's performance against economic, social and environmental parameters. The rationale for CSR has been articulated in a number of ways. In essence it is about building sustainable businesses, which need healthy economies, markets and communities. Corporate social responsibility (CSR) has variously been described as a 'motherhood issue' (Ryan 2002, p. 302) 'the hot business issue of the noughties' (Blyth 2005, p. 30) and 'the talk of the town in corporate circles these days' (Mees & Bonham 2004). There seems to be an infinite number of definitions of CSR, ranging from the simplistic to the complex, and a range of associated terms and ideas (some used interchangeably), including 'corporate sustainability, corporate citizenship, corporate social investment, the triple bottom line, socially responsible investment, business sustainability and corporate governance' (Prime Minister's Community Business Partnership). It has been suggested that 'some...researchers...distort the definition of corporate social responsibility or performance so much that the concept becomes morally vacuous, conceptually meaningless, and utterly unrecognizable' (Orlitzky 2005); or CSR may be regarded as 'the panacea which will solve the global poverty gap, social exclusion and environmental degradation' (Van Marrewijk 2003).

Mass Torts

Tort means a breach of some duty independent of contract giving rise to a civil cause of action and for which compensation is recoverable. The person committing a tort or wrong is called a tortfeasor or wrong doer, and his misdoing is a tortious act. The principal aim of the law of torts is compensation of victims or their dependents.²

'Mass Torts' can be put in plain words as 'such activity of the defendant, the harm caused by which is wide and a large number or sector of society gets affected simultaneously. A mass tort is a civil action involving numerous plaintiffs against one or a few corporate defendants in state or federal court. As the name implies a mass tort includes many plaintiffs and law firms have used the mass media to reach possible plaintiffs. Mass torts may include mass disaster torts, mass toxic or noxious torts and product liability torts³.

A noxious tort is one in which the wrongful act consists of exposure to a deadly substance. This could occur in a variety of ways, such as an accidental release (example a chemical spill or explosion), workplace exposure (example to solvent fumes or asbestos), or harmful effects from medications or other consumer products.

Tracing from the pages of history, Corporate Social Responsibility, as identified in long history in both the East and West, is about a commitment to social philanthropy, in the belief that the creation of wealth is primarily geared for social good. This aspect of ethical business in modern times can be traced back to 19th-century philanthropists like Robert Owen. The businessmen then "ran successful businesses, made money because they offered honest products and treated their people honestly, gave honest value for money, put back more than they took and told no lies."

History of Mass tort litigation often produces arbitrary results; it fails to deliver the right compensation to the right victims when it is most needed; that it misallocates risk among

² G. Williams, *The aims of the Law of Torts*, (1951) 4 *Current Legal Problems*, 137.

³ Available at <http://www.scribd.com/doc/55412373/Bhopal-Gas-Tragedy-Project> browsed on August 16, 2011 at 4 am.

consumers, corporations, and governments; that it generates unconscionable; and that it does not achieve corrective justice⁴.

Industry is the backbone of development. It is considered as standard to weight prosperity and civilization of a country. In the present time it is believed that the more industrious a nation is the more prosperous country. The demand for companies that invest in CSR has increased in the recent years from customers, employers, suppliers, community groups, governments as well as some stakeholders. As the concern for more serious issues viz Global warming, corporate liability in cases of threats posed by the industrial activities and the tortuous liability of corporate bodies due to rapid urbanization has increased rapidly in the past years this has led to further increase in demand for CSR several companies have responded by increasing their CSR budgetary allocations. Due to this, there is increase in number of companies' continuously working on CSR related issues. Companies are, for example, starting to take more concern to the environment, health and social issues. However other companies have resisted investing in CSR as they believe that it contradicts their aim to maximize profits. But Mass Torts like Bhopal Tragedy in India, Thalidomide tragedy demands proper implementation of CSR and avails the responsibility on Corporations towards society and world at large.

Definition of Corporate Social Responsibility

*"Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large"*⁵.

Corporate social responsibility (CSR) can be defined as the "economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time"⁶.

Corporate social responsibility may also be referred to as "corporate citizenship" and can involve incurring short-term costs that do not provide an immediate financial benefit to the company, but instead promote positive social and environmental change⁷.

Bhopal Gas Tragedy

On the night intervening 2nd and 3rd December, 1984, there occurred in Bhopal the most tragic industrial disaster in which thousands of persons lost their lives and lakhs of people suffered injuries of various kinds. On a clear night, with little wind and no rain expected, the worst nightmare was unleashed on the unsuspecting people of Bhopal. Workers, on the night shift in the plant detected a faint smell of boiled cabbage (associated with MIC), but they ignored it. What they did not know was that shoddy maintenance and poor safety precautions had meant that water was leaking into tank, carrying 40 tons of MIC, and a violent reaction was about to take place. When a few workers dared to venture out towards that tank, they felt the rumble under their feet and in a few moments, the tank burst out of its concrete casing and exploded, sending a deadly cloud of MIC into the air.

⁴ Schuck, Peter H., "Mass Torts: An Institutional Evolutionist Perspective" (1995). Faculty Scholarship Series. Paper 2159. http://digitalcommons.law.yale.edu/fss_papers/2159

⁵ Shamasastri, R., 1967, *Kautilya's Arthashastra*, Mysore Printing and Publishing House, Mysore.

⁶ Carroll and Buchholtz "Corporate Social Responsibility" 2003, p. 36

⁷ Arthaud-Day, M.L. "Transnational Corporate Social Responsibility: A Tri-Dimensional Approach to International CSR Research." *Business Ethics Quarterly* 15 (2005): 1–22.

The prevailing wind at ground level sent the cloud swirling across the surrounding slums and into the city of Bhopal.

This was the first time that an accident had occurred in a Union carbide plant. In the Indian plant itself, one of the workers, Ranjit Singh, had died in 1981 of exposure to MIC when a few drops of it fell on his clothing and he removed his safety mask a little too early. Compensation was paid, the event was hushed up and there was little to indicate that this was more than an isolated aberration. However, in the 80s the plant started running at a loss due to diminishing demand for Sevin and hence was forced to cut back on costs. Unfortunately, the person responsible for cutting costs did not know the first thing about chemicals and ended up getting rid of all the safety mechanisms, including the all-important flare to burn off any escaping MIC in case of a leak. Between 1981 and 1984, six such leaks were documented, but did not lead to any deaths, according to a subsequent report by the Madhya Pradesh government. In the American plant manufacturing 'Sevin' as well, over 28 such leaks were documented, but the information wasn't released for the fear of causing an uproar in the local community. The Bhopal plant, in 1984, had ceased to conform to any international safety standards and Indian standards being non-existent, it continued to cut back on safety.

Around lakhs of people were affected because of the incident. This massive figure includes approximately thousands who died instantly and several hundred thousand maimed for life, including children born with defects arising from the disaster. Such a large number almost matches another tragedy - the bombing of Hiroshima at the end of World War II.

While the Bhopal case was being argued in the High Court, the Supreme Court of India, in a separate poisonous gas leak case, came up with a new doctrine which could be used in the Bhopal case as well and that was *absolute liability*.

Thalidomide Tragedy

Thalidomide is an immunomodulatory and antiangiogenic drug. Although the exact mechanism of action is not fully understood, it has been shown to be active in a variety of diseases. There are multiple trials going on to evaluate the optimal dose of thalidomide and the importance of combining thalidomide with other drugs. This review introduces the properties and putative mechanism of action of thalidomide and summarizes the most important clinical trials with this biological modifier.

Thalidomide tragedy in 1950 this drug was approved for OTC sales in Europe, Japan, Australia, Canada and Brazil. The German manufacturers of this drug had not collected human safety data before releasing it to the market. Clinical trials in pregnant women and animal studies were started simultaneously in the US. Shortly after the beginning of the trial Australian, American and European physicians started reporting large number of birth defects by 1961. Over 8000 children were born without hands and legs. Deception in research was reported in the Milgram study. Stanley Milgram's research on Holocaust people's response to authority, where the subjects, who were not fully informed of the study modality, were made to carry out certain activities without comprehending the implications. This encroached upon the psychological domain of the participants⁸. Such mass tort tragedy has once again questioned the Role of corporate houses for CSR.

⁸ Committee on Human Research Training Module: Johns Hopkins Bloomberg School of Public Health, Baltimore, MD. (http://www.jhsph.edu/chr_acc12.12.05).

Oleum Gas Tragedy

The doctrine of absolute liability, which was laid down in the case of *MC Mehta v. Union of India*, where the leak of Oleum Gas had killed a few people near the factory, stated that any emissions from the premises of a factory or establishment engaged in the manufacture or storage of such harmful substances would make the owner of such establishment absolutely liable for any damage arising out of such escape. Unlike the previous doctrine of strict liability which governed damages arising out of such incidents, this doctrine allowed no defenses whatsoever for such an incident and is similar to the "polluter pays" principle in environmental law in the US.

CSR and Environmental Sustainability

The sustainable development is promotion of corporate social responsibility and accountability, strengthening of public-private-partnerships and continuous attention to improvements in corporate sector practices and processes.

The idea of Corporate Environmental Responsibility under the veil of CSR derives its inspiration from the principles of UN Global Compact for Corporate Sustainability which read as follows:

Principle 7: Business should support a precautionary approach to environmental challenges;

Principle 8: undertake responsibility to promote greater environmental responsibility;

Principle 9: encourage the development and diffusion of environmentally friendly technologies."

CSR is thus the umbilical cord between sustainable development and Disaster Management, only then can the idea of development be socially safe and commercially viable.

In the light of environmental sustainability and CSR, the increasing pressure on the Indian Government was followed by enactments and legislations. Realising that commitment and voluntary initiatives of industry for responsible care of the environment will help in building a partnership for pollution control, the Ministry of Environment and Forest (MoEF) in the year 2003 came up with the Charter on Corporate Responsibility for Environmental Protection (CREP). The CII (Confederation of Indian Industries) has also established an Environment Management Division (EMD) involved in research and propagation of environmentally sound industrial systems and processes and ensuring greater compliance on part of industries. In the global context, such measures have been reinforced with international reference standards set by the United Nations, Organization for Economic Co-operation and Development (OECD) Guidelines and International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Hence, CSR now entails within its ambit various ideas and concepts, prominent among them being Design For Environment (DFE) and Green Engineering. Thus, it has been widely observed amongst industries riveting across ideas of DFE and Green Engineering. Design For Environment primarily embraces the following tasks within itself:

- Improved maintenance of equipment's
- Energy leak and loss prevention
- Improved building envelopes
- Use of high efficiency devices
- Improved monitoring and control of potentially hazardous systems

On a similar note, it is found that two out of the twelve principles of Green Engineering directly hit upon the idea of CSR in the context of an industrial hazard or disaster.

*"Inherent rather than circumstantial: Need to strive to ensure that all materials and energy input and outputs are as inherently non hazardous as possible.
Prevention instead of treatment: It is better to prevent waste than to treat or cleanup hazardous waste after it is formed."*

Thus, the sustenance of these expanding environmental operations depends upon the realization on the part of corporate that it owes a debt to the society to make up for environmental degradation and to become environmentally conscious and socially responsible

Change in the Perception of CSR

Changing social expectations are nothing but a strong denotation of how aware the consumers all around India have become. The case of Environmental Tragedy was no different. Such Tragedy also demands Corporate Social Responsibility In India, the focus of CSR was mainly on Charity. Whether or not companies had a penchant for CSR, they addressed the issue of Environmental as they regarded factory monitoring as a potential legal liability.

But with the Environmental Tragedy, came an increased risk of observance of CSR on the legal angle, and this forced many organisations into greater compliance. Consequent to the mishap, there was a gradual and remarkable shift from the 'Two P's Balance': People – CSR and Profit – Business earnings" to the 'Three P's Balance': Planet – Environmental Protection, People and Profit. "

With the onset of increasing disasters resulting out of industrial activities worldwide, CSR now stood as a plethora of Economic, Ethical and Environmental tenets. The norm then was in event of an industrial disaster, the organisation alleged to have inflicted the disaster should follow an all-encompassing definition of CSR that must include: Medical Rehabilitation, Social Rehabilitation, Economic Rehabilitation and Environmental Rehabilitation. The changed notion of CSR became global and percolated into every organisation's structure.

The meaning and the ambit of the idea has been steered through to such an extent that of late, the idea of environmental sustainability and CSR reporting has been absolutely intertwined now. Further, it has happened to such an extent that CSR has begun to be known as 'Sustainability Reporting'. Every Company's attitude on CSR is now more on 'transformation' rather than on 'Information'.

Recommendations and Conclusion

CSR should be viewed as a process and not as a destination. Although CSR has grown at a rapid pace over the last few decades, it still faces a lot of challenges in proper implementation. Some business still believe that CSR would deviate their attention from economic activities but many companies have experiences that it doesn't lessen the profits rather it increases the long-term profits of a company by reputation and image building of a company enhancing its most valuable asset i.e. "Goodwill". Recommendations suggested are as follows:

- a) To mandate CSR through legislative enactments (as in Saudi Arabia) from the government's side.
- b) To rationalise and harmonise the economic, compliance, ethical, and sustainability dimensions of corporate responsibility and sustainability in the context of stakeholder requirements.
- c) Integrating eco-design and other sustainability requirements into product and service offerings.

- d) To manage the sustainability performance, optimisation process to continually increase stakeholder satisfaction.
- e) To promote and encourage whistleblowers to ensure a check on business operations.
- f) To manage non-financial risk, particularly to brand, reputation, performance and instability as an integral part of corporate sustainability management.
- g) To promote and regularise welfare practices for the greater good of the society.
- h) To control the perils of uncontrolled development, satisfy the needs of the present generation and at the same time ensuring that the resources for future generations are not jeopardized.

What is needed is a joint effort by the government and civil society i.e. People, NGO's, NPO's etc to make CSR a success. The need is and awareness and encouragement of corporate sustainability and corporate philanthropy from NGO's and civil society to ensure that business operations are sustainable. It is expected from business houses to realise that money and profit is the primary but not the ultimate aim of a business rather it is service and welfare of the society.

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