

Corporate Social Responsibility: A Tool For Good Governance

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*“Successful people have a social responsibility to make the world
a better place and not just take away from it”*

-Carrie Underwood

INTRODUCTION: THE CONCEPT

With the augment of globalization, privatisation and liberalisation, the corporate sector across the world is struggling with a novel challenge of meeting the demands of the current generation without compromising on the needs of the future generation. A company, in its endeavour to survive the mounting competition and complexities of the business world, impacts the society in one but several ways. In order to create a room for itself in such circumstances, corporate have realised that there is a strong need to build goodwill relationship with the community at large. Such association shall provide for an evidentiary value of the credibility, trustworthiness and reliability of the company. Also, corporations are more powerful and immensely equipped than any other business structure. Accordingly, they are potentially more treacherous and capable of inflicting harm on its weaker counterparts, if allowed to operate unchecked. Thus, adopting a socially responsible behaviour is the only mechanism through which the negatives of doing business can be undone. In the wake of the same, corporates are expected to act in public interest, taking due consideration of all fraternities dealing with it namely, the consumers, investors, employees, creditors, etc. collectively known as “stakeholders”. This is known as “Corporate Social Trusteeship” or popularly, “Corporate Social Responsibility”.

MEANING

There is no strict straight jacket standardized formula which comprehensively or precisely describes the term “Corporate Social Responsibility”. It is incapable of a universally applicable definition and is thus, defined differently at different times by different individuals and corporate groups. According to the World Business Council for

Sustainable Development, “Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large”. In the light of the above, John Elkington, strategic thinker and author, advocated that, the Corporate Sector must focus its attention on achieving the “triple bottom line” of “people, planet and profit”. It may be described as an extension of corporate governance, a notion which goes a step further and caters to the social, economic and environmental needs of the stakeholders. The idea inculcates an overall responsible behaviour which is not merely restricted to good governance and disclosures. A responsible corporate behaviour caters to the well-being of the larger community. It may thus, be gathered from the aforesaid discussion that the meaning and role of a corporation in the modern world is not simply restricted to the conventional notion of being an economic-legal entity as enshrined under the Companies Act, 1956 but, extends to that of being a social entity as well, as enshrined under the newly drafted Companies Act, 2013.

HISTORY OF EVOLUTION

Capitalism dwelled in the beginning of the 19th century marking the arrival of industrial revolution. The nature of the market demanded a pool of liquid to justify the capitalist platform. It seemed to be a cumbersome task until a collective action was initiated. This gave birth to a new type of business structure and corporations were incarnated having profit maximization as their ultimate aim. However, it was comprehended that these business entities were acquiring gigantic proportions and exercising power beyond expectations, further giving rise to European colonialism. In the process, “slavery” and “forced labour” became rampant and economic power was concentrated in these massive organizations. Thus, with the cognizance of the “corporate menace” arose the need for corporate social responsibility. It was only in the year 1953 when the concept of CSR was first mentioned by William J. Bowen in his publication 'Social Responsibilities of the Businessman'. However, the term acquired popularity in the 1990s.

Acts of philanthropy have been a way of life in India since times immemorial. The notion of parting with a portion of one's surplus wealth without expecting anything in return is not a western import

in the country. Kautilya, the great Indian political strategist (Circa AD 100-150), postulated in his discourse on the duties of the King that, *“In the happiness of his subjects lies his (King's) happiness; in their welfare, his welfare”*. From around 600BC, the merchant was considered an asset to the society and was treated with respect and civility, as is recorded in the Mahabharata and the Arthashastra. Over the centuries, this strong ritual of charity has been imbibed by various economic entities in India in their business strategy. Many leading businessmen in the country were evidently influenced by Mahatma Gandhi and his theory of trusteeship of wealth. Much of this ancient wisdom applies to present-day corporations as well wherein; the stakeholders constitute the population of the “Corporate Kingdom”.

DEBATE OVER CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility endeavours to open the corporate door to an external world comprising of human values, needs, aspirations and rights, beyond the order of profit motivated corporate life. However, with the recognition of this approach where “people matter” a debate has ensued over the acceptability of CSR, thus raising a plethora of questions. The following arguments, for and against corporate social responsibility emerge from this controversy surrounding it.

ARGUEMENTS FAVOURING CORPORATE SOCIAL RESPONSIBILITY

❖ Corporates Have Colossal Reservoir Of Resources To Dispense

Companies today have ballooned to gigantic proportions. They withhold an enviable pool of resources, command ample power and control and, are economically empowered to contribute towards raising the standard of living of the people. This inevitably raises the expectations of the society for these institutions to be socially responsible.

❖ Economies Of Indemnity And Goodwill

In developing countries or emerging economies wherein, the State shoulders the responsibility of societal welfare, it gives preference to organizations voluntarily sharing the former's liability. Indulgence in social responsibility therefore, provides for an extremely inexpensive insurance package for corporates. If corporations ignore to imbibe within themselves, the trait of social trusteeship and ensuing

accountability, the Government, by adopting arbitrary and repressive methods, will place excessive restraints on these organizations, thus curtailing their enormous power and reserves through unwarranted intervention in the working of the former. On the other hand, a socially responsible behaviour is appreciated by the State. A socially driven and “obedient” corporation is applauded for its approach through incentives such as tax concessions and subsidies. Moreover, resorting to a socially responsible behaviour is a powerful tool for the company to earn goodwill and credibility amongst the various groups of stakeholders.

❖ **NECESSARY EVIL FOR SURVIVAL**

With an increase in cut-throat competition and struggle for survival, a corporation needs to have an edge over its competitors. This has led to a paradigm shift in the approach of corporates to target optimum profits instead of maximize profits and rather make an investment in building a viable image in the eyes of all stakeholders. It is this reputation which will keep the business going.

❖ **STAKEHOLDERS SANCTION BUSINESS**

A successful business can be established and sustain its growth with the support of certain stakeholders for instance, the employees, investors, consumers, etc. It thus becomes the responsibility of a flourishing entity to pay back these stakeholders. In case of persistent neglect by the companies towards CSR, consumers would switch to another company's products and services, speak out against it to family/friends, refuse to invest in that company's stock, etc. Similarly, due to lack of motivation, the employee turnover would be high and the company would fail to recruit proficient staff. A culmination of these factors would put the company to a catastrophic end.

ARGUMENTS AGAINST CORPORATE SOCIAL RESPONSIBILITY

❖ **BUSINESS OBJECTIVE: PHILANTHROPY OR PROFITS**

Acts of philanthropy may be a motivating factor for businesses to engage themselves in CSR activities however; it cannot be ignored that a commercial entity cannot be expected to act selflessly. Such futile deeds in the name of “social responsibility” would certainly imply an additional cost on the company which it would bear by raising the prices of its products/services. As an obvious

consequence, the corporate would lose on business. Furthermore, if such socially responsible behaviour is not emulated by its counterparts, the former would be steadily ousted from the market. Such type of perilous extravagance can thus, not be permitted. The whole notion of CSR is therefore, evidently against the proposition of a flourishing business and is unreasonably smuggled into the fiscal panorama.

❖ **A COMPANY IS NOT A CHARITABLE INSTITUTION**

Social welfare in a polity is the function of the Government. A corporate, on the other hand, comes into existence with the sole purpose of earning profits and producing wealth. It is not a charitable agency or a community service institution. In the modern competitive environment, where a business is already pressurized with the ponderous task of fulfilling the incessant demands of the market, social responsibility shall be an encumbrance for doing business. Theodore Levitt (1958), in his HBR article “The Dangers of Social Responsibility” appropriately cautions that, “Government's job is not business and the business's job is not Government”. It is astonishing to note that in the guise of concepts like corporate social responsibility, the government has got a platform to conveniently evade its liability.

❖ **CORPORATES LACK THE ATTRIBUTES OF A SOCIAL WORKER**

Being an economic entity, corporates lack the skills, expertise and patience to combat the complex societal problems. The arena of CSR is still at a nascent stage and devoid of a precise or comprehensive definition. In such circumstances, if unnecessary pressure is inflicted on companies to indulge in CSR activities, it may lead to a conflict in interests, thereby jolting economic growth. It is thus, recommendable that a corporation is not coerced to do something in which it is deficient of competence.

❖ **POSSIBILITY OF EVASION**

Since the idea of CSR includes within its fold employee welfare initiatives and the like, companies in their CSR policies focus entirely on the same. As a consequence, they virtually seem to be socially responsible whilst not really contributing to an outside community or its development.

CORPORATE SOCIAL RESPONSIBILITY IN INDIA: AN

OVERVIEW

In the recent years, the trend of imbibing a socially responsible behaviour has become progressively prominent in the Indian corporate scenario. This phenomenon can be attributed to the increasing realization amongst corporations in India that for sustaining survival, it is vital to build trustworthy and sustainable relationship with the community at large, besides targeting profits simplicitor. Another key driver of CSR programmes herein is the myriad socio-economic challenges the country is facing. This, accompanied with the limited resources in the government's possession, has opened up an assortment of areas for corporates to contribute towards social development. The regime of social commitment in India involves innumerable initiatives undertaken by corporates such as, establishing social trusts, educational institutions, healthcare units; adopting environment friendly measures, avoiding unethical/deceptive advertising, incorporating a pro-consumer approach, providing medical and recreational facilities to employees, and the like.

As has been discussed, companies in large numbers are voluntarily redressing CSR issues in India. It is neither a novel concept nor confined anymore to corporates like the TATA Group or Aditya Birla Group, which have been well appreciated for serving the community ever since their inception. Unfortunately however, owing to the pitiable state of corporate governance, the CSR performance remains far from satisfactory. This, therefore necessitates, government intervention through an appropriate legislative and regulatory framework.

STATUTORY FRAMEWORK PERTAINING TO CSR IN INDIA

❖ COMPANIES ACT, 1956

The Companies Act, 1956 is silent on CSR thus making it a voluntary contribution.

❖ THE COMPANIES ACT, 2013

The Act, promulgated with an objective to make corporate regulations more contemporary, incorporates a provision pertaining to CSR exclusively under **Section 135**. It states that **every company having net worth of Rs. 500 crore or more, or turnover of Rs. 1,000 crore or more, or net profit of Rs. five crore or more, during any financial year, shall constitute a CSR Committee** of the Board, comprising of three or more Directors, including at least one

Independent Director, to formulate and recommend activities to the

Board, as specified in Schedule VII, for discharging corporate social responsibilities in such a manner that **the company would spend at least 2 per cent of its average net profits of the previous three years on the such activities.** The CSR committee shall also be required to recommend the amount of expenditure to be incurred on the activities referred to above and, to monitor the company's CSR policy from time to time. The Board of every company shall, after taking into account the recommendations made by the CSR Committee, approve the CSR policy for the company and disclose contents of the same in its report while also placing it on the company's website. If the Company fails to spend the stipulated percentage of profits towards CSR, the Board shall, in its report specify the reasons for not doing so. According to Schedule VII, CSR activities will include, eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief, funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and, such other matters as may be prescribed. The 2013 Act further provides that the company shall give preference to the local area and surrounding areas of its operation.

❖ VOLUNTARY GUIDELINES ON CORPORATE SOCIAL RESPONSIBILITY

These guidelines were issued by the Ministry Of Corporate Affairs In 2009. They Have Now Been Purified And Reinstated By The National Voluntary Guidelines On Social, Environmental And Economical Responsibilities Of Business 2011, with a view to assist the Indian corporate sector to evolve and transform into a global leader in the field of responsible business. The objective was to bring forth a more comprehensive set of directives that circumscribe the social, environmental and also, the economic responsibilities of business. The new Guidelines aspire at mainstreaming the concept of “Business Responsibilities”.

Accordingly, it uses the term “Responsible Business” instead of “Corporate Social Responsibility (CSR)” as the former encompasses the limited scope and understanding of the latter. **The Guidelines lay down nine Principles in total, each accompanied with the associated “Core Elements”. While Principles 1, 3, 4 and 7, deal exclusively with corporate governance and disclosures; Principles 2, 5, 6, 8 and 9 focus on Corporate Social and Environmental Responsibility.**

Principle 2 states that, in order to function effectively and profitably, **businesses should provide goods and services that are safe and, contribute to sustainability throughout their life cycle.** It propagates that; **corporations should raise the consumer's awareness of their rights.** **Principle 5** emphasises that, **businesses should respect and promote human rights.** **Principle 6** remarks that **business should respect, protect, and make efforts to restore the environment.** **Principle 8** specifies that **businesses should support inclusive growth and equitable development.** It must focus on the overall advancement of the society. **Principle 9** endorses that **businesses should provide value to their customers and consumers in a responsible manner.** The principle recognizes that customers should have the freedom of choice in the selection and usage of goods and services. Also, businesses should **promote and advertise their products in ways that does not mislead or confuse the consumers.** Lastly, businesses should provide adequate **grievance handling mechanisms** to address customer concerns and feedback.

The Guidelines assume that one of the critical aspects of Responsible Business practices is that businesses should not just be accountable simplicitor, but they should also be seen as socially, economically and environmentally responsible.

JUDICIAL APPROACH TOWARDS CSR

Apart from the afore-mentioned statutory initiatives undertaken to ensure responsible corporate behaviour, even courts in India have taken due cognizance of the repercussions of a corporation's actions on society and environment. One such commendable judgement is that of the Supreme Court delivered in the case of **M.C. Mehta v. Union of India.** M.C. Mehta, a social activist lawyer, vide a petition, sought closure of Shriram Industries, located in a densely populated area of Delhi, as it was engaged in manufacturing hazardous substances. While his petition was pending, oleum gas leaked from one of its units affecting several persons. The Honourable Court gave

a landmark decision wherein, it went a step further from the Rule of Strict Liability laid down in the famous English case of *Ryland v. Fletcher*, and introduced the principle of “No-fault” or “Absolute” or “Stricter than strict” liability vis-a-vis enterprises engaged in a hazardous or inherently dangerous activity. It observed that, “such enterprises must conduct their activities with the highest standards of safety and, if any harm results therefrom, it must be absolutely liable to compensate for the same. It should be no answer to the enterprise to say that it had taken all reasonable care or, that the harm occurred without any negligence on its part”.

The basis of the rule as indicated by the Court is two-fold:

- If permission is granted to an enterprise to carry on a hazardous or inherently dangerous activity and earn profits from the same, the law must presume that such permission is conditional. The said enterprise shall absorb the cost of any accident (including indemnification of all those who suffer harm in the mishap) arising on account of such activity. The Court, in such cases, shall entertain no excuse on the part of the enterprise.
- The enterprise is in possession of abundant resources guard against apparent risks and dangers and, to compensate the disaster.

The Court also held that the measure of compensation payable should be correlated to the magnitude and capacity of the enterprise, so that the intended deterrent effect can be attained.

The larger and prosperous the enterprise, the greater must be the amount of damages payable by it.

MC Mehta is also credited for the decision in the **TAJ TRAPEZIUM CASE** wherein he once again invoked the attention of the Honourable Supreme Court by filing a petition seeking relocation of industries located in the Taj Trapezium Zone (TTZ), emitting hazardous chemicals and gases which were a major source of causing air pollution in that area. It was contended that these emissions affected the beauty of the historical monument whilst also being the cause of ill-health of the people inhabiting the quarter. Consequently, the Court ordered the shifting of such industries from the TTZ in a phased manner thereby giving recognition to the notion of social and environmental responsibility of business.

The **Madras High Court** in its judgement **T.S. ARUMUGHAM v. LAKSHMI VILAS BANK LTD. AND OTHERS** while duly recognizing the concept of CSR held that, “In the light of the changing socio-economic concepts and values, a company is regarded as a

living, vital and dynamic, social organism with firm and deep-rooted affiliations with the rest of the community in which it functions. Apart from capital, there is another equally important factor of production namely, labour. Then, there are the financial institutions and depositors, who provide the additional finance required for production, and, lastly, there are the consumers and the rest of the members of the community who are vitally interested in the product manufactured by the concern. In recent times, there is considerable thinking on the subject of social responsibilities of corporate management and it is now acknowledged even in highly developed countries like the United States and England, that maximisation of social welfare should be the legitimate goal of a company. It should be responsible not only to shareholders but also to workers, consumers and the other members of the community and be guided by considerations of national economy and progress."

*While upholding the interests of employees in case of winding up of the company, as part of the latter's social responsibility, Honourable Supreme Court in **NATIONAL TEXTILE***

WORKERS UNION v. P.R. RAMKRISHNAN AND OTHERS

held that, "the Court in a winding-up proceeding may require or permit any employee to appear at any stage of a winding-up proceeding and hear him, if the Court be of the opinion that the employee or the employees should be heard". It acknowledged the social responsibility of a corporate and remarked that, "The concept of a company has undergone radical transformation in the last few decades. The old nineteenth century view which regarded a company merely as a legal device adopted by shareholders for carrying on trade or business as proprietors has been discarded and a company is now looked upon as a socioeconomic institution wielding economic power and influencing the life of the people. A company, according to the new socio-economic thinking, is a social institution having duties and responsibilities towards the community in which it functions and one of its paramount objectives is to bring about maximisation of social welfare and common good. This necessarily involves reorientation of thinking in regard to the duties and obligations of the company not only vis-a-vis the shareholders but also vis-a-vis the rest of the community affected by its operations such as workers, consumers and the Government representing the society."

CONCLUSION

Corporate Social Responsibility has today become a business necessity. It forms an integral part of the corporate strategy and is approached in a more organized fashion. Nowadays, companies have special teams devoted towards devising, planning and executing CSR policies and strategies.

Unfortunately however, social responsibility vis-a-vis the Indian corporate sector, endures from perpetual neglect and apathy. The emphasis is not on societal upliftment but rather on a policy that requires implementation. As an outcome of such outlook, most of the CSR policies are faltering and shallow. They are often looked upon as mere tax sheltering devices.

Prior to the promulgation of The Companies Act 2013, what made the scenario worst was the voluntary nature of CSR in India, devoid of any enforcement mechanisms or legal outcomes.

The worst Indian experience emphasizing this shortcoming is the BHOPAL GAS TRAGEDY CASE of 1984 which is often cited as the greatest industrial disaster in the world that took place at the Union Carbide pesticide plant in the city of Bhopal, Madhya Pradesh. At midnight, on December 3rd 1984, the plant accidentally released methyl iso-cyanate (MIC) gas, exposing more than 500,000 people to its aftermaths. Almost twenty eight years after the gas leak, 390 tonnes of toxic chemicals abandoned at the Union Carbide plant continues to pollute the ground water in the region thereby affecting thousands of residents dependent upon it. The victims continue to be plagued with a host of problems with no solution in sight. The Central Bureau of Investigation had sought a review of the Supreme Court judgment of 1996 in the matter that diluted charges against the accused from culpable homicide not amounting to murder to criminal negligence. This led to lighter punishment for all the accused on June 7th, 2010, when a Bhopal court had sentenced seven former Carbide executives, including former Union Carbide India Limited (UCIL) Chairman Keshub Mahindra, to two years in jail. They were granted bail immediately. Asking the court to reconsider its ruling, the CBI had said, "The men behind one of the world's biggest industrial catastrophes should not walk away with a minimal punishment of two years despite ample evidence to show the commission of an offence of homicide." The Supreme Court vide its judgment dated May 11th 2011 rejected the curative petition so filed by the CBI sparking a nationwide outrage. The decision is a clear indication of how the Indian Courts, in the absence of a stringent legislation, in few cases failed to address the grievances of the victims affected by the irresponsible behaviour that corporations exhibit. Courts have shown the tendency to simply consider the technical points of the law and not the gravity of the repercussions of the company's acts on society and other stakeholders.

The Companies Act 2013 is a historic piece of legislation that has been enunciated to regulate Indian companies. For the first time ever, corporate social responsibility has received legal sanctity. However, there are still certain issues which need to be addressed. Firstly, there is a debate as to whether penal consequences should emanate on failure to spend on CSR activities or simply an explanation in the directors' report is a sufficient sanction. Also, in case of non-profitable companies falling under the designated category, reluctance in compliance might be witnessed. Further clarity is required in what all constitutes CSR

activities as the list specified under Schedule VII of the Act seems like an inclusive and not exhaustive list. Also, the CSR provisions under the 2013 Act require a minimum of 3 directors for the constitution of the CSR committee, clarification is needed as to whether qualifying private companies would be required to appoint a third director to comply with the CSR provisions. The Act is thus at a nascent stage and there are certain ambiguities which need to be resolved. It is too early to say how far the legislation will go in labouring a “well behaved” corporate.

It may hereby be concluded that, social transformation cannot be brought forth in isolation. Having vast resources under its control, corporates undoubtedly have the adeptness to bring about social change. However, this manpower and money must be collaborated with the expertise of NGOs and government, to successfully place India's social development on a faster track. Also, enacting a legislation simplicitor would not be of much help unless it is backed by stringent consequences for non-observance. The implementation of the law must be taken care of. Lastly, a transition in the approach of the corporates towards CSR is the need of the hour. Self-regulation is the paramount remedy.

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