

# Corporate Social Responsibility & Corporate Governance

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*The sixties and early seventies were turbulent times. Opposition to the Vietnam War, the environmental and civil rights movements, and radicalism generally roiled the corporate world, as much as the world at large. These disparate strands coalesced into the "corporate social responsibility movement," culminating in strident advocacy of federal chartering of large corporations, mandatory public interest directors, and required social accounting and disclosure. A principal feature of that movement is that, unlike in the early 1970s, the social responsibility is seen as converging with, rather than diverging from, broader trends in corporate governance, most specifically the "good governance" movement, which has been underfoot in many countries around the globe for well over a decade now.*

*In the 1990s and the twenty-first century, the pendulum has centred. The generally accepted governance model envisions a board of directors made up by a super majority of truly independent directors. Independent directors supply the monitoring and fill the void dispersed shareholdings produce and the separation of ownership from control highlights. Instead of attempting to manage the corporation's business and affairs, in the "good governance" movement, directors take on a more focused mission. With its independence preserved by a board nominating committee— itself comprised of independent directors—and the integrity of information upon which to base evaluations aided by an audit committee, the board's role is to hire, monitor, and, if necessary, replace the senior executive officers, most particularly the chief executive officer.*

*With this article, the author shall attempt to understand the scope of corporate social responsibility and its relationship with corporate governance. The balancing act carried out by corporation between profit motives and at the same time maintaining the ethical/moral responsibility that they owe towards the society at large.*

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120,000 people continue to suffer from severe health ailments related to the Bhopal gas leak accident and contamination<sup>1</sup>.

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 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 an annual sale of \$28 billion, says it is "committed to the principles of Sustainable Development, and its approximately 50,000 employees seek to balance economic, environmental and social responsibilities."

*B. Has anything changed?*

What in effect has changed during the past two decades in India in the time span between the above examples? Undoubtedly, on the one hand, the business operating environment has turned from one, which was open and hostile (The Coca Cola Company was asked to leave India in 1977) to be very warm and welcoming in India's new era of economic liberalization (India is now marketed as a new global business destination).

This has not reflected in any new responsible behaviour on the side of the corporates themselves. In fact, while some cases come to light, others

<sup>1</sup> [http://www.Mu.mtu.edu/hu\\_dept/tcCtymtu/papers/bhopal.htm](http://www.Mu.mtu.edu/hu_dept/tcCtymtu/papers/bhopal.htm) <last visited 15/03/2009> <sup>2</sup> US\$ 3.4 billion Foreign Direct Investment (FDI) into India in 2001-2002, compared to USD 43 billion in China. India policy is to pursue higher FDIs. [http://www.atimes.com/atimes/South\\_Asia/DI07Dj07.html](http://www.atimes.com/atimes/South_Asia/DI07Dj07.html) <last visited 15/03/2009>

remain hidden. For example, multinational companies exploring new markets in India have been known to resist more stringent environmental legislation in India, which may be at par with those in developed countries<sup>3</sup>. Many international brands, marketing new materials such as plastics, food packaging or electronics do not bring along systems of waste minimization or management, which they readily incorporate into their western operations. Corporate Social Responsibility then does not seem to be a globally practiced work ethics.

On the other hand, during the same period, "Responsible Care," "Corporate Social Responsibility (CSR)" and the UN based "Global Compact" were new terms to have found increasing international legitimacy as today's way of doing business. But are they real? As corporates become more global and enter newer developing country markets, such as in India and China, these terms are widely used on websites, in corporate literature and in presentations, evidently to convince people that things have changed and that a new ethical global business practice is underway. However, the nature of engagement on the ground leaves a lot to be desired.

### *C. India and CSR*

In India, the market is the new 'mantra.' Globalization has brought in new players and alluring products into markets. The growing middle class, which has been bereft, of 'goods' in the past, is too happy consuming, to want to pay heed to what may lie underneath. American style, glass lined shopping

<sup>3</sup> Various environmental norms in India are much more lax than EU norms for example and resisted by multinationals.

malls teem with the newly rich. Plastic money has made hitherto inaccessible goods merely a signature away. It is a new ethos, expectant and eager, which draws in glitzy brands supported by nubile advertising. The dismal human condition of the rest of the country does not exist here, and the fact that over 25 % of the country does not have even a meal a day is mere statistics.<sup>4</sup> It is an engagement, which for many is an uncomfortable one, and a willingness to believe in corporate literature an easy 'out' of any possible guilt. In such a context the picking seems to be easy for businesses with the 'system' available to be beaten for profit. Terms like '*ethical behaviour*'<sup>1</sup> can put an uncomfortable hurdle in that path and for powerful corporate bending rules, is not too difficult. Corporate philanthropy helps as well. NGOs are funded to carry out 'community development' work, and these too are advertised as part of the branding process<sup>5</sup>. Cynically, such donations also obtain local tax rebates. But even though some people may benefit from such charity, it does not translate into changing the way business itself is done. A few pertinent questions that can be raised at this stage are:

- Can Corporate Social Responsibility truly be a reality in such a context?
- Does it need other legal and institutional pushes which empower the citizenry to function adequately?

<sup>4</sup> India is home to the largest number of hungry people in the world, According to the United Nations Development Program's "Human Development Report," this exceeds 233 million hungry people, c.f. <http://www.foodrelief.org/articles/22/1/India-has-largest-number-of-hungry-people-UN/Page1.html> <last visited on 15/03/2009>

<sup>5</sup> Unilever website for example states "Community involvement is one element of our corporate social responsibility. Around the world our brands and companies engage with a wide variety of social and environmental causes to help people, their communities and the environment." c.f. [http://www.article13.com/A13\\_ContentList.asplstrAction=GetPublication&PNID=1359](http://www.article13.com/A13_ContentList.asplstrAction=GetPublication&PNID=1359) <last visited on 15/03/2009>

Such provisions can include effective liability laws, information disclosure requirements, corporate accountability and an impartial implementation of various citizens' rights through various bodies. Take the case of producer responsibility for waste management. Many countries in Europe, including Switzerland, Sweden, Germany etc, by law need companies to collect used cars, television sets, computers, and batteries and to dispose them off. However, these 'responsible' models work in the given legal and social milieu. The same companies do not show such 'enlightened' behaviour in India, and in fact often resist the setting up of such systems through their immense lobbying powers with governments. It would be futile to expect CSR to work in such an environment. It can be argued that without such enabling conditions in a society, CSR cannot effectively work. It would need a functioning democracy that delivers not only in its intent but also in its institutions. When the balance of power in areas of civil liberties, environmental and social rights between industry, the citizens, and the state is equal then CSR could guide the larger role business has to play. Under such political conditions CSR, even when voluntary, puts a high degree of accountability onto the corporate entity. Shareholders would then accept that business goes beyond profits and dividends, into the manner in which these have been achieved.<sup>6</sup>

In another realm, where institutions meant to protect rights of society are not firmly in place and the power to influence processes is not vested enough in the citizenry, CSR could become out of place and misleading. No

<sup>6</sup> Corporate Social Responsibility: a critical perspective from India, by Ravi Agarwal c.f. [http://www.toxicslink.org/qdocs/Corporate\\_Social\\_ResponsibilityjnIndia.pdf](http://www.toxicslink.org/qdocs/Corporate_Social_ResponsibilityjnIndia.pdf) <last visited on 15/03/2009>

doubt India is a democracy, one that is very successful at ensuring a peaceful transference of power through an electoral system every five years.

Yet, the country faces gross social inequities of poverty and a new affluence for a few. Human, consumer and environmental rights are contested terrains, and corporate scandals are commonplace. Many environmental and social legislations have been enacted under its strongly democratic Constitution. However, implementation is dismal and reflects the fact that Institutions responsible for this are weak and unaccountable to public pressure. In some areas, especially relating to marginalized sections like workers, there is also an inadequate legal focus.

For example, there is no comprehensive Occupational Safety and Health Act, nor are Information Right laws in place. Though India is party to several international environmental and labour conventions, many such treaties including International Labour Organization (ILO) and United Nations Environmental Program (UNEP) have not been ratified<sup>7</sup>. Corruption in high circles is regularly reported,<sup>8</sup> but convictions are almost non-existent. In such a scenario, CSR then becomes a mere 'web site' declaration, with no pressure to deliver on the ground.

<sup>7</sup> The UNEP POPs as well as PIC Conventions, the ILO' Freedom of Association and Protection of Right to Organised Convention (No.87), Right to Organise and Collective Bargaining Convention (No.98), Minimum Age Convention (No. 13 8), Worst forms of Child Labour Convention (No. 182)

<sup>8</sup> In a scandal in October 2003, a Cabinet Minister was caught on videotape accepting bribe from a representative of an Australian mining company. He had to resign. The case is under investigation, c.f. <http://www.globalintegrity.org/reports/2006/india/timeline.cfm> <last visited 15/03/2009>

## II. What is Corporate Social Responsibility?

In their key *Communication of 2002*, the *European Commission* presented CSR as - "*a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.*" As with all other efforts to spell out the notion (at the EU level, as well as in the context of the activities of the United Nations, the OECD, and various other supranational bodies), particular note should be taken of the word "*voluntary.*" Thus, actions within the framework of CSR are seen as complementary to, rather than as a part of, normative regulatory processes. For many commentators, indeed, this has developed into yet another laboratory in which to test propositions about the efficacy and desirability of so-called "soft law" forms of regulation, in preference to more traditional "hard law" regulatory approaches.

This has immediately given rise to controversy over the impact of any such actions—with more pessimistic observers commenting on the absence of sanctions to underpin any voluntary undertakings, while others prefer to stress the advantages of voluntary commitments in terms of flexibility, nuanced self-regulation, and what are presented as "mature" corporate governance frameworks.<sup>10</sup>

<sup>9</sup>Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, COM(2002) 347 final c.f. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0347:FIN:EN:pdf> <last visited 15/03/2009>

<sup>10</sup>For *e.g.*, the concerns expressed by the European Trade Union Confederation (ETUC), Press Release, ETUC Office of Press and Communications, Corporate Social Responsibility and European Trade Unions: Danger of a Rift (Mar. 14, 2006), c.f. <http://www.etuc.org/2190>. <last visited 15/03/2009>

The European Council's ensuing *Resolution of the Employment and Social Policy Council on CSR*,<sup>4</sup> drew inspiration from the European Commission's earlier Communication, in which it was laid out what have come to be described as received "principles" of CSR— involving:

*"recognition of the **voluntary nature** of CSR; a need for credibility and transparency of CSR practices; a focus on activities where Community involvement adds value; a balanced and broad approach to CSR, including economic, social and environmental issues as well as consumer interests; attention to the specific needs and characteristics of SMEs; and support of, and compatibility with, existing internationally agreed instruments. . . ."*

Once again, the emphasis is upon the "voluntary nature" of any actions—this time taking into account any existing "internationally agreed instruments." In fairness, however, it should be noted that the European Council did go on to emphasize that: *"CSR is behaviour by business over and above legal requirements, which should continue to be properly enforced"*.

Despite the wide spectrum of approaches to CSR, there is large consensus on its main features. Thus, it is suggested that:

- CSR is behaviour by businesses over and above legal requirements, voluntarily adopted because businesses deem it to be in their long-term interest;

<sup>4</sup>Council of the European Union, *Resolution of the Employment and Social Policy Council on CSR* c.f. [http://www.ialemiliaromagna.it/PUB/progetti/loderes/Documenti/DOCUMENTI/MatehaliUtili/EUjCouncil\\_Resolution\\_on\\_CSR.pdf](http://www.ialemiliaromagna.it/PUB/progetti/loderes/Documenti/DOCUMENTI/MatehaliUtili/EUjCouncil_Resolution_on_CSR.pdf) <last visited 15/03/2009>

- CSR is intrinsically linked to the concept of sustainable development: businesses need to integrate the economic, social, and environmental impact in their operations; and,
- CSR is not an optional "add-on" to business core activities—but about the way in which businesses are managed.

Not dissimilar values can be seen elsewhere, as, for example, in the context of the 1999 *OECD Principles of Corporate Governance*, where it is observed that:

*"Corporate governance relates to the internal means by which corporations are operated and controlled. While governments play a central role in shaping the legal, institutional and regulatory climate within which individual corporate governance systems are developed, the main responsibility lies with the private sector. A good corporate governance regime helps to assure that corporations use their capital efficiently. Good corporate governance helps, too, to ensure that corporations take into "*

Further evidence of the interest aroused by concerns for improved corporate governance and the promotion of values that can be broadly considered under the rubric of CSR may be seen in the development of standards for benchmarking corporate behaviour in various dimensions. Particular mention should be made here of progress towards "SA 8000," and a

<sup>12</sup> OECD Principles of Corporate Governance *c.f.* [http://www.bestpractices.cz/praktiky/ETIKA\\_V\\_PODNIKANI/p2003\\_oecd\\_principles\\_of\\_corporate\\_governance.pdf](http://www.bestpractices.cz/praktiky/ETIKA_V_PODNIKANI/p2003_oecd_principles_of_corporate_governance.pdf) <last visited 15/03/2009>

range of like developments, purporting to set measures against which corporate behaviour may be assessed in pseudo-empirical terms.<sup>13</sup>

The broader context for all of this has been a number of international texts and documents addressed to business, emanating both from global organizations, such as the United Nations or the OECD, and from regional bodies, such as the Council of Europe or the European Union.<sup>14</sup>

Even the Hon'ble Supreme Court has observed that the traditional view that a company is the property of the shareholders is an exploded myth.<sup>15</sup> According to the new socio-economic thinking, a company is a social institution having duties and responsibilities towards the community in which it functions. Obviously, the Hon'ble Supreme Court of India was referring to CSR, when it spoke of 'duties and responsibilities' towards the community. The generally accepted view is that if a company has the resources and has come a long way in its progress, it owes a debt to the society and the community in which it has progressed. Also, it is agreed that if a company has caused some loss to its surrounding areas, it is its obligation to make up for that loss, whether technical or environmental<sup>16</sup>, as a part of its CSR.

<sup>13</sup> Social Accountability International's SA8000:2001 standard was developed in 1997 and has become the most widely recognized standard in this field.

<sup>14</sup> The ILO tripartite declaration of principles concerning Multinational Enterprises (MNEs) and Social Policy (1977, revised 2000); the OECD guidelines for MNEs (1976, revised 2000), at [http://www.investment.gov.eg/MOI\\_PORTAL/OtherSpeeches/OECDGuidelines.pdf](http://www.investment.gov.eg/MOI_PORTAL/OtherSpeeches/OECDGuidelines.pdf) <last visited on 15/03/2009>

<sup>15</sup> *National Textile Worker's Union v. P.R. Ramakrishnan*, AIR 1983 SC 759

<sup>16</sup> The *Polluter Pays* principle as laid down by the Supreme Court in *UCC v. UOI*, AIR, 1992 SC 248 ; *Indian Council of EnviroLegal Action v. UOI* AIR, 1996 SC 1037

### III. From Philanthropy to Stake Holder Participation: The New Paradigm of Corporate Social Responsibility

The conceptualization of corporate social responsibility up-till the 1990's was purely in terms of philanthropy or charity. Welfare programs or initiatives were introduced not as a duty or a responsibility but as a form of charity that was supposed to indicate the virtues of the company or the organization. Many industrial groups like the Tatas or Birlas setup charitable trusts that provided financial grants for various worthy causes. Although there were some cases where-the corporation took up a more active role like the establishment of the Birla Institute of Technology, Pillani by the Birlas or setting up of primary schools by several major industrial groups for their workers's children but even in these cases the approach was philanthropical.

However the post-liberalization phase has seen a fundamental shift from this philanthropy-based model of CSR to a stakeholder- participation based model. The change is evident in the statements about corporate social responsibility being made by India's leading industrial groups like the Tatas, "*over the years, the nature of the company's involvement with the community has undergone a change. It has moved away from charity and dependence to empowerment and partnership*" and the consistent transformation in their corporate social responsibility practices in the last decade. In the stakeholder model the community in which the corporation is present in is seen as a stakeholder in the company and therefore, the company has certain obligation and duties towards it like it has towards its other stakeholders (customers, employees, shareholders). It is a recognition of the fact that companies

<sup>17</sup>TATA Steel official website c.f. [www.tatasteel.com](http://www.tatasteel.com) <last visited on 15/03/2009>

perform in non-financial arenas such as human rights, business ethics, environmental policies, corporate contributions, community development, corporate governance, and workplace issues and company should be held accountable for its 'triple bottom-line' that includes social, environmental, and financial performance and not just the financial aspect.

#### IV. Public Sector Enterprises, Corporate Social Responsibility and Liberalization

In the article so far, the focus has been on the private sector and its greater societal obligations. India, also, has a large public sector with several huge corporations. Companies operating in various sectors like petroleum, heavy industries, aviation, mining, steel, equipment manufacturing and shipping. The Indian public sector has had a long tradition of corporate social responsibility and the initiatives of corporations like the Oil and Natural Gas Commission (ONGC), Steel Authority of India Ltd (SAIL) and Gas Authority of India Ltd. (GAIL) have been critical in the development of several backward regions of the country. Indian Airlines and Bharat Heavy Electronics have been widely acclaimed for their disaster management efforts.

The era of liberalization has led to the privatization of several public sector units and others being forced to make switch from being monopolies to being free market players with intense private competition. These dynamic process have raised several key questions related to the corporate social responsibility of the public sector:

Times Group official website c.f. [www.timesfoundation.org](http://www.timesfoundation.org) <last visited on 15/03/2009>

- What should the social involvement levels of a company or corporation once it is privatized?
- Should public sector units continue to play the same social role as they did in the pre-independence era or is there a need to scale back their social responsibility initiatives?

These are questions that are central to the post-liberalization debate and need further analysis and research. Meanwhile, the opponents of privatization have used a 'corporate social responsibility' argument for their cause, they argue that considering the vital importance of the social role played by the public sector in India, there should not be any privatization of these vital industries. The P.S.U.s hold a very important position, especially with the certain social guarantee that it provides to its workers, contrary to what happens in the private sector. Hence, CSR should not be a ground to justify privatisation, as clearly PSU have a distinct social role of their own.

## V. Conclusion

The new economic era in India i.e. the post-liberalization phase of the Indian economy was a catalyst for the radical transformation in the corporate social responsibility related practices in the country. The change was twofold: transformation of the conceptual understanding of corporate social responsibility and innovations at the implementation level. At the conceptual level, there was a fundamental transformation from the charity-oriented approach to the stakeholder-oriented approach where the target group was seen as stakeholder in the community whose well-being was integral to the long term success of the company. However, the real revolution occurred at

the implementation stages where companies have started committing manpower, expertise in addition to financial resources in order to provide a host of services, programs and schemes that are flexible enough to accommodate the needs of the target community. The CSR initiatives have also seen greater people participation at all stages and tighter accountability standards. The issue of norms for CSR seems to have been adequately dealt with by industry practices like benchmarking, CSR ratings and certification by different agencies.

However, as of now, India is still not ready for a substantive law for the enforcement of CSR as it still needs to be flexible with its policy so as to balance the needs of a developing country- i.e. to attract foreign investors by providing a congenial environment to invest without having too many stringent law- along with its responsibility towards its own people. However, certain judicial pronouncements are a positive indication that the country is slowly getting ready for such a law. India is coming out of the traditional view of *'doing for the sake of if'* and coming forward and realising their responsibilities. When the concept of CSR begins to be understood as a business oriented concept, without which the business would become difficult, it will be the time when India may be ready for statutory backing to the CSR.

Notwithstanding the above and any amount of sermonising on the CSR platform, ultimately 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.