Towards Understanding the Legal Framework Related To Corporate Social Responsibility in India

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Abstract

The evolution of the relationship between companies and society has been one of slow transformation from a philanthropic coexistence to one where the mutual interest of all the stakeholders is gaining paramount importance. Companies started realizing that they cannot exist in the business if they do not take care of the interests of the society and all stakeholders. This triggered the evolution of the concept of Corporate Social Responsibility. Every author for the last 50 years has been trying to understand CSR from his/her understanding and there is no common definition accepted by every one for this subject (Woods 2011). There are many direct and indirect laws which govern CSR in India. ILO played its role in shaping CSR thinking in India by Indian Business Personalities. There are many labour laws which try to provide safety, heathy working environment, living wages, and welfare for the employees. Laws related to environmental protection are also one source for shaping CSR movement in India. In spite of having so many laws and regulatory authorities, violations of law are happening in India. Thus, an attempt has been made in this paper to discuss various definitions of CSR, Codes/Standards/Principles of CSR, various laws and labour laws concerned with CSR. Also two interesting cases have also been discussed in this paper.

Key Words: Corporate Social Responsibility, Codes, Standards, principles of CSR, UN Global Compact, ILO, ISO, OHASAS, Social Accountability etc.

Introduction:

In the last twenty years, there has been a sea change in the nature of the triangular relationship between companies, the state and the society. No longer can firms continue to act as independent entities, regardless of the interest of the general public. The evolution of the relationship between companies and society has been one of slow transformation from a philanthropic coexistence to one where the mutual interest of all the stakeholders is gaining paramount importance. Companies are beginning to realize the fact that in order to gain strategic initiative and to ensure continued existence, business practices may have to be moulded from the normal practice of solely focusing on profits to factor in public goodwill and responsible business etiquettes (Reynard and Forstater, 2002).

Evolution of the Definition and Concept of Corporate Social Responsibility:

The initial idea was that “since social institutions shaped economic outcomes, it was to be expected that business firms as an economic outcome of societal interests should consider the social impact of business activity” (Howard Bowen 1953). Another school of thought believed that “Social responsibility means that businessmen should oversee the operation of an economic system that fulfils the expectations of the people. And this means, in turn, that the economy's means of productionShould be employed in such a way that production and distribution should enhance total socio-economic welfare” Frederick (1960).

Harold Johnson (1971)opined that 'a socially responsible firm is one whose managerial staffbalances a multiplicity of interests, instead of striving only for larger profits for its stockholders.According to Keith Davis (1973) 'Social responsibility in the final analysis implies a public posture toward society's economic and human resources and a willingness to see that those resources are used for broad social ends and not simply for the narrowly circumscribed interests of private persons and firms'

Gary (1987) defined CSR as "the process of communicating the social and environmental effects of organizations economic actions to particular interest groups within society and to society at large". However, in this decade new concepts which are closely related to CSR like, stakeholder theory, business ethics, corporate governance, responsiveness, corporate social performance, and corporate citizenshipere introduced. Also more efforts were put to operationalize the concept of CSR rather defining it.

According to Lee (1997) CSR refers to a company's commitment to operate in an economically and environmentally sustainable manner, while acknowledging the interests of a variety of stakeholders and maximizing economic, social and environmental value.During the early part of 21st

Century, Corporate Social Reporting started gaining momentum. Perks (1993) defined corporate social reporting as "the disclosure of those costs and benefits that may or may not be quantifiable in money terms arising from economic activities and substantially borne by the community at large or other stakeholders".

According to Carroll (1999) "CSR encompasses the economic, legal, ethical and discretionary (philanthropic) expectations that society has of organizations at a given point in time."Another trend appearing in literature is the increasing dialogue between stakeholders. Companies started augmenting their discussions with labour unions, environmental groups and other relevant stakeholders and the implementation of certification solutions by corporations, which is the establishment of codes of conduct, monitoring and reporting(Kapstein, 2001).Bebbington et al. (2008) use the term CSR reporting, which highlights the link between the reporting function and the organizational functions and operations that are concerned with, and impacted by, activities associated with CSR.

From the above discussion, it is understood that although the study of the concept of CSR and defining it in clear terms was started in 1950s and various social scientists defined it in their own way and according to their own understanding, till today we have no common definition for CSR (Woods 2011).

Codes / Standards / Principles on CSR

In the following sections an attempt has been made to bring out various codes/standards/principles on CSR. Each one is briefly discussed.

Universal Declaration of Human Rights:

Adopted by United Nations, this declaration paved way for many international human rights standards for all sectors entities.

UN Global Compact:

An international multi-constituent, voluntary initiative based on internationally accepted ten principles in pursuit of a more sustainable inclusive global economy. The ten principles covers human rights, forced labour, child labour, environmental challenges and responsibility, non-discrimination, freedom of associations, collective bargaining, corruption, etc.

Global Reporting Initiative (GRI):

Since its founding in 1997, the GRI has been addressing the need for standardized approaches to corporate sustainability reporting. In 2006, GRI published Version 3.0 (G3) of its Sustainability Reporting Guidelines emphasizing performance indicators, which contain a separate section titled "Human Rights" with nine performance indicators.

Organization for Economic Co-operation and Development (OECD):

OECD guidelines contains recommendations on core labour, environmental standards, human rights, competition, taxation, science and technology combating corruption and safe guarding, consumer rights.

Social Accountability 8000:

'SA 8000' standard for social accountability, created in 2000 by the Council on Economic Priorities Accreditation Agency (CEPAA). SA8000 developed by an international coalition of businesses, trade unions and non-governmental organizations (NGOs) on the basis of International Labour Organization (ILO) conventions--the Universal Declaration of Human Rights and the UN convention on the Rights of the Child.

The SA8000 code of practice is broken down into nine key areas child labour, management systems, working hours, compensation, disciplinary practices, forced labour, health & safety, freedom of association & collective bargaining and discrimination.

Principles for Responsible Investment (PRI):

These are a set of global best practice principles for responsible investment It provides a framework for achieving better long term investment returns and more sustainable markets. For Example, equator principle is a set of environmental and social benchmarks for managing environmental and social issues in development project finance globally. They are developed by private sector banks-led by Citigroup, ABN AMRO, and Barclays and arelaunched in June 2003.

Role of International Labour Organization (ILO) in shaping CSR:

ILO seeks the promotion of social justice and internationally recognized human and labor rights. It formulates international labour standards in the form of conventions and recommendations setting minimum standards of basic labour rights. International Organization for Standardization (ISO) 26000: ISO an International Standard setting body developed a new standard on Social Responsibility namely ISO 26000 published in Nov., 2009.

ISO 26000 is intended for use by all types of organizations and in all countries and to assist organization to operate in a socially responsible manner. Occupational Health & Safety Advisory Services (OHSAS) Standard: OHSAS 18001 is applicable to any organization which aims to establish a health and safety management system at work.

Labour Laws:

India has altogether ratified 333 labour laws. The ways these laws are supervised and implemented, vary. Sub-contracts are common in India. One challenge is that 90% of the Indian labour is in the informal sector, which is not protected by the labour regulations (Venkata ratnam 2006).

Most Indian states have enforced an act for minimum wages for labourers in scheduled employment, as stipulated in the *Minimum Wage Act* from 1948. However, the minimum wage is often not paid. According to ILO, labour under minimum wage is considered a form of forced labour. According to ILO estimates, there are more than one million forced labourers in India, particularly in the southern part. Many of these are children.

Contract labour in India is another complex subject. . The contract workers do not get the same protection and benefits as permanent workers. Many work as contract labour for longer periods of time. Although the ILO Conventions related to Forced Labour have been ratified, certain forms of bonded labour still persists, especially in the informal sector.

India has enacted legislation that prohibits discrimination on the basis of gender, religion, ethnicity or caste. Again, the record of implementation is varied. ILO has observed some violations in India's implementation of the Discrimination (Employment and Occupation) Convention, (No 111, from 1958). This convention obligates the state parties to hinder discrimination on the basis of caste or gender, such as different salary scales and labour conditions.

Child Labour and Right of Organization:

India is member of the International Labour Organization, and has ratified 40 of the ILO conventions. However, India has not ratified four of the ILO core conventions:

- 087 Freedom of Association and Protection of the Right to Organize (1948)
- 098 Right to Organize and Collective Bargaining (1949)
- 138 Minimum Age Convention (1973)
- 182 Elimination of the Worst Forms of Child Labour (1999)

India's domestic law on child labour, *Child Labour (Prohibition and Regulation) Act*(1986), ban employment of children in some dangerous occupations, such as factories and mines, and regulate the working conditions in others. According to this law, anyone above the age of 14 will be regarded as an adult and will not be protected by the child labour regulations.According to UNICEF, insufficient attention has been given in India to eliminate the worst forms of child labour. The 1986 child labour law does not cover children in all sectors. India has the world's highest number of child labourers under14 years.

The Environmental laws:

The main law on environment and production is *The Environment (Protection) Act* (1986). This law gives the central government, the authority to protect and improve environmental quality, as well as control and reduce pollution from all sources.The responsibility for environmental governance is shared between the corporations and the government. Many Indian institutions have come up with voluntary guidelines on environmental friendly practice. Among these, there is a partnership on voluntary pollution control, developed by the Indian Ministry of Environment and Forests together with the industrial sector. Other initiatives include the Energy Efficient Initiative by the Indian Chamber of Commerce, the Indian Ecomark and the Clean Technology initiative by the Confederation of Indian Industry and others.

As far as the implementation of environmental laws is concerned, one of the challengeshas been 'lack of knowledge on how to implement the laws.There are also weaknesses in the implementation and control mechanisms, The budget and infrastructure for control has not been sufficient, although greatly improved over the past years.

Amendments to Companies Act 2013:

As all over the world Social reporting gained momentum, the Indian Government also did not leave the matter to the Corporate alone. It interfered with it by amending Companies Act in 2013. According to section 135 of the amended Act, Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more, or a net profit of rupees five crore or more, continuously for three years have to spend 2% from the profits towards social activities. The listed companies have to constitute a corporate social responsibility committee for spending money for corporate social responsibility activities. The committee should consist of three or more directors out of which one director shall be an independent director. In case of private companies two directors may form the committee.

The Corporate Social Responsibility committee shall formulate policy of social activities to be undertaken by the company and recommend it to directors as specified in Schedule VII of Companies Act, 2013. The policy includes the amount to be spent on the activities and the activities to be undertaken in nearby areas, where the company is located. It is mandatory that the director of a company have to include the corporate social responsibility activities in director's report and have to upload it in the company's website. If the company is not able to spend the amount on social activities, it has to mention the reasons. Foreign company which is having branch office in India also have to undertake corporate social responsibility activities in India.

Companies (Corporate Social Responsibility Policy) Rules, 2014:

A company can implement its CSR activities through the following methods.

1. Directly on its own
2. Through its own non-profit foundation set- up so as to facilitate this initiative.
3. Through independently registered non-profit organizations that has a recorded experience of at least three years in similar such related activities.
4. Collaborating or pooling their resources with other companies. However, CSR spending on activities undertaken in India, only will be taken into consideration.
5. Activities meant exclusively for employees and their families will not be considered as CSR activities.

Some of the Violations of laws related to CSR in India.

In the following sections, an attempt has been made to bring out how the laws have been violated by Indian business. The author believes that not only the good practices of CSR form a part of the Concept but the violations are more important as they indicate a clear mind set of the Indian Business towards their commitment to be a good Corporate Citizen. Hence, a discussion is made about the violations of Laws by Indian Business. There are many violations of CSR laws in India, but the author has taken some prominent ones and presented them in the following sections.

a. Violation of Human Rights for children (boy and girl) –A case study of Ramgarh Village in Jharkhand:

In a press news item (The Hindu 5th April, 2011) it was found that children are working in an illegal coal mine at Banwar, Ramgarh village in Jharkhand. Children under the age of fourteen works in illegal coal mines (rat holes) 10X10 foot and 400 feet deep where a mere slip of foot will plunch one to a certain death. These mine workers are mostly from Orissa, West Bengal, Bihar, Chhattisgarh and Assam. The way coal is mined is scary. These mines are increasing in numbers manned mostly by children ranging in age from 7 to 17. However, the Mines Act 1952 stipulates that any one aged below 18 cannot be employed in mines. These labourers start work at 5 in the morning and by the time they come out of the mine it is dark. Then they drink and gamble. The kin of those who die in accidents in these mines never get any compensation as the deaths are never recorded. With the frequent exposure to dust and coal particles the children working in these mines suffer from respiratory problems and the primary health centre is out of reach. The Jharkhand Government has not given these workers any benefit under the Mahatma Gandhi National Rural Employment Guarantee Act. Worst of all adolescent girls face sexual harassment. Many abortions are done in Nursing Homes but they hardly come to Govt. notice because these hospitals are not registered. The State Government is aware of the plight of these children but it is yet to ensure their rights.

b. Violation of CSR principles- Case of Coca Cola in India:

It is not only the Indian Business, but the MNCs operating in India also violated the basic CSR principles. The high degree of public protests against the Coca Cola plant in Plachimada, Kerala, India got international attention and also led to government intervention for closure of the plant. The plant at Plachimada was alleged to have exploited the ground water resources leading to drying up of wells and other natural water resources in the area. The entire region which was a thriving agricultural land had to rely on water supplied by tankers. Coca Cola was drawing 1.5 million liters/day from the common groundwater resource. However due to inherent water scarcity the company is able to extract only 800,000 liters from the bore wells. The company drew water from the nearby villages to compensate for the lack of availability causing parched lands of more than 2000 people residing within 1.2 miles of the factory (Jayaraman, 2002).

The Coca Cola Company had to deal with protests from the local community and supporting environmental conservation groups. Protesters picketed the factory gates for a long period of time causing large scale media attention. Adding to the water exploitation, Coca Cola was accused of supplying poisonous waste as fertilizer to the local farmers. Tests done by an independent agency on the behalf of BBC showed that the sludge contained high levels of Lead and Cadmium (Srivastava, 2004). The sludge which was disposed off in open ground ran along with rain water to the natural water resources. The contamination caused by the sludge has allegedly caused allergic symptoms and perpetual headache to the local population. Tests also show that the water available in the wells is contaminated and unsuitable for consumption (Iype, 2003). The Kerala incidents were not isolated ones and the company had to face similar accusations from various parts of the country. For example in Varanasi, the local community protested against Coca Cola for exploiting water resources and spilling waste into the sacred Ganges. Added to these were the findings from the Centre for Science and Environment that twelve large soft-drink brands manufactured by Coca-Cola and its rival Pepsi, sold in and around Delhi, contained a cocktail of pesticide residues, including chemicals which can cause cancer, damage the nervous and reproductive systems and reduce bone mineral density.

Coca Cola is one of the most recognized brands across the globe and is associated with a certain style of life. Coca Cola is also associated as a representative of globalization and essentially western culture. It ranks among one of the top foreign investors in India. However the protests from the local community have led to world-wide reaction and has even led to open campaigns for boycott of products of Coca Cola. The government of Kerala also ordered the stopping of operations of the plant at Plachimada to safeguard the interests of the local community.

Coca Cola's behaviour in its expanding Indian market has led to world-wide apprehension with the international media and agencies showing support to the protests against the multinational. There were campaigns for international boycott of Coca Cola's products (Atlanta IMC, 2003). In India the protests were also directed against MNCs in general as there were demands for irresponsible MNCs to leave the country.

Coca Cola responded to these by litigations in the court and applying pressures through its power centres in US. Public Relations agencies were hired to neutralize the situation. The company also issued releases which mentions about its socially responsible behaviour and good corporate citizenship.

The case clearly shows that developing economies can respond and protest against irresponsible behaviours of MNCs. However the bad publicity and loss of brand value has repercussions not only in the local markets but also in the global market scenario. The case of Coca Cola also shows that developing economies might have loose laws which do not protect the interests of the local population or laws that are not implemented properly. However it is in the best interest of the corporations to take care of the welfare of the local community. The adverse publicity caused by the protests and media coverage brings out high degree of negative public response for the product safety of the company.

Conclusion:

To sum up there is no clear cut definition of Corporate Social Responsibility although it has been researched for the last 50 years. For some it is donating money to NGOs, for some others it is the welfare facilities provided to their employees. Some companies think their backward integration as CSR. For example, ITC waste management, HUL farmer support scheme for tomatoes etc. Some other companies try to expand their business through some initiatives which they call as CSR. For example, C&P Colgate Express, HUL Pepsodent express, HUL hand washing promotion etc. Strictly speaking these are not considered as CSR. The violations of CSR laws are rampant all over the world more so in developing economies, especially in Africa, Asia and South America continents.

Indian Government liberalized compliance reporting procedure for Indian business people and also for MNCs through many amendments made to law in 2014. The impact (positive or negative) can be a good research topic for future researchers as such topic demands primary data collection.

References (in Alphabetical order)

Bajpai, G.N. (2001): "*Corporate Social Responsibility in India and Europe: Cross Cultural Perspective*", retrieved from: http://www.ficci.com (accessed 12 January 2009).

Basu, D., Devarani, L. (2008): "*Corporate social responsibility--Some basic dimensions*" Natural Resources Systems Program publication.

Bowen, H.R. (1953): "*Social responsibilities of businessman*", NY, New York, USA: Harper & Row. Commission of the European Communities, retrieved from: http://ec.europa.eu/index_en.html.

Caroll, A.B. (1999): "*Corporate social responsibility: Evolution of a definitional construct*", Business and Society, Vol.38 No. 3, pp.268-295.

Charter on Corporate Responsibility for Environmental Protection (CREP), retrieved from: http://www.cpcb.nic.in/oldwebsite/Projects%20&%20Action%20Plans/CREP_Recommendations.html

Cochran, P. (2007): "The evolution of corporate social responsibility", Business Horizons, Vol. 50 No. 2, pp. 449-454.

Davis, K. (1973): "The case for and against business assumption of social responsibilities", Academy of Management Journal, Vol.16, pp.312-322.

Frederick, W.C. (1960): "The growing concern over business responsibility", California Management Review, Vol.2, pp. 54-61.

Gupta, A.D. (2007): "Social responsibility in India towards global compact approach", International Journal of Social economics, Vol.34, pp. 637-663.

Hawkins, D. (2006): "CSR balancing tomorrow's sustainability & today's profitability". Palgrave Macmillan, New York.

Hermansson. N. (2008): "The CSR Implementation process: A four-step model to an efficient Corporate Social Responsibility (CSR) implementation, Thesis submitted to International Business & Economics Program, Kristianstad University.

Hockerts, K., Morsing, M (2003): "*A Literature review on Corporate Social Responsibility in the Innovation Process",* CBS Centre for CSR Denmark, Working Paper.

GRI (2000) SD Reporting Guidelines & FS Sector Supplement, retrieved from: http://www.globalreporting.org/ReportingFramework/ Sector Supplements/

Gupta, A.D. (2007): "Social responsibility in India towards global compact approach", International Journal of Social economics, Vol.34, pp. 637-663.

ILO website, retrieved from: http://www.ilo.org/global/lang-en/index.htm.

ISO 26000 guidelines, retrieved from: http://isotc.iso.org/livelink/livelink/fetch/ 2000/2122/830949/3934883/3935096/home.html?nodeid=4451259&vernum=0

Iype, G. (2003): *'Sludge at coke factory is deadly',* retrieved from http://www.rediff.com/money/2003/aug/05spec2.htm

Jayaraman, N. (2002): *Coca Cola parches agricultural land in India,* Retrieved fromhttp://www.globalpolicy.org/globaliz/special /2002/0528india.htm

Kapstein, B. (2001): "*The Corporate ethics crusade*", Foreign affairs, Vol.80, pp. 105-119.

Mohan, A. (2001): "*Corporate citizenship: perspectives from India"*, Journal of Corporate Citizenship, Vol. 12 No. 2, pp. 107-17.

Murphy, V, (2008): "*Corporate social reporting practices of top Indian software firms*", Australasian Accounting Business & Finance Journal, retrieved from:http://findarticles.com/p/articles/mi_qa5450/ is_200802/ai_n25417971/ (accessed 22 June 2009).

OECD Guidelines for Multinational Enterprises,retrieved from: http://actrav.itcilo.org/actrav-english/ telearn/global/ilo/guide/oecd.htm

OHSAS guidelines, retrieved from: http://www.ohsas.org/

Raman, R. S. (2006): "*Corporate social reporting in India--A view from the top",* Global Business review, Vol. 7 No. 2, pp. 313-324.

The Hindu, *"Child labour in rat holes in Jharkhand"*5th April 2011

Shinde, S (2005): "*Social responsibility corporate style*", retrieved from http://www.expresscomputer online.com/ 20050502/technologylike01.shtml

Simpson, S., Whelan, J. (2008): *"Integration and Implementation of CSR within the Business",* International Business Leader's Forum, retrieved from www.undp.it.files//global%20compact/csrtraining.

Wood, D.J. (1991): "*Towards improving corporate social performance",* Business Horizons, Vol. 34 No. 4, pp. 66-73.