

ENVIRONMENT PROTECTION AND CORPORATE SOCIAL RESPONSIBILITY

: A Critique from Legal perspective

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ABSTRACT: *Man, Society and Environment have mutual relationship. Nature and society are interdependent and duty of man to protect them is inherent. This basic percept envisages the protection of environment. However, rapid economic development, technological and scientific advancement have increased their impact on the natural environment. They have added environmental degradation and ecological imbalances. Hence, there is variety of specific legislations are passed to protect the environment and ecology. Apart from these legislations, a comprehensive legislation i.e. Environment (Protection) Act, 1986 and various Rules under this Act have been made to prevent, control and abate all types of pollutions. But due to unwillingness on the part of corporations to comply with, the applicability of these laws is at stake.*

On the other hand, the companies are asking for Corporate Social Responsibility (CSR). They are arguing that it is there social responsibility to protect and care the environment and human resources. For these corporations are creating or have been created code of conduct. Corporate Social Responsibility is a phenomenon which states that companies have to do right things, beyond legal requirement. The concept is based on the idea that not only public policy but companies, too, should take for social and environment issues. In more particular, CSR is seen as a concept in which companies voluntarily integrate social and environment concerns into their business and into the interaction with their stakeholders. The idea of being socially responsible company means doing more than comply with the law for environment and human resource.

But the question is whether CSR is needed? Why do not comply with law, first? Various reports are come which shows that companies are not complying even with the minimum legal requirement for better protection of environment. After these reports and corporations' argument for CSR, next question click in the mind is whether corporate houses are doing so for genuine environment protection or for some ulterior motives? Again, whether companies will sacrifice their profit for environment impact? Last, but foremost question is whether companies are incorporating CSR for social responsibility or for making their business shareholder accountable.

I have explored and examined all these questions in this paper. This paper before examining gray aspect of CSR highlights what does CSR mean? and why law should be incorporated rather CSR? Hence this paper examines the CSR and argues for compliance of law.

INTRODUCTION:

'Love to nature' is as ancient phenomenon as the existence of humanity. Man is the measure of all things's so said Plato. Man loves nature and nature in turn nourishes him. Man loves society and society in turn protects him. Nature and society are thus inter dependent and duty of man to protect them is inherent. This basic percept envisages the protection of environment and preservation of humanity. Hence, man is both creator and moulders of his environment, which gives him physical substance and affords him the opportunity of intellectual, moral, social and spiritual growth. In the long and tortuous evolution of human race on this planet, a stage has been reached when; throw the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Thus the natural environment, i.e. air, water, land, trees, plants, animals, micro organism, rivers, lakes, mountains etc, is adversely effected by man made environment- by scientific and technological advancements. Corporate houses- particularly chemical corporate industries- development in the field of atomic energy, excessive use of fossil fuel had badly effected the natural environment. In the words of Edward Goldsmith, an ecologist-

'by now it should be clear that the environment is becoming less capable of sustaining the growing impact of our economic development'.

Further more it is said that corporate houses are the axis to gear up the economy of nation, but on the other side it has been identified as a major source of environmental degradation and pollution. Famous minamata disease in Japan (1956), Bhopal gas tragedy (1984), Cherhernobyl (USSR) atomic reactor accident in 1986 have showed that industrialisation has poised a serious threat not only to human beings but also to animals, aquatic life and vegetation cover. The world wide resentment and anger over the irresponsible behavior of business let to an urgent need for the business to salvage its image. It is under these circumstances that Corporate Social Responsibility(CSR) emerged as a buzz word among the corporate houses which wished to manage the global opinion within the frame work of open market economy.

CSR is described World Bank as a companies obligation to be accountable to all of its stakeholders in all its operations activities. Socially responsible companies consider the full scope of there impact on communities and the environment when making decisions, balancing the needs of stakeholders with there need to make a profit. (Deborah Doane: 2004) CSR essentially involves a shift in the focus of the corporate responsibility from profit maximisation for share holders within the obligation of law to responsibility to a broader range of stakeholders, including communal concerns such as protection of the environment and accountability on ethical as well as legal obligation.

CSR policies involves commitment by corporations, usually expressed in there statements of business principles or corporate specific codes of conduce, to enhanced concern for the environment, human rights and fairness to suppliers and consumers.

It is paradoxical that the CSR initiatives purports to protect the environment and to reduce the pollution, when the responsibly for degradation of environment and ecological imbalances raised with these corporations. There are numerous examples like the plight of the people of Bougainville Island or the Ogoni people of Nigeria, and similar instances of violence and human rights violations by Africa's oil tycoons and firms like Exxon and Sheel. The MNCs which expand into the developing countries do so, not for charity, but because of benefit like cheap labour, raw material and due to lax implementation of labour and environmental standards in these countries. A BP engineer who visited an oil town in Nigeria in 1990 remarked: "I have explored for oil in Venezuela, I have explored for oil in Kuwait, and I have never seen an oil rich town as completely impoverished as Oloibiri". (Greenpeace International 1994:14, cited in Eweje 2006:111).

By above it is clear that, CSR is an intelligent devise to by pass corporate accountability or compliance with state sponsored regulation and standards. Voluntary codes and charters give the impression that the corporate houses are doing enough, while they continue with their irresponsible practices without fear of being coerced into mending their ways.

ENVIRONMENT PROTECTION AND CSR: Reality

Always arguments are made by the corporations that they are making there industries environment friendly but it always becomes only to say, never comply with.

The corporate houses claim that they are incorporating the CSR agenda for making there corporations environment and human friendly but the reality is some what different. Actually corporations wants there shareholders benefited. There are various reports which shows that main source of environment pollution is made by the industries.

Industries for maximizing there profits, degrade the environment and pollute it, in the following way (Shastri: 2005):

- a) Use of natural resources by industries, as it destroys nature and affects the natural environment. Cotton, textile, paper, iron, coal, oil, fodder, plywood, food processing, etc all need natural products as raw materials. Thus increasing needs of industries have resulted in over exploitation and stress on natural resources.
- b) Residues of industries known as effluents are released in water and land without any treatment which pollutes the water and land, effecting the aquatic life and underground water.
- c) Fossil fuel used by industries like coal, kerosene, diesel, and atomic energy also pollutes the air in the form of smoke and radioactive particles.
- d) Noise, also a major by-product of industries and industrial products causes noise pollution.
- e) Industrial wastes – particularly hazardous waste and radioactive waste- have also become a major environment pollution problem.

There are variety of cases has been occurred which shows that due to over exploitation of natural resources and industrial wastes, the human generation was in danger. The *Bhopal Holocaust* (1984), where more than 3000 person died and about 2 lakh were affected by the leakage of MIC gas, *Love Canal Incident* of USA (1978) where residents of an area were evacuated and the US Government spent more than \$30 million in a clean up operation, *Seveso Incident* in North Italy (1976) where contaminated debris, contained in steel drums, were disposed of innocuously with

barrels of vinegar in a pickle factory and it played havoc later on. Methyl-mercury poisoning in the *Minamata Bay* (Japan, 1956-80) caused by the industrial release of Methyl and Mercury compounds resulted in several deaths and several types of diseases including pre-natal brain damage, nuclear accidents at *The Three Mile Island*, nuclear power station of the USA in 1979 and *Chernobyl* in the then USSR are representative sample of the works kind of threat to the present generation and to posterity by the industrialization. Studies of these incidents reveal various kinds of short-term and long-term effects on human beings, flora and fauna. A complete list of the various kinds of ailments and reversible and non-reversible effects is still to be drawn up. Some ill effects have been identified and evaluated and some have not been realized. The evaluation is not easy.

In an unpublished report of NEERI, it is estimated by NEERI that 60 percent of Calcutta's residents suffer from some kind of respiratory disease due to air pollution done by industries and factories. The burning of coal as an industrial and domestic fuel accounts for a significant proportion of pollutant emissions, especially SPM. Suspended particulate matter from coal combustion is clearly a major problem throughout Calcutta and should be the main focus of immediate control efforts. Surprisingly, SO₂, concentrations are relatively low (within WHO guidelines) which is due to the low sulphur content (0.3 percent) of the local coal. (www.ess.co.at) .

PROTECTION OF ENVIRONMENT BY GUARDIAN OF LAW

There are variety of cases have been come before the Apex Court of India and before various State High Courts, where corporate houses are made liable for environment pollution and is degradation.

In *M.C. Mehta vs. Union of India* (1988)1 SCC 471, which is famous as Ganga Pollution Case, an industry (tannery) were found to made holy river Ganga toxic. In this case, tanneries used to discharge untreated effluents in the rivers water and near Kanpur, the water of river Ganga was found highly toxic. The court ordered that tanneries should stop functioning and before restarting, must install pre-treatment plants for trade effluents. Further it was held that statutory must be strictly enforced and obeyed.

Recently in *A.Q.F.M. Yamuna vs. CPCB* (2000) 9 SCC 440 the Supreme Court ordered the closure of industries or to shift them from the territory of the State of Delhi as their untreated effluent and sludge was polluted the holy river Yamuna.

In *M.C. Mehta vs. Union of India*, (Taj Trapezium Case) yellowing of a historical Monuments – the Taj Mahal at Agra – was also found to be due to foundries, chemical and Hazardous industries and an oil refinery. The sulphur dioxide emitted by the Mathura Refinery combined with oxygen – with the aid of moisture – in the atmosphere, forms sulphuric acid called ‘acid rain’ affecting the marble of the Taj Mahal. Therefore, the Supreme Court issued orders for shifting of 292 industries from the Taj Trapezium or to close them.

The leakage of MIC gas from the Union Carbide Corporation, Bhopal gave impetus to the development of environment-law and principles of quantum of compensation. (*Union Carbide Corp. vs. Union of India*). Again, leakage of oleum gas from Shri Ram Food and Fertilizer Corp. gave an opportunity to propound the principle of ‘no-fault liability’ and ‘absolute liability and non-delegable duty of the industry dealing in inherently dangerous and hazardous activity. (*M.C. Mehta vs. Union of India*).

Further, *Indian Council for Environment legal Action and Others vs. Union of India* (1996) 3 SCC 212, the SC accepted the Polluter Pays Principle. In this case some chemical factories in Bichhri (Udaipur District) produced hazardous chemicals like oleum etc. These industries did not have the requisite clearances, licenses etc. Nor did they have necessary equipment for the treatment of discharged toxic effluents. Toxic sludge and untreated waste waters resulted in the percolation of toxic substances into the bowels of the Earth. Aquifers and subterranean supplies of water got pollutes; wells and stream turned dark and dirt; water not only became unfit for human consumption but also unfit for cattle to drink and for irrigation of land. So much so, even the soil became unfit for cultivation. Death, disease and other disasters gradually resulted and the villagers in the area revolted as a result of this enormous environment degradation. The SC held that as per the Polluter Pays Principle, once the activity carried on is hazardous or inherently dangerous, the persons carrying on such activity is liable to make good the loss caused to any other person by his activity

irrespective of the fact whether he took reasonable care while carrying on his activity. Hence, it was ordered to polluting industries to pay to the villagers for damages caused to them.

These are the some of the important cases where the corporate houses were held to liable for environment degradation & eco-imbances.

The world in general and in India particular, almost all the corporations in order to maximize there profit exploit the natural resources and thereby harms the natural environment.

CONCLUSION

In India, there are variety of specific environment laws and an umbrella legislation i.e. Environment (Protection) Act,1986 have been passed for protection of the environment, but the corporations are evolving or have evolved a new agenda of CSR, for protecting the environment from going beyond the law. But the question click in the mind that there are variety of laws under which the provisions have been bade and environment Policy 2006 in India, why they not comply with them first. As it has been discussed in various cases, the industries are found guilty for harming environment and creating ecological imbalances, which shows, the reality of their CSR agenda. Actually it is nothing but a bad capitalism. They are incorporation CSR to show that they are actually socially responsible for environment and human resources and they are doing well for the society at large but the truth is that they are doing so for hiding their irresponsible business. Further, most of them show that they are socially responsible for the company image but in actual they are not concerned about the environment.

Lastly, I would submit that the CSR agenda is futile, unless the corporate house does not comply with the existing law. There is no need to go beyond the law; the existing law should be complied with.

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