

CORPORATE SOCIAL RESPONSIBILITY- ISSUES AND CHALLENGES FACED.

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Chapter 1

Overview

Corporate Social Responsibility (CSR) merely means the responsibility of the corporate that extends towards the society. “Corporate Social Responsibility” is a buzz word in the corporate world. CSR provisions are contained in section 135 of the Companies Act 2013, and companies rule, 2014¹.

Our social club has different walks of life with different status, different needs and ambition, thus it would be difficult in matching the expectations of the entire guild in every respect. Therefore government tries to implement and introduce such programmes which appears it to offer benefit to the guild as a whole.

CSR activities will only benefit a part of our society and leave the others high and dry. Rather if we can seek court interference to warrant the governments to do service without any discrimination, neither the people who form part of the society nor the Government would be able to do anything about such things.

The CSR provisions aim to offer, rules, regulations, guidance to the companies that are expected to spend 2% portion from their profits on CSR activities as specified in Schedule VII to the 2013 Act.

Applying the slogan of “Service First; Self Next” to corporation leaders is not going to help either. Companies are formed basically for profit making purposes only and every penny earned is spent for making more money. Largely, promoters and those who have definitive control of the company may be able to direct the manner and purpose for spending the money of the company on Corporate Social Responsibility activities.

¹KS Ravichandran- Corporate Social Responsibility – Emerging Opportunities and Challenges in India
Publication: LexisNexis First Edition 2016 Page 7 to 19.

Chapter 2

INTRODUCTION

When we discuss about corporate institution we focus on corporations which strives for profit-maximisation, leaving an impact of a social, economical and environmental nature. When we exploit the natural resources, it is obvious it's for human needs and therefore we take it as a social cost. Sometimes, the need could be the justification for excessive exploitation with greed and such exploitation could affect the society in very many ways. CSR provides a road map to justice in our society. The responsibility goes beyond what is normally expected out of Board of Directors of the companies, it extends to not only protecting consumers, employees, shareholders, governments, stakeholders, members of the company but also towards the society and environment as a whole. Though profit making undoubtedly would be goal; but companies must do their business in a socially responsible manner and thereby be proud to be a company who along with making profits realizes its social responsibility. When an entity indulges themselves with tax evasion and other unethical practices, it is said that it has failed to fulfil its social obligation. Thus if an entity retains huge distributable profits by not declaring dividends, it creates unutilised cash assets which if released will boost economic development and taxes could lead to more spending by the Government on social welfare schemes².

As large corporations are invariably companies incorporated under the Companies Act, the legislature has thought it fit to introduce, through the Companies Act, 2013 (the 2013 Act), a provision for requiring a company to spend a portion of its net profits on activities that fulfill its social responsibility³. Irrespective of the type of company, if a companies's net worth is five hundred crore rupees or more, or turnover of one thousand crore rupees or more or a net profit of rupees five crore rupees or more during any financial year, the provisions of section 135 of the 2013 Act and the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Policy Rules) will apply⁴. Business Dictionary defines CSR as "A company's sense of

² Ibid,Pg 7.

³ Notification of section 135 of Companies act.

⁴ Ibid.

responsibility towards the community and environment (both ecological and social) in which it operates⁵

The Economist, in January 20, 2005, stated that "Corporate social responsibility is now an industry in its own right, and a flourishing profession as well. Consultancies have sprung up to advise companies on how to do CSR, and how to let it be known that they are doing it. Most multinationals now have a senior executive, often with a staff at his disposal, explicitly charged with developing and coordinating the CSR function. In some cases, these executives have been recruited from NGOs. "There are executive-education programmes in CSR, business-school chairs in CSR, CSR professional organisations, CSR websites, CSR newsletters and much, much more".

The first step towards mainstreaming the concept of Business Responsibility was taken by the Ministry of Corporate Affairs (MCA). In the year 2009, it released "Voluntary Guidelines on Corporate Social Responsibility".

Later, in 2011, in furtherance of this step, the "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business" was issued by the Institute of Corporate Affairs. The nine 9 principles for doing business in a fair manner promoting the need and ethics and the core elements that come under those principles constitute the basis for doing business in a responsible manner. Abiding to the nine principles of Corporate Social Responsibility would certainly contribute to the social responsibility of the company.

⁵ Available at <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> [Accessed on November 8, 2017].

Chapter 3

National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business⁶:

Principle 1: "Businesses should conduct and govern themselves with Ethics, Transparency and Accountability".

The core elements being:

- Businesses should develop governance structures, procedures, provisions and practices that ensure ethical conduct at all levels; and also promote the adoption of these principles.
- Businesses should not engage themselves into unnecessary corrupt practices.
- Businesses should discharge all their responsibility to disclose all financial and other mandatory disclosures.
- Businesses should communicate transparency and assure access to information to all (shareholders, stakeholders and investors).
- Businesses should report on their adoption of these guidelines.

Principle 2: "Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle".

The core elements being:

- Businesses should assure safety and sustainable use of use resource over the life-cycle of the product from design to disposal.
- Businesses should make consumer's aware of their rights through education, product labelling, appropriate and helpful marketing communication, full details of contents and composition and promotion of safe usage and disposal of their products and services should be disclosed to the consumers.

⁶ MCA. (2017). *National Voluntary Guidelines for social, environmental and economic responsibility of business* . [online] Available at: http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.p [Accessed 23 Nov. 2017].

- Businesses should regularly review and improve upon the process of new technology development, deployment and commercialization, incorporating social, ethical, and environmental considerations.
- Businesses should recognize and respect the rights of society.

Principle 3: "Businesses should promote the wellbeing of all employees"⁷.

The core elements being:

- Businesses should provide equal opportunities amongst all without any discrimination of caste or gender at the time of recruitment as well as during the course of employment irrespective of caste, creed, gender, race, religion, disability or sexual orientation.
- Businesses should also respect the right to freedom of employees, association, participation, and also provide access to grievance redressal mechanisms.
- Businesses should not use child labour, forced labour or any form of involuntary labour, whether paid or unpaid.
- Employees should be informed about these guidelines on regular basis.
- Businesses should consider work-life balance of its employees, especially that of women.
- Businesses should ensure there is no harassment at workplace, and employees should feel safe and secure in discharging their responsibilities.
- Businesses should provide facilities for employees with special needs, and ensure payment of wages to be on time.
- Businesses should ensure upgrading all employees by providing access to necessary learning opportunities, on an equal and non-discriminatory basis and should also promote employee morale and career development.
- Businesses should provide safe, hygienic humane, which upholds the dignity of the employees.

Principle 4: "Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalised".

The core elements being:

- Businesses should recognize their stakeholders by understanding their concerns, and commit to engaging with them.

⁷ Supra note 6, Pg 10.

- Businesses should understand their responsibility and shall stay transparent about their impact of their policies, decisions, product and services.
- Businesses shall give extra importance/ attention to stakeholders in areas that are underdeveloped.
- Businesses should resolve differences with stakeholders in a just, fair and equitable manner.

Principle 5: "Businesses should respect and promote human rights"⁸.

The core elements being:

- Businesses should understand human rights content of the Constitution of India.
- Businesses should accept the fact that human rights are inherent, universal, indivisible and interdependent in nature.
- Businesses should also promote the awareness and realization of human rights across the globe.
- Businesses should have respect for human rights in management systems by giving them access to grievance mechanisms.

Principle 6: "Businesses should respect, protect, and make efforts to restore the environment".

The core elements being:

- Businesses shall utilize natural and manmade resources in a sustainable manner and ensure the sustainability of resources by reducing, reusing, recycling.
- Businesses should report their environmental performance to the stakeholders timely.
- Businesses should take measures to prevent pollution. They should assess environmental damage and bear the cost of pollution abatement with due regard to public interest.
- Businesses shall improve their environmental performance by adopting cleaner production methods, promoting the use of energy efficient and environment friendly technologies.

Few Important Environmental Laws that prevail in India striving to preserve and protect the environment and seeking to achieve ecological balance are as follows:⁹

1. The Environment Protection Act, 1986

⁸ Supra Note 6, Pg 14.

⁹ Supra Note 6, Pg 15.

2. The Water (Prevention and Control of Pollution) Act, 1974
3. The Air (Prevention and Control of Pollution) Act, 1981
4. The River Boards Act, 1956
5. The Water (Prevention and Control of Pollution) Cess Act, 1977
6. The Mines and Minerals (Regulation and Development) Act, 1947
7. The Atomic Energy Act, 1962

Principle 7: "Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner".

The core elements being:

- Businesses, while pursuing policy of advocates, must ensure that their advocacy positions are consistent with the 9 principles of national voluntary guidelines.
- Businesses should also to an extent utilize the trade and industry chambers and associations and other such collective platforms to undertake such policy advocacy.

Principle 8: "Businesses should support inclusive growth and equitable development"¹⁰.

The core elements being:

- Businesses shall understand their impact on social and economic development, and respond through action to minimise the negative impacts.
- Businesses should invent products, technologies and processes that would promote the wellbeing of society.
- Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation.
- Businesses trying to develop regions which are underdeveloped should be especially sensitive to local concerns.

¹⁰ Supra Note 6, Pg 16.

Principle 9: "Businesses should engage with and provide value to their customers and consumers in a responsible manner".

The core elements being:

- Businesses should disclose all information truthfully and factually, through labelling and other means, to society. Minute details from the use of the products, so that the customers can exercise their freedom to consume. Wherever required, businesses should also educate their customers on the safe and responsible usage of the products.
- Businesses should promote and advertise their products in a way that it doesn't mislead or confuse the consumers, by violating any of the principles in these Guidelines.
- Businesses, while serving the customers, should take into account the overall well-being of the customers and that of society.
- Businesses should make sure that they do not restrict the freedom of choice and free competition.
- Businesses should exercise due care and caution while providing goods and services that result in over exploitation of natural resources.
- Businesses should facilitate adequate grievance mechanisms to address customer concerns and feedback.

Chapter 4

Unethical and Undesirable Corporate Practices

➤ **Ranbaxy**

A Newspaper report in Business Standard, 29th May, 2013 stated that the United States Food and Drug Administrator (USFDA) banned 30 Ranbaxy a Pharmaceutical company/drugs being supplied from its Indian facilities to the US. Ranbaxy pleaded guilty to felony charges related to drug safety and agreed to pay \$500 million in civil and criminal fines under a settlement with the US Department of Justice. Former executive of Ranbaxy and Whistle Blower Dinesh Thakur's suit, alleging fraud by the company, blew the lid off the controversy. Ranbaxy, in papers filed in Federal court in Baltimore, admitted it had sold batches of drugs that were improperly manufactured, stored and tested which was an unethical social practise leading to failure of social responsibilities of the company¹¹.

➤ **The Volkswagen**

In September 2015, the Environmental Protection Agency (EPA) found that Volkswagen AG, a German Passenger Car and Vehicle manufacturer cars being sold in America had a "defeat device" or software in diesel engines that could detect when they were being tested, changing the performance accordingly to improve results. The German car giant has admitted it purposefully misrepresented emissions for its diesel models by using software that reported different values during testing and operation, due to which they had a major push to sell diesel cars in the America, backed by a huge marketing campaign trumpeting its cars low emissions. CSR does not simply require companies to earmark a small portion of their profits and spend the same on CSR activities. In fact, it is important that the companies that make profits do not indulge in unethical practices for making commercial gains.

Newspaper "The Business Standard" reported this incident dated on 25th September, 2015 as follows:

¹¹ Bhattacharya k. Asis, "Ranbaxy- Selling improperly manufactured drugs" Business Standard ,Year 2013.[Accessed on October 17, 2017].

- The company said its vehicles with 1.6-litre and 2.0-litre diesel engines are "affected by the manipulations that are being talked about."¹²
- The company's Jetta, Beetle, Golf and Audi AS models in the US from 2009 to 2015, and the Passat from 2014-15, were fitted with the devices which produced doctored results.
- The value of Volkswagen company has shrunk by around 30 percent since the scandal was revealed, their sale has reduced.
- The company has also been accused by the EPA of modifying software on the 3 litre diesel engines fitted to some Porsche and Audi as well as VW models. VW has denied the claims, which affect at least 10,000 vehicles.
- Volkswagen has set aside 6.5 billion euros (\$7.3 billion) to cover the costs of the scandal.
- The company's chief executive Martin Winterkorn resigned following the revelation saying he was "shocked" by recent events and was "not aware of any wrongdoing on my part".
- German public prosecutors have considered an investigation, with US authorities also said to be planning criminal investigations.
- Simultaneously, other countries around the world and Europe have also started their own inquiry to find out whether the fudging practice also took place there.

➤ **Mitsubishi**

Another day another wrong doing by a car manufacturer company cheated. The Newspaper Business Standard dated 21st April, 2016 reports that Mitsubishi Motors cheated on fuel-efficiency tests, and panic selling wiped about USD 2.5 billion off the automaker's market value in response to its shock admission that it cheated. Japanese transport ministry officials raided company's Research and Development centre. Following the admission, the government slammed the maker of Outlander Sport Utility Vehicles SUVs and Lancer cars. The embattled stock has free fallen, plunging 15 per cent to down 20 percent, after diving 15 since the news of the fuel-cheating first broke. Mitsubishi admitted that unnamed employees rigged tests to make some of its cars seem more efficient than they were in reality¹³.

¹² Sanni Juoperi, Thesis published by University of Jyväskylä (School of Business and Economics), Year 2017 [Accessed on October 26, 2017].

¹³ IANS, "Mitsubishi fined for faking fuel consumption". Business standard Year 2016 [Accessed on October 20, 2017].

➤ **JOHNSON & JOHNSON**

A recent report in Business Standard Newspaper, 4th May, 2016 stated that Baby care products manufacturer Johnson & Johnson (J&J) was ordered by a US jury on Monday to pay 855 million (Rs 363 Crore) to a woman who said that using the company's talcum powder for feminine hygiene caused her to develop ovarian cancer. J&J is the leader in the baby care products market in India. This includes everything from diapers to talcs, creams, lotions and soaps. In response to a mail, a J&J spokesperson said:

*"The jury's decision goes against 30 years of studies by medical experts around the world that continue to support the safety of cosmetic talc. Johnson & Johnson has always taken questions about the safety of its products extremely seriously, Multiple scientific and regulatory reviews have determined that the talc is safe for use in cosmetic products and the labelling on Johnson's Baby Powder is appropriate. We will appeal the recent verdict and continue to defend the safety of Johnson's Baby Powder."*¹⁴

The last time J&J had suffered a trial loss, in February 2016, it was asked to pay \$72 million (or Rs 475 Crore) to a family of a US woman who died of cancer. Indian regulators had subsequently conducted an investigation of J&J's factory in Mulund in the Mumbai city. The investigation came after samples of Johnson's baby powder were picked up for testing by the Food and Drug Administration (FDA) in Maharashtra which ended up proving things against them.¹⁵

➤ **Samsung Labour Violations**

World's two biggest smartphone suppliers, Apple and Samsung, which rely on Chinese labour to produce millions of phones every quarter, has been under controversies of labour violations since a time now. The guardian.com reported on 1st July, 2014 that an external audit found labour violations at dozens of its suppliers in China, including failure to provide safety gear for their labourers and excessive working hours, but none involved child labour. The findings outlined its annual corporate social responsibility report. "A majority of suppliers do not comply with China's legally permitted overtime hours," says the report that and it is demanded that those suppliers reduce overtime.

¹⁴ Supra Note 1, Pg 18.

¹⁵ Singh Surbhi, "Johnson & Johnson told to pay up after powder gives woman ovarian cancer", Business Standard Times Year 2016. [Accessed on November 7, 2017].

Apple was the focus of intense scrutiny from 2010 over labour practices at Foxconn, its principal supplier in China. Samsung has already come under controversies in its home country of south Korea over its response to claims that chemicals in one of its chip factories caused leukaemia and led to the deaths of a number of workers. The company has apologised for the length of time it took to provide compensation, while saying that it does not accept there was a link. The world's largest maker of mobile phones and smartphones, Samsung has been subjected to increasing examination of its practices as they have been violating principles of the national voluntary guidelines for the company.

In 2012 it faced allegations that its plants in China used child labourers. New York-based pressure group China Labour Watch claimed that working conditions at Samsung suppliers were "inhumane", and the company vowed to eliminate illegal overtime by the end of 2014. The latest report says that 33 suppliers broke local regulations on insurance, 39 paid fixed wages without compensation for overtime, and 33 cut pay as a disciplinary measure. The report doesn't specify the extent to which those figures overlapped. The audit, covering the period to the end of December 2013, also found that 59 suppliers in China didn't provide sufficient protective goggles, masks and other safety equipment to workers, while 48 let minors (employees aged 16-18) handle chemicals. Most of the audited factories did not comply with legally permitted overtime hours. The audit also found suppliers which had excessively noisy or dusty workplaces, and which failed to control air and water pollution from their output. Samsung conducted its own audit of Chinese suppliers in 2012 and said it found instances of Chinese workers working beyond legal hours. The audit was carried out by a third party auditor certified by the Electronic Industry Citizenship Coalition, an electronics industry group¹⁶.

➤ **Harmful Chemicals in Bread:**

Another recent report in the Economic Times, 24th May, 2016, reported that thirty-eight samples of commonly available branded varieties of packaged breads, including buns, ready-to-eat burger bread and ready-to-eat pizza breads of popular fast food outlets from Delhi were tested by CSE's (Common Service Centres) Pollution Monitoring Laboratory. It was said that CSE found 84% samples positive with Potassium Bromate or Iodate. They reconfirmed the presence of Potassium Bromate or Iodate in a few samples through an external third-party

¹⁶ Arthur Charles "Samsung finds Labour Violations at dozens of its Chinese suppliers", Guardian.com newspaper, Year 2014 [Accessed on October 22, 2017].

laboratory also. CSE said high levels of Potassium Bromate or Iodate were found in sandwich bread, pay, bun and white bread of virtually all top brands. CSE has urged the Food Safety and Standards Authority of India, the food regulator, to ban the use of potassium bromate and potassium iodate with immediate effect¹⁷.

➤ **HSBC Tax Scandal**

HSBC's Swiss banking helped wealthy customers dodge taxes and conceal millions of dollars of assets, doling out bundles of untraceable cash and advising clients on how to find a way to evade domestic tax, according to a leaked secret bank account files.

The files obtained through an international collaboration of news outlets, including the Guardian, the French daily Le Monde, BBC Panorama and the Washington-based International Consortium of Investigative Journalists reveal that HSBC's Swiss private bank:

- ❖ Routinely allowed clients to withdraw bricks of cash, often in foreign currencies of little use in Switzerland.
- ❖ Colluded with some clients to conceal undeclared "black" accounts from their domestic tax authorities.
- ❖ Aggressively marketed schemes likely to enable wealthy clients to avoid European taxes.
- ❖ Provided accounts to international criminals, corrupt businessmen and other high-risk individuals.

The HSBC files, which cover the period 2005-2007, amount to the biggest banking leak in history, shedding light on some 30,000 accounts holding almost \$120bn (£78bn) of assets¹⁸.

➤ **Deplorable Labour Practices in Coimbatore and Tirapur, Industrial Cities in Tamil Nadu¹⁹:**

Districts such as Tiruppur and Coimbatore have also developed labour concepts wherein young girls are lured to work under deplorable conditions for a period of three years from the age of eighteen and at the end of three year tenure, they are able to go back to their places

¹⁷ Doctor Vikram "There are more problems with bread than just carcinogenic elements: focus should be on quality of wheat", Economic Time, Year 2016 [Accessed on October 22, 2017].

¹⁸ Wintour Patrick, "HSBC Scandal caused horrible damage to reputation", Guardian.com Year 2015 [Accessed on October 26, 2017]

¹⁹ Supra Note 1, Pg 12.

with their accumulated wages which constitute a sum that would help their parents to meet their marriage expenses. In most of the cases, such workers are treated like bonded labour in those establishments. The young girls have to stay at hostels which provide bare minimum facility for living. Often, they suffer untold harassment's sometimes which include sexual harassment's also. In spite of the fact that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 seeks to protect women workers from such harassment. Establishments have been reluctant to ensure compliance of laws. Poverty at their homes drives them seek remunerative employment and they have no other go.

Chapter 5

Conclusion:

The above instances point out that CSR has more to do with doing business for commercial gains without indulging in practices that are corrupt, unethical, and operations and processes that degrade the environment and harm the health of people. The Board of Directors of a company must own up collective responsibility to ensure that the company's bottom line is very healthy while its practices hit hard the below the belt of people and degrade environment.

A more detailed study would show that the importance of CSR in India has been quite a fail. The corporations simply seem to have been engaged in unethical practices by evading compliances in order to make profit. Workforce is being neglected and they are usually treated in an undignified manner.

For instance, even simple provisions relating to the payment of wages to the employees are not being properly complied with properly. The Contract Labour (Regulation and Abolition) Central (Amendment) Rules, 2016, states that the rates of minimum wages payable to workmen by the contractor shall not be less than—

- (a) The rates prescribed under the Minimum Wages Act, 1948 (II of 1948) for such employment where applicable; or
- (b) The rates, if any, fixed by agreement, settlement or award; or
- (c) Ten thousand rupees, whichever is higher".

The study by ASSOCHAN1 shows that, India states that based on 26 days working in a month, currently the workers are paid Rs. 6973/- per month, when employed by the Contractors in the Union Territory of Dadra and Nagar Haveli. The situation is similar in other States also. This will now go up straight to Rs. 10,000/- per month.

There are also several big corporations that employ workmen in the name of apprentices to train and utilise them for a short period of time such as 18 to 36 months. Those workmen are not really given a permanent job. In most of the cases, workmen are actually employed as casual workers without giving any benefit of provident fund and without being enrolment under the Employees State Insurance Schemes. These are common practices across the country.

In fact, as a matter of public policy, in order to protect the welfare of the workmen, there are numerous laws that provide for matters such as remuneration, dispute resolution, social security, safety, health and overall well being of workmen. Presently, the Government of India and some State governments are seriously considering relaxation of certain norms to make it easier for doing business. Large corporations must, as a matter of their social responsibility, strive to comply with the applicable laws in letter and spirit and do something more.