

the test as to the existentiality of this Doctrine becomes imperative. Subject to the existentiality of doctrines alone the law could be declared as viable and vibrant and otherwise not. It is thus assertive that the doctrines should not be sacrificed in the face of law as such law would always be draconic and idiotic. Whenever the law changes the face of the society changes and the status of the instrumentality changes. It is felt that law is changed subject to the change in the society. Whereas the changed law will change the face of the society more rapidly which is happening in the country in the present we changing the law based on change in the society. It is propagated that due to change in the society the law is changed. It is hypocritical and far from truth.

These reactions make platform for their further existence as well as functioning. This in an inevitable change or the consequence of such amendments. We are the masters of our actions but servant of the consequences. Each amendment may be justified or may not be faulted, but they have changed the characteristics of the instrumentalities of the state as a follow on. Consequently the functional differences and differences in efficiency of each instrumentality and

consequent other causes and effects and so on and so forth. It appears that the doctrines such as 'checks and balances' ought to be considered as the basis and foundation of law around which the law is to be built rather than trying to seek adjustment of those doctrines to the law. It is something like 'putting the horse before the cart'.

It is beyond any debate that the doctrine free laws are destined to malfunction and the country has to pay high price for it. Therefore, the doctrines are the foundations and there are no substitutes to those doctrines and accordingly they are to be strictly adhered to as otherwise the edifice built over land without foundation would fall like pack of cards. Thus, the doctrinal legislation would alone work for survival of the society in welfare and well being and not otherwise. Various Legal Maxims and doctrines of law form foundation for any well constructed legislation for they are propounded by the exemplarily intellectual jurists who practiced checks and balances in their thought, word and deed in making their personality and wisdom and then subsequently those principles of law. For example, Vidura, Sanjaya and Bhishma are indomitable jurists on law as well as political science.

NEED FOR CORPORATE SOCIAL RESPONSIBILITY ACT AND ITS MODEL

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Abstract

In this article I would like to bring down the significance of an Act on corporate social responsibility to the society and an effective model for its efficient functioning without many hindrances in implementation.

Introduction:

Corporate Social Responsibility is like a wind, where most of the activity is invisible; it is often delivered at an erroneous time in an erroneous manner. It is time and again an active attempt to increase corporate

domination, rather than simply a defensive image management operation. This is the reality which exists and which one has to digest. The term corporate social responsibility can never be precisely defined because it keeps altering depending on the society and occasion. It can only be described. One of the pertinent descriptions with relation to our society was propounded by Votaw who referred to the term as, “a brilliant one... it means something but not always the same thing to everybody... many simply equate it with a charitable contribution. Some take it to mean socially conscious; many of those who embrace it fervently see it as a mere synonym for “legitimacy” in the context of belonging or being proper or valid; a few see it as a sort of fiduciary duty imposing higher standards of behaviour of business man than on citizens at large¹.

Current Scenario of Corporate Social Responsibility:

Traditionally in India, the corporate houses were responsible towards the society, due to the nation's culture which gave high regard to the society. Corporate social responsibility has been followed in India decades ago without any external compulsion by companies such as Tata. But, as time passed by the corporate sector's attitude towards the society changed, they gave utmost importance to their corporate houses alone due to which the gap between India and Bharat widened. To reduce this, the government took a number of superfluous initiatives; one among them is introduction of corporate social responsibility voluntary guidelines 2009. The important feature of this guideline is the word voluntary, which itself is considered by the Indians to be useless or unessential.

Adam Smith in his 1759 book, “The theory of moral sentiments”, spoke on the importance of altruism in human motivation,

he used an example in this book that is highly relevant to the present Corporate Social Responsibility scenario, he questions a man of humanity in Europe that how would he respond on hearing that the great empire of China was suddenly swallowed by an earth quake? His answer was that if this man was to lose his little finger tomorrow he would not sleep tonight, but provided he never saw the people of China, he would snore with the utmost profound security over the ruin of a 100 million brethren, the destruction of the immense multitude seems plainly an object less interesting to him rather than his paltry misfortune of his own.

Why this example is relevant is because it deals with the inherent tendency of humans. Moreover Adam Smith is sceptical not about the strength of altruism but about its scope and reach. The same problem lies at the core of jurisprudence of Corporate Social Responsibility. Corporate Social Responsibility existing today is a green wash. Green wash is a sort of disinformation disseminated by an organisation so as to present an environmentally responsible public image².

Need for an Act:

The Gross Domestic Product (GDP) expanded at a rate of 8.60% in the last quarter in India. Our GDP is worth 1296 billion dollars or 2.09% of the world's economy, according to World Bank. At the same time as per a Times of India report, acute poverty prevails in eight Indian states, including Bihar, Orissa, Uttar Pradesh, and West Bengal, together accounting for more poor people than in the 26 poorest African nations combined, a new ‘multidimensional’ measure of global poverty. This is the wretched position of our country, where rich are getting richer and poor are getting poorer. India being one of the densely populated states in the world needs a number of basic

1. D. Votaw, “Genius Becomes Rare in The Corporate Dilemma: Traditional Values and Contemporary Problems”, ed. 1973, p.11.

2. Subhabrata Bobby Banerjee, “Corporate Social Responsibility- The Good, The Bad and The Ugly”, ed.2007, p.6.

amenities which could be provided in full only through the contributions of the corporate houses. The bridge between the rich and the poorer has to be reduced or else the dream of our nation becoming a developed country by 2020 will not happen. This could happen only if the social responsibility is imposed upon the corporate houses through an act and not through voluntary guidelines. Which is evident from the recent happenings where a couple of companies (BP and Goldman Sachs) which were rewarded with acclaim from the governments for their role towards corporate social responsibility, but soon after this they faltered to deliver even the basic necessities which needs to be fulfilled by a company. There are almost more than seven lakh registered companies in India out of which almost seven thousand are listed in the stock exchange, but only handful of companies only indulge in Corporate Social Responsibility activities.

Voluntary Corporate Social Responsibility philosophy is used as a subtle device to maintain economic power in their own hands by extending their influence and decision making into so many non-business areas that they be benevolent dictators. They make use of their socially clean image to the optimum level that they intend to do what they aren't supposed to. The old adage from Milton Friedman that the business of business is business is proving untrue increasingly the business of business is power and control. This has to change into business of business is people, which could be achieved through *two A's*, Act and Awareness among the entrepreneurs society, making them to know what are the benefits attached through social activities.

'Did you ever expect a confrontation to have conscience, when it has no soul to be damned and no body to be kicked? And by god, it ought to have both! These words were said by first Baron Thurlow, Lord Chancellor of England. Through this quote

he wanted to bring to light the real state of corporations from whom we expect them to be socially responsible. Taking these entire factors one would definitely be convinced with the fact that an Act on Corporate Social Responsibility is the need of the hour.

Model of the Act:

The model of the Act is very important factor since it is only this which determines the success of the act and its impact on the nation. With, regards to model on how it should be I would like to propound a theory formulated by one of the world's successful businessmen of all times, Bill gates. He has derived a theory of '*Creative capitalism*' in which he says companies that combine profit motive with environment and other concerns can thrive in competitive world only if they are able to attract its employees and customers to participate in the process. That is customers have to pay more for the product, similarly companies must be able to attract high level employees relatively cheap, who are ready to contribute a bit towards the society. What is required is contribution from every side but the relative amount from each side will vary. Corporate social responsibility should encompass within itself a wider community, consisting of employees, consumers, suppliers and the society at large. It will be very meagre from the consumer and more from the entrepreneur; all the others like distributors, suppliers, employees will fit in between. Two major factors for proposing such a model is because, firstly even if the corporate houses are compelled to contribute and they do so, if it is not utilised and used by the public then the basic purpose of the introduction of the Act for the upliftment of the Society would not be attained. If one the other hand if everyone is brought within the circle of contribution then there would be a sense of awareness among everyone and the Act would not falter at no point of time. The second reason is like the old adage which says power corrupts and absolute power corrupts

absolutely, similarly if the entire load of contribution is imposed on the Companies alone then due to immense pressure of performing they might falter to deliver even basic functions which are required to be delivered by a corporate house. By making everyone responsible although the degree might vary it would be immensely helpful in the long run for the Act as well as the society.

Measures to Curb Political Ascendancy:

Adequate measures should be taken to curb the misuse of the funds by the indulgence of political parties. This could be done through making quarterly disclosures by the companies on the amount contributed and to whom it was contributed. Restrictions should be imposed on the companies from contributing towards political parties or their benamis. Transparency is the bottom line for this, which could be achieved through continual disclosures. The disclosures or reporting should be certified by qualified auditors.

Eligibility, Councils, Privileges:

Enterprises which are classified as small and medium enterprises should be exempted, only listed companies, public companies and companies with turnover of certain amount,

net assets, on the basis of employees, etc could be made eligible. Even subsidiary companies of which the parent company fulfils the requirement should be prescribed.

A council should be set up to supervise, inspect and make necessary modifications to the Act whenever the need arises. Tax benefits or incentives should be given to all those who contribute for the up-liftment of the society through this Act.

Conclusion:

I would like to conclude my article stating there is no point in being a corporation, until you are responsible towards your society, which at least should be achieved through mandatory provisions. There is no point in complaining about the corporations attitude towards the society in the past, since both corporation and the society were at the nascent stages. But, now aren't in their developed stage and the society still lagging behind, this has to be fixed by the corporations. As Bill Maher said, 'we have bill of rights, what we need is bill of responsibilities.' If this is achieved then India will also become renowned like Denmark, and everyone will look upto us, and the dream of our country becoming a super power in the world is not too far.

SECTION 685 OF GREATER HYDERABAD MUNICIPAL CORPORATIONS ACT, 1955 — A NOTE ABOUT THE TWO DECISIONS 2010 (4) ALT 751 AND 2009 (2) ALT 652 = 2010 (3) ALD 47 — TAKING DIFFERENT VIEWS

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1. In the above two decisions, two learned Single Judges of the Honourable High Court considered the scope of Section 685 of the Hyderabad Municipal Corporations Act 1955

in different way. This section is on par with Section 80 Civil Procedure Code and provides that no suit against any Corporation could be filed without issuing notice as per the section.