

CORPORATE SOCIAL RESPONSIBILITY: A HUMAN RIGHTS PERSPECTIVE

K.M. Shazzad Mohashin*

ABSTRACT

Corporate social responsibility (CSR) is a growing global phenomenon. The idea is not without controversy and confusion though. At the present moment CSR activities are carried out more as a promotional affair motivated on philanthropy. Corporations may or may not do any CSR activities at their own volition. On top it there is no real legal obligation to perform them in an organised manner to attain an unified end. CSR activities are largely carried out sparingly. Very few legal initiatives have been introduced in a handful of states. Yet, large number of corporations still remains unaccounted for. Corporations can be and are quite often mighty powerful and their operations can pose serious threat to the rights of the people and the environment. The experience, in particular, oil, foot-ware, and apparel industries in the developing countries are not pleasant indeed. Even after that corporation too often will escape their liability under international law on grounds of state sovereignty and non-intervention into internal affairs as well as lack of personality. In that event, tightening national enforcement regime might become a potent weapon. This paper addresses these issues alongside the general corporate concern of wealth maximisation of the shareholders. The paper argues that violation of human rights and complicity in violation of human rights are issues of national as well as international law. The growing trend of conferring personality to international organisations is only a demand of time for greater global justice. However, to these entire process international human rights regime can be the perfect launching pad and a suitable point of reference. International human rights normative framework is based upon universal consensus and is the most effective global standard to measure the conduct of state and non-state actors. The framework is devoid of ambiguity and it imposes genuine implementation obligation upon the actors. Furthermore, it can influence the policy dialogue and change the rhetoric in favour of corporate conduct that is directed towards the protection and promotion of human rights. Both human rights and corporations become beneficiaries in this integrated approach. Corporations become more socially embedded enhancing its sustainability and profitability in the long run. Human rights regime benefits as well since it ushers a new avenue for implementation and realisation of human rights spreading the manual and language of human rights into more and more spheres and particularly in an important sphere of corporate activities and influence.

* **K M Shazzad Mohashin** is a Lecturer at the Department of Law & Justice, Jahangirnagar University.

INTRODUCTION

The origin of the concept of corporate social responsibility does not date back too long into history. The origin of corporate social responsibility also owes somewhat to the concept of stake holder theory in corporate governance. Though the concept of stakeholder theory is still in its most fragile state the claim for corporate social responsibility has gained greater mileage across jurisdictions. The term corporate social responsibility came to common use in the late 1960s and early 1970s, but perhaps it gained greater impetus in the last few years particularly as a result of the significant corporate response around the world to the Asian tsunami relief and rehabilitation cause after December 2004, than it did in the last four decades. And of course, who can forget the Bhopal disaster in 1984, where 40 tons of methylisocyanate gas leaked from Union Carbide India Ltd (UCIL), a subsidiary of Union Carbide Corporation (UCC) which, reports say, killed close to 4000 people and caused significant morbidity and premature death for another several thousands. Most unfortunate part of the fact is that the UCC managed to escape legal responsibility by an eventual settlement with the Indian government paying a mere sum of \$470 millions in compensation accepting a *moral responsibility* for which is the worst industrial disaster in history.

International business has experienced far-reaching structural changes over the years. With the rise of service and knowledge inventive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment.¹ The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Not only that too often expansion of business has been solely derived for profits caring very little or not caring at all about human rights or the environment. ‘Corporations are to make profits by whatever means they can’- can surely be not the supreme consideration. Corporations are often thought to be some sort of concession or privilege granted by the state. The claim gets firmly established when one goes through the history of company affairs, particularly the political activities, in the 18th and 19th century across the vast territory of Asia, Africa and America. Companies such as the East India Company or the Dutch East India Company carried

¹ OECD Guidelines for Multinational Enterprises, Preface, paragraph 2, <online available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>> (last visited on 28 August 2011)

out massive, in their terms, civilizing missions in these regions. Therefore, it is obvious that the impact of corporations is well felt and profound throughout history. These companies entered into agreements with local authorities, rulers, even kings in non-European world, though the general feeling was these were mere 'entities' lacking sovereignty which on the other hand these corporations used to enjoy.² However, the agreements were meant to be binding and any non-fulfilment with the terms of the agreement was met with sanctions and even military actions. Atrocities of the worst nature inflicted by European trading companies even could be justified because the non-European world was composed of uncivilized people. Francisco de Vitoria, the great Spanish jurist in the 16th century went to the extent of opining that (the Native Americans) did not have any law, authority to administer law, and even were incapable of maintaining family matters. They possessed defective intellectual capacity and were no better than wild beasts. These people needed guardianship and civilization. The process was a bloody one but was sophisticatedly disguised under the civilizing mission. Exporting civilization to the non-European world was the paramount consideration which expelled any evil that was inflicted to achieve it. Civilization was used as a barometer of difference in the hay days of colonization. The question that needs to be asked is the legitimacy of the 'civilizing mission' itself where bridging the gap between European and non-European world was seen as both the end and means of civilization. Things have only changed for the better ever since. Even though the author disapproves the 'civilizing mission' suggests that the same experience can be used to do good the 'historic debt' that the multinational corporations owe to people around the world. The process that was used to justify atrocities and denial of right needs to be applied to uphold and guarantee rights. 'Humanity' is the name of the mission. Humanity calls for respect for human rights and environment. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives.³ Many

² For a detail discussion on the issue, see generally, Anghie, A., *Imperialism, Sovereignty, and the Making of International Law*, New York, Cambridge University Press, 2004.

³ *Supra* note 1, paragraph 5.