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SANJANA ROY

Hidayatullah National Law University, india

DEERGA AIREN

Hidayatullah National law University , India

MAKING CORPORATE SOCIAL RESPONSIBILITY MANDATORY: JOB DONE OR UNDONE

Abstract:

The evolution of concept of social responsibility of business has passed through different stages of struggle. Corporate Social Responsibility (CSR) is the process by which the corporation participates in the welfare activities of both internal as well as external community by actively assisting in the improvement in the quality of life of the people in the community in which it operates. Corporates can create social value as much as business value for themselves and the two should always preferably go together. Some companies like British Petroleum, Apple, Wal-Mart, Tata and Birla though appear as the real pioneers of CSR, but this paper delves into the reality of how these companies try to use CSR as a tool to cloak their irresponsibility. The Ministry of Corporate Affairs in India deserves a high mention in this regard, as India became the first country in the world to make CSR mandatory for companies crossing a particular threshold as per its laws. Section 135 of the Indian Companies Act, 2013 has been enforced even after staunch opposition from the corporate sector and remains a watershed achievement for the Indian government. Though many companies have already started flouting the new rules, the government has not risen up to the situation. This paper proposes some reforms by which the new rules could be properly enforced, and the companies can be made aware that by promoting CSR they are giving their due back to the society.

Keywords:

Corporate social responsibility, internal and external stakeholder, network of a company

“A good company delivers great products and services but a great company does that and makes the world a better place.”~ William Ford Junior.

An organization does not flourish in vacuum.¹ The current interrelated financial, economic, climate, energy, food, water, political, and security crises affecting the globe only highlight the historically unprecedented degree of interconnectivity and interdependence. The current trend of globalization has brought a realisation among the firms that in order to compete effectively in a competitive environment they need clearly defined business practices with a sound focus on public interest in markets.² Thus, business cannot escape from society and society cannot exist without business. The relationship between business and society stands eternally established.³ At first, the modern discussion on CSR was given by Howard Bowen in his book, “Social Responsibilities of the Businessman”.

The old 19th century view which regarded a company merely as a legal device adopted by shareholders for carrying on trade and business as proprietors have been discarded and a company is now looked upon as a socio-economic institution wielding economic power and influencing the life of the people.⁴ It is high time to put emphasis on value based management and only it can create new horizon of achieving corporate excellence on holistic approach to best serve the society.⁵ From the notion of charity today there is a visible shift in paradigm to responsibility.⁶

According to the European Union, “*CSR is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholder on a voluntary basis.*”

I. LESSONS LEARNT BY CORPORATE GIANTS AROUND THE WORLD

This section of the article provides how the policies pursued by the well-known multinational companies underwent a sea change after conflicts were reported.

Coca-Cola

Coca-Cola started its business in 1886 in Atlanta, Georgia. By 1920 it already had a global presence. In 2007 Coca-Cola launched its sustainability framework Live Positively embedded in the system at all levels, from production and packaging to distribution. Its CSR policy Live Positively establishes seven core areas where the company sets itself measurable goals to improve the business’ sustainability practices. The core areas are

¹Dr. Sanjeev Kumar Tiwari, CORPORATE SOCIAL RESPONSIBILITY: A CRITICAL STUDY 126 (1d ed 2011).

²*Id.* At 127.

³Joe W. (Chip) Pitts, *Corporate Social Responsibility: Current Status And Future Evolution*, 6 RUTGERS JOURNAL OF LAW & PUBLIC POLICY 111 (2009).

⁴Partha Sarathi Adhya, CORPORATE SOCIAL RESPONSIBILITY: THE INDIAN TREND 38 (1d ed 2011).

⁵TIWARI, *supra* note 1.

⁶*Id.* at 129.

beverage benefits, active healthy living, the community, energy and climate, sustainable packaging, water stewardship and the workplace.

Coca-Cola had a Code of Business Conduct which aims at providing guidelines to employees to prevent corruption and competition. It also adopted the UN Global Compact⁷ and Ruggie's Protect, Respect and Remedy Framework.⁸

Conflicts in Coca-Cola

As per the report published by Centre for Science and Environment (CSE), an Indian NGO in 2003, it was alleged that the coca-cola beverages contained high levels of pesticides as per European standards and was also responsible for causing ground water pollution.⁹ The Indian Government formed a Joint Committee¹⁰ to investigate the same.

A panel was also set up by the Government of Kerala which recommended fining the Indian subsidiary of Coca-Cola an amount of \$ 47 million.

These violations by Coca-Cola caused damage to its brand and reputation to a great extent. So much so that its sales decreased considerably.¹¹

Coca-Cola CSR Policies after conflicts

After this debacle, Coca-Cola India started a NGO, Anandana which works among the local communities to address local water problems.¹²

Walmart

Walmart Supercenters, a US based company is the world's largest retailer. It is an important emerging private actor in the transformation of lawmaking in the CSR field, often being referred as a 'global legislator.'¹³ It is known for using its' contractual relationship to

⁷Global Compact is an initiative created in 1999 under the leadership of the former UN Secretary-General, Kofi Annan. It establishes ten principles for conducting responsible business covering the areas of human rights, labour, the environment and anti-corruption. (Jan. 22, 2015), www.unglobalcompact.org.

⁸The "Protect, Respect and Remedy' Framework is an initiative devised by John Ruggie, Special Representative of the UN Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises. It lays the foundation for a system for better managing business and human rights challenges. It is based on three pillars: the State's duty to protect human rights, the corporate responsibility to respect human rights, and access to an effective remedy for breaches of human rights, <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf> (last updated Jan. 22, 2015).

⁹J. Hills & R. Welford, *Case Study: Coca-Cola and Water in India*, 12 CORPORATE SOCIAL RESPONSIBILITY AND ENVIRONMENTAL MANAGEMENT 168 (2005).

¹⁰Joint Committee on Pesticide Residues in and Safety Standards for Soft Drinks, Fruit Juice and Other Beverages, Report, LOK SABHA SECRETARIAT 158-161 (2004).

¹¹*India: Pollution Fine Sought Against Coca-Cola*, NEW YORK TIMES, March 23, 2010, <http://www.nytimes.com/2010/03/24/world/asia/24briefs-Indiabrf.html>.

¹²Anandana, <http://www.yatn.net/aboutfoundation.html> (last updated Jan. 22, 2015).

¹³M.P. Vandenbergh, *The New Walmart Effect: the Role of Private Contracting in Global Governance*, 54 UCLA LAW REVIEW 913 (2007).

regulate behaviour among its suppliers around the globe with respect to product quality, working conditions for the suppliers' employees, and ethical conduct.¹⁴ Since 2007, Walmart publishes its annual report on the website, initially it was called the 'Global Sustainability Report' but due to incorporating quite a few elements in its CSR program, it changed the name in 2011 to 'Global Responsibility Report'.¹⁵

Conflicts in Walmart

Walmart's conflicts over the years have served as an important factor for the development of its Code of Conduct and Annual Reporting. It was alleged by its female employees' that there was gender discrimination in the pay scales, and it was also accused of using child labour in Bangladesh.

Walmart's policies after conflict

Walmart's 'Report on Ethical Sourcing' was elaborated in 2006 after reports of discrimination against female employees and abuse of child labour surfaced.¹⁶ It also introduced its zero-tolerance policy for underage workers and whenever there were any violations, it resulted in cessation of its business *ipso facto*.¹⁷

I. LESSONS LEARNT BY CORPORATE GIANTS IN INDIA

Tata group

"In a free enterprise, the community is not just another stakeholder in business but is in fact the very purpose of its existence." ~ Jamshedji Nusserwanji Tata

Tata Group in India has a range of CSR projects, most of which are community improvement programs. Its commitment has led to the formulation of the Tata Council for Community Initiatives. Tata Iron and Steel Company, Jamshedpur is the largest private sector steel manufacturing company in India. In its initial stage, it developed its township with all amenities for the benefit of its employees and the public in its neighbourhood. This was the shining example of CSR.

Similarly, Jamshedji Tata, the founder of the Tata Group earmarked a large portion of his fortune to establishment of Indian Institute of Science, Bangalore to promote science and technology in India. After his demise, Tata group established Tata Memorial Centre for

¹⁴L. Cata Backer, *Economic Globalisation and the Rise of Efficient Systems of Global Private Lawmaking: Walmart as a Global Legislator*, 39 CONNECTICUT LAW REVIEW 1739 (2007).

¹⁵Walmart, 'WalmartGlobalResponsibilityReport', (Jan.23,2015) <http://walmartstores.com/Sustainability/7951.aspx>.

¹⁶Walmart, 2005 Report on Ethical Resources, 8 (2011).

¹⁷*Id.*

Cancer Research which even today is helping millions of people by providing treatment free of cost.

The Tata Steel Rural Development Society was established in 1979 and it had pioneered Rural Development Programme in and around Jamshedpur. Later its activities were expanded in 500 villages in Bihar, Orissa and Madhya Pradesh.

Tata Chemicals has created an oasis in arid land of Okha mandal to provide safe drinking water to the township of Mathapur and 42 villages around it. Thus, they have created a benchmark in CSR in caring for its employees, shareholders and the society at large.¹⁸

Birla group

“To actively contribute to the social and economic development of the communities in which we operate. In doing so, build a better, sustainable way of life for the weaker sections of society and raise the country’s human development index.” ~ Mrs. Rajashree Birla

Mr. Aditya Birla weaved the concept of sustainable livelihood, which in his view transcended cheque book philanthropy. He felt that it was unwise to keep on giving endlessly. Instead, he felt that channelising resources to ensure that the people have the wherewithal to make both ends meet would be more productive. He said, *“Give a hungry man fish for a day, he will eat it and the next day, he would be hungry again. Instead, if you taught him how to fish, he would be able to feed him and his family for lifetime.”*

The ‘Aditya Birla Centre for Community Initiatives and Rural Development’ has covered 500 villages across the country. Their activities include ‘self reliance’ through sustainable development by providing employment schemes for rural youths making safe drinking water and health care easily accessible to physically impaired, promoted widow-remarriage etc. The Birla group runs as many as 15 hospitals in India; includes Adult education in schools and conducts as many as 78 schools all over India; rehabilitates handicapped persons having touched more than 5000 physically challenged individuals so far.

Real patrons of CSR?

Though these companies appear to be pioneers of CSR but the picture is not as clear as it appears, in fact it gets murkier. Tata Global Beverages has been accused by the World Bank of abusing labour and human rights of its workers at Tea plantation projects. It was alleged that wages were not been paid by Tata Global Beverages as per industry agreements. It also violated the working hours as specified in the Plantations Labour Act, 1951.¹⁹

¹⁸Adhya, *supra* note 30.

¹⁹Neeta Bhalla, *World Bank probes Tata Tea project over worker abuse*, REUTERS (Feb. 14, 2014), in.reuters.com/article/2014/02/13/india-tata-tea-humanrights-idINDEEA1COGG20140213.

The M.B Shah Commission on illegal mining in Odisha has held that top companies such as Tata Steel, the Aditya Birla Group's Essel Mining and Odisha Mining Corporation have violated Environment and Forest Laws. These groups have been accused of extracting iron ore worth Rs 45,453 crore and manganese worth Rs 3,089 crore illegally and without lawful authority by violating conditions of Environment Clearance.²⁰

So the corporate houses should not try to use corporate social responsibility to cloak irresponsibility. These examples point that how shallow the concept of CSR has become in the present era. Thomson-Reuters columnist Chrystia Freeland has called CSR "a fetish encouraged by the philanthropies that feed off it, and funded by the corporate executive who find that it serves their bottom line."²¹ Consumers have been willing to pay more and buy more from companies with a CSR halo. Now, they should know better.

I. AN ANECDOTE OF TRANSFORMATION OF GUIDELINES INTO LAW

"What comes from the people must go back to the people" ~ **Jamshedji Nusserwanji Tata**

For a developing country like India, investment by corporate in CSR activities is a requisite. India is faced with problems like poverty, illiteracy, lack of healthcare and these challenges are ubiquitous and the government has limited resources to tackle these challenges.

More and more companies should realize their responsibility towards the community and do their part for the society through donations and charity events. In fact, CSR nowadays has gone beyond mere charity and donations, and is approached in a more organized fashion. CSR has come a long way in India, from responsive activities to sustainable initiatives, corporates have included CSR as part of their practice area. Companies form CSR teams, especially dedicated to formulating policies, strategies and goals for their CSR programs and allocate budgets to support them.

Before 2013

It is difficult to find any provision in the Companies Act, 1956 which supports socially responsible business. The Companies Act, 1956 primarily saw businesses as profit maximizing institutions. The Supreme Court however gave few judgments where it showed that the company has a duty towards the society where it functions.

²⁰Tata, Birla, SALE among 70 companies violating green norms, says Shah panel, BUSINESS STANDARD, January 23, 2015, www.business-standard.com/article/companies/tata-birla-sale-among-70-companies-violating-green-norms-says-shah-panel-114010600898_1.html.

²¹Aiyar, *supra* note 27.

After 2013

India's new Companies Act 2013 has introduced several new provisions which has changed the face of Indian corporate business. One of such new provisions is CSR. The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources from the society and by performing the task of CSR activities, the companies are giving their due back to the society.

135 of the Companies Act provides a threshold limit for applicability of the CSR to a Company i.e. (a) net worth of the company to be Rs 500 crore or more; (b) turnover of the company to be Rs 1000 crore or more; (c) net profit of the company to be Rs 5 crore or Section more. Further as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies, but also applicable to branch and project offices of a foreign company in India.

Every qualifying company requires spending of at least 2% of its average net profit for the immediately preceding 3 financial years on CSR activities. Further, the qualifying company will be required to constitute a CSR committee consisting of 3 or more directors of the company. The CSR Committee shall formulate and recommend to the Board, a policy which shall indicate the activities to be undertaken, recommend the amount of expenditure to be incurred on the activities referred and monitor the CSR Policy of the company. The Board shall take into account the recommendations made by the CSR Committee and approve the CSR Policy of the company.

The term CSR has been defined under the CSR Rules which includes but is not limited to:

- Projects or programs relating to activities specified in the Schedule VII; or
- Projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in Schedule VII.

As per the rules enumerated above, CSR regarding the companies has been made flexible as the companies have been allowed either to adopt the CSR activities as enshrined in Schedule VII of the Act or follow any CSR activity which is in conformity with schedule VII of the Act.

Is CSR meeting the need of the day?

CSR reinforces the separation thesis or the idea that we should separate business from society. It is reinforced by the disciplines of business, and by executive and business thinkers themselves.

CSR becomes an add-on to ameliorate the supposedly harsh consequences of this view of capitalism. For an instance, a firm A which decides to higher employees, now in this

regard has it done something that is for the business the answer to that question is an unqualified and resounding 'Yes'. Now has it done something that is for society the answer to that question is also a 'Yes'. Now all these employees are full fledged members of the society as well as being stakeholder in firm A. If they benefit in their dealings with firm A, then society benefits too, both directly and in the number of indirect ways. CSR is often about seeming to do good works and, while there is certainly nothing wrong with doing more good, there can be an implication that companies need to do good works because the underlying structure of business is not good, or morally neutral. This is a destructive idea, because it fails to recognize the central role business has played in improving the lives of hundreds of millions of people around the world. And, it often causes companies to act in bad faith and get involved in matters where they have little expertise. Business is not about making profits only, it is rather a system of social co-operation, a system of how people work together to create value for each other.²²

The problem with CSR is it is focused on CSR. Why is it not called Business Social Responsibility? The focus on corporate implies that corporations, due to their size and success and perhaps their shareholding pattern, have to shoulder responsibilities that smaller and more closely held businesses do not. It could be argued that large and successful corporations have a greater responsibility to society than small and less successful ones, because they have greater resources to shoulder society's burden. However, classification of responsibilities on the basis of size and success is highly problematic, as sometimes small business organizations could earn more revenues than largely constituted business organizations and are in a better position to contribute to CSR.

The main idea underlying CSR is that what is good for the workers, the environment and the community is also good for the financial performance of the business.²³ Investment in CSR is intangible benefits, out of which some can be measured while some benefits, cannot be quantified.

I. SUGGESTIONS

- CSR should not only focus on companies, rather it should apply to all organizational forms. The approach should be that CSR should apply as much to an entrepreneurial start-up and to midsized closely held firm as it does to a corporation with diffused ownership.
- The law is not very clear whether the list in Schedule VII is exhaustive or illustrative. There is a contradiction in a couple of provisions which makes the issue ambiguous. Several companies are therefore taking a conservative view and currently sticking with only Schedule VII identified matters. This is unfortunate for some needy sections such as senior citizens care, care for differently abled which are not

²²R. Edward Freeman & S. Ramakrishna Velamuri, *A New Approach to CSR: Company Stakeholder Responsibility*, 9 (1d ed 2006).

²³Tiwari, *supra* note 1.

specifically covered in Schedule VII. It is important to note that activities undertaken exclusively for the benefit of employees or their families will not be considered as CSR. So, the statute should provide clear provisions for the inclusion of these activities.

- In a small private company which barely crosses the threshold limit, it seems a little harsh to insist on such a third director when the Companies Act does not mandate it, and that too an independent one just to ensure corporate social responsibility whilst that additional money could have itself been spent on a socially responsible cause.
- Can any portion of this 2% be spent on administrative expenses which will be inevitable (such as hiring people to do or monitor the activities) or is such administrative expense over and above the 2%? There is no clear answer to this. However since the wordings of Section 135 states that this 2% should be spent in pursuance of the CSR Policy, one may be able to take the view that administrative expenditure related to CSR would also be considered as part of the 2% spend. However, the government should come up with clarity in this regard.
- It is also not quite clear as to the precise obligations of a Company in execution of CSR. The rules permit companies to work through NGOs but mandates that the Company must ensure that the policy is complied with. Does this mean that a company cannot pass on all the money to an umbrella NGO which might have more expertise in the matter than the company has. This might compel the company to act on matters in which they have little or no expertise. This ambiguity might just cause more harm rather than good to the society.
- Another glaring issue is the consequence of non-compliance. There are clear penal consequences if one fails to even set up the CSR committee, fail to create a policy etc. However once the company fails to spend the actual amount of money allocated for CSR, there is no penalty which is provided under the Act. So there should be a penal provision included in Section 135 itself to punish companies for this wilful omission.
- Government should organize seminars where participation of companies Human Resource Personnels should be made compulsory so that they should understand the value of CSR that it is not an imposition but rather their responsibility towards society.
- If a company is willing to spend 5% of the business profits before 2013 Act provision, it would have spend on CSR activities but now because of the rigidity of the threshold limit that company has to spend minimum 2% of profit every year might just discourage individuals to spend in CSR activities as they will think whether their business is flourishing or at recession they have to spend 2% thereby causing loss to the society. So, instead of clear threshold limit some flexibility should be brought in the limit provided. Power should be given to the government to raise or lower the

cap in certain special circumstances which should be explicitly mentioned in Section 135 itself or in the corresponding CSR rules.

II. CONCLUSION

In a world of good intentions, the emergence of the slogan “corporate social responsibility” has been a particularly striking feature of the twenty-first century. This step has boosted much required social projects with some professional management of the private sector. Nevertheless, as the popularity of CSR surges, more and more national and international players will be seeking to harness the power of corporate-funded investment in social welfare projects. Accordingly, India’s compulsory CSR mandate may represent merely the beginning of a new wave of development in the realm of corporate social responsibility. A product of unique historical exigencies, the mandate may represent a new type of solution to an increasingly pressing international problem.

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