



From Profit To People: Csr And Human Rights In The Indian Framework

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"The responsibility of business enterprises to respect human rights requires that they avoid causing or contributing to adverse human rights impacts"

- United Nations Guiding Principles on Business and Human Rights

1. INTRODUCTION

The 21st century is characterized by unprecedented challenges and opportunities, arising from globalization, the desire for inclusive development and the imperative of climate change. Indian business, which is today viewed globally as a responsible component of the ascendancy of India, is poised now to take on a leadership role in the challenges of our times. It is recognized the world over that integrating social, environmental and ethical responsibilities into governance of businesses ensure their long-term success, competitiveness and sustainability. This approach also reaffirms the view that businesses are an integral part of society, and have a critical and active role to play in the sustenance and improvement of healthy ecosystems, in fostering social inclusiveness and equity, and in upholding the essentials of ethical practices and good governance. This also makes business sense as companies with effective CSR, have image of socially responsible companies, achieve sustainable growth in their operations in the long run and their products and services are preferred by the customers.

No doubt India is a democracy, one that is very successful at ensuring a peaceful transfer of power through an electoral system every five years. Yet, the country faces gross social inequities of poverty and a new affluence for a few, human, consumer and environmental rights are contested terrains, and corporate scandals are commonplace.¹

Indian entrepreneurs and business enterprises have a long tradition of working within the values that have defined our nation's character for millennia. India's ancient wisdom, which is still relevant today, inspires people to work for the larger objective of the well-being of all stakeholders. These sound and all-encompassing values are even more relevant in current times, as organizations grapple with the challenges of modern-day enterprise, the aspirations of stakeholders and of citizens eager to be active participants in economic growth and development.²

¹ Ravi Agarwal, "corporate social responsibility: a critical perspective from India", http://www.toxicslink.org/qdoes/Corporate_Social_Responsibility_in_India.pdf last visited on 01/02/2016.

² <http://caclubindia.com/forum/corporate-social-responsibility-voluntary-guidelines-2009-98392.asp> last visited on 01/02/2016.

2. EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA

CSR History

India has a long rich history of close business involvement in social causes for national development. In India, CSR is known from ancient time as social duty or charity, which through different ages is changing its nature in broader aspect, now generally known as CSR. From the origin of business, which leads towards excess wealth, social and environmental issues have deep roots in the history of business. India has had a long tradition of corporate philanthropy and industrial welfare has been put to practice since late 1800s. Historically, the philanthropy of business people in India has resembled western philanthropy in being rooted in religious belief. Business practices in the 1900s that could be termed socially responsible took different forms: philanthropic donations to charity, service to the community, enhancing employee welfare and promoting religious conduct. Corporations may give funds to charitable or educational institutions and may argue for them as great humanitarian deeds, when in fact they are simply trying to buy community good will. The ideology of CSR in the 1950s was primarily based on an assumption of the obligation of business to society.

After Independence, JRD Tata who always laid a great deal of emphasis to go beyond conducting themselves as honest citizens pointed out that there were many ways in which industrial and business enterprises can contribute to public welfare beyond the scope of their normal activities. He advised that apart from the obvious one of donating funds to good causes which has been their normal practice for years; they could have used their own financial, managerial and human resources to provide task forces for undertaking direct relief and reconstruction measures. Slowly, it began to be accepted, at least in theory that business had to share a part of the social overhead costs of. Traditionally, it had discharged its responsibility to society through benefactions for education, medical facilities, and scientific research among other objects. The important change at that time was that industry accepted social responsibility as part of the management of the enterprise itself. The community development and social welfare program of the premier Tata Company, Tata Iron and Steel Company was started the concepts of "Social Responsibility." (Gupta, 2007).

The term corporate social performance was first coined by Sethi (1975), expanded by Carroll (1979), and then refined by Wartick and Cochran (1985). In Sethi's 1975 three-level model, the concept of corporate social performance was discussed, and distinctions made between various corporate behaviors.

According to "Altered Images: the 2001 State of Corporate Responsibility in India Poll", a survey conducted by Tata Energy Research Institute (TERI), the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches.³

1. Ethical Model (1930-1950):

One significant aspect of this model is the promotion of "trusteeship" that was revived and reinterpreted by Gandhi. Under this notion the business were motivated to manage their business entity as trust held in the interest of the community. The idea prompted many family run businesses to contribute towards socioeconomic development. The efforts of Tata group directed towards the well being of the society are also worth mentioning in this model.

2. Static Model (1950-1970):

Under the aegis of Nehru, this model came into being in the post independence era. The era was driven by a mixed and socialist kind of economy. The important feature of this model was that the state ownership and legal requirements decided the corporate responsibilities.

³ http://www.in.kpmg.com/pdf/CSR_Whitepaper.pdf last visited on 02/02/2016.

3. Liberal Model (1970-1990):

The model was encapsulated by Milton Friedman. As per this model, corporate responsibility is confined to its economic bottom line. This implies that it is sufficient for business to obey the law and generate wealth, which through taxation and private charitable choices can be directed to social ends.

4. Stakeholder Model (1990-present):

The model came into existence during 1990s as a consequence of realization that with growing economic profits, businesses also have certain social roles to fulfill. The model expects companies to perform according to “triple bottom line” approach. The businesses are also focusing on accountability and transparency through several mechanisms.

3. PERSPECTIVES

3.1. BUSINESS PERSPECTIVE

Focuses on the importance of ‘reputation capital’ for capturing and sustaining markets. CSR is nothing but a new business strategy to reduce investment risk and maximise profits by taking all the stakeholders into confidence.

3.2. ECO - SOCIAL PERSPECTIVE

Recognises the fact that social and environmental stability and sustainability are two major prerequisites for sustainability of the market in the long run. CSR is both a value and a strategy for ensuring sustainability of a business.

3.3. RIGHT - BASED PERSPECTIVE

Focuses on the fact that consumers, employees, stakeholders and affected communities have a right to know about corporations and their businesses. It stresses accountability, transparency, and social and environmental investment as major aspects of CSR.⁴

4. PROTECTION OF HUMAN RIGHTS UNDER CORPORATE LAWS

A corporation is a congregation of various stakeholders, namely, customers, employees, investors, vendor partners, government and society. A corporation should be fair and transparent to its stakeholders in all its transactions. This has become imperative in today’s globalized business world where corporations need to access global pools of capital, need to attract and retain the best human capital from various parts of the world, need to partner with vendors on mega collaborations and need to live in harmony with the community. Unless a corporation embraces and demonstrates ethical conduct, it will not be able to succeed.

4.1 Corporate Social Responsibility Voluntary Guidelines, 2009⁵

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⁴ Corporate Social Responsibility: Background and Perspective, John Samuel and Anil Saari.

⁵ Issued by the Ministry of Corporate Affairs, Government of India, dated 14 to 21 December 2009.

After considering the experience of adoption of these guidelines by Indian Corporate Sector and consideration of relevant feedback and other related issues, the Government may initiate the exercise for review of these guidelines for further improvement after one year. These guidelines can be divided into three parts: Fundamental Principle, Core Elements and Implementation Guidance.

GUIDELINES

1. Fundamental Principle⁶

Each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with the participation of various level executives and should be approved by the board.

2. Core Elements:

The CSR Policy should normally cover following core elements;

a. Care for all Stakeholder:

The companies should respect the interests of, and be responsive towards all stakeholders, including shareholder, employees, customer, suppliers, project affected people, society at large etc. And create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.

b. Ethical Functioning:

Their governance systems should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.

c. Respect for Worker Rights and Welfare:

Companies should provide a workplace environment that is safe, hygienic and humane and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on a equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labor have an effective grievance redressal system, should not employ child or forced labor and provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.

d. Respect for Human Rights:

Companies should respect human rights for all and avoid complicity with human rights abuse by them or by third party.

e. Respect for Environment:

Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.

3. Activities for social and Inclusive Development:

Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting at disadvantaged sections of society.

⁶http://www.mca.gov.in/Ministry/latestnews/Corporate_Voluntary_Guidelines_24dec2009.pdf last visited on 03/02/2016.

4. Implementation guidance:

1. The CSR policy of the business entity should provide for an implementation strategy which should include identification of projects/activities, setting measurable physical targets with timeframe, organizational mechanism and responsibilities, time schedules and monitoring. Companies may partner with local authorities, business associations and civil society/non-Government organization. They may influence the supply chain for CSR initiative and motivate employees for voluntary effort for social development. They may evolve a system of need assessment and impact assessment while undertaking CSR activities in a particular area independent evolution may also be undertaken for selected projects/activities from time to time.
2. Companies should allocate specific amount in their budgets for CSR activities. This amount may be related to profits after tax, cost of planned CSR activities or any other suitable parameter.
3. To share experiences and network with other organization the company should engage with well-established and recognized programmes/platforms which encourage responsible business practices and CSR activities. This would help companies to improve on their CSR strategies and effectively project the image of being socially responsible.

Apart from this there is no direct reference to protection of human rights under the Indian Corporate Laws. However, the concept of 'Corporate Governance' is firmly established under Companies Act, 1956 and Clause 49 Listing Agreement.

Corporate governance is needed to create a corporate culture of consciousness, transparency and openers. It refers to combination of laws, rules, regulations, procedures and voluntary practices to enable the companies to maximize the shareholders long-term value. It should lead to increasing customer satisfaction, shareholder value and wealth. Good corporate governance increases the confidence of investors and results in development of capital market.

5 CORPORATE GOVERNANCE UNDER COMPANIES ACT, 1956

The Ministry of Corporate Affairs (MCA) is the main authority for regulating and promoting efficient, transparent and accountable form of corporate governance the Indian corporate sector. It is constantly working towards improvement in legislative framework and administrative set up, so as to enable easy incorporation and exit of the companies, as well as convenient compliance of regulations with transiency and accountability in corporate governance. It is primarily concerned with administration of the Companies Act, 1956 and related legislations.

The Companies Act, 1956 has an elaborate provisions relating to Corporate Governance which deals with management and administration of companies. It contains specials provisions with respect to the accounts and audit, directors' remuneration, other financial and non-financial disclosures, corporate democracy, prevention of mismanagement, etc.

5.1 Disclosures on Remuneration of Directors:

The specific disclosure on the remuneration of directors regarding all elements of remuneration package of all the directors should be made as a part of Corporate Governance. Section 299 of the Act requires every director of the company to make disclosure, at the Board meeting, of the nature of his concern or interest in a contract or arrangement (present or proposed) entered by or on behalf of the company/ The company is also required to record such transactions in the Register or Contract under section 301 of the Act.

5.2 Requirements of the Audit Committee:

Audit Committee has a critical role to play in ensuring the integrity of financial management of the company. This Committee ad assurance to the shareholders that the auditors, who act on their behalf, are in a position to safeguard their interests. Besides the requirements of Clause 49, section 292A of the Act requires every public having paid up capital of Rs. 5 crores or more shall constitute a committee of the board to be known as Audit Committee. As per the Act, the committee shall consist of at least three directors; two-third of the total strength shall be the director other than managing or whole time directors. The Annual Report of company shall direct the composition of the Audit Committee.

5.3 Number of Directorships Restricted

Section 275, 276 & 277 have been amended to provide that no person shall hold office as director in more than 15 companies (excluding private company, unlimited company etc., as defined in section 278) instead of 20 companies.

5.4 Corporate Democracy

Wider participation by the shareholder in the decision making process is a pre-condition for demarcating corporate bodies. Due to geographical distance or other practical problems, a substantially large number of shareholders cannot attend the general meetings. To overcome these obstacles and pave way for introduction of real cooperative democracy, section 192A of the Act and the Companies (Passing of Resolution by Postal Ballot), Rules provides for certain resolutions to be approved and passed by the shareholders through postal ballots.

5.5 Appointment of Nominee Director by Small Shareholders:

Section 252 has been amended to provide that a public company having paid-up capital of Rs. 5 crore (or) more and on thousand (or) more small shareholders can elect a director by small shareholders. "Small Shareholders" means a shareholder holding shares of nominal value of Rs. 20,000 (or) less in a company.

5.6 Director' Responsibility Statement:

Sub-Section (2AA) in Section 217A has provided that Board's report shall include a director's responsibility statement with respect to applicable accounting standards. This statement will give confidence in the minds of shareholder above practices followed and all care taken by directors. Thus, the directors can be held responsible for not following the policies, practices and accounting standards and for any willful default in discharging their duties and inaccuracy in such audited accounts. However, it may not be practically possible for the Board to discharge all such duties unless senior executives and internal auditors are assigned such duties and their compliance certificate is obtained to facilitate preparation of directors' responsibility statement.

5.7 Corporate Governance under Clause 49 of the Listing Agreement:

1. Listing Agreement was first introduced by BSE and later followed by other stock exchange.
2. SEBI by issuing circular 21st February 2000 specified principles of Corporate Governance and introduced new clause 49 in the listing agreement of the stock exchanges.
3. It contains 51 clauses.
4. Listing means admission of securities to dealings on a recognized stock exchange. The securities may be of any public limited company, central or state government, quasi government and other financial institutions etc.
5. Listing helps in free transferability, leads to transparency in disclosure of information.

6. CSR UNDER THE COMPANIES ACT, 2013

In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013, which was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013. The CSR provisions within the Act is applicable to companies with an annual turnover of 1,000 crore INR and more, or a net worth of 500 crore INR and more, or a net profit of five crore INR and more. The new rules, which will be applicable from the fiscal year 2014-15 onwards, also require companies to set-up a CSR committee consisting of their board members, including at least one independent director.

The Act encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities. The ministry's draft rules, that have been put up for public comment, define net profit as the profit before tax as per the books of accounts, excluding profits arising from branches outside India. The Act lists out a set of activities eligible under CSR. Companies may implement these activities taking into account the local conditions after seeking board approval. The indicative activities which can be undertaken by a company under CSR have been specified under Schedule VII of the Act.

The draft rules (as of September 2013) provide a number of clarifications and while these are awaiting public comment before notification, some of the highlights are as follows:

Surplus arising out of CSR activities will have to be reinvested into CSR initiatives, and this will be over and above the 2% figure

The company can implement its CSR activities through the following methods: a. Directly on its own Through its own non-profit foundation set- up so as to facilitate this initiative.

b. Through independently registered non-profit organisations that have a record of at least three years in similar such related activities.

c. Collaborating or pooling their resources with other companies

Only CSR activities undertaken in India will be taken into consideration

Activities meant exclusively for employees and their families will not qualify.

A format for the board report on CSR has been provided which includes amongst others, activity-wise , reasons for spends under 2% of the average net profits of the previous three years and a responsibility statement that the CSR policy, implementation and monitoring process is in compliance with the CSR objectives, in letter and in spirit. This has to be signed by either the CEO, or the MD or a director of the company

1. Governance

Clause 135 of the Act lays down the guidelines to be followed by companies while developing their CSR programme.

The CSR committee will be responsible for preparing a detailed plan on CSR activities, including the expenditure, the type of activities, roles and responsibilities of various stakeholders and a monitoring mechanism for such activities. The CSR committee can also ensure that all the kinds of income accrued to the company by way of CSR activities should be credited back to the community or CSR corpus.

2. Reporting

The new Act requires that the board of the company shall, after taking into account the recommendations made by the CSR committee, approve the CSR policy for the company and disclose its contents in their report and also publish the details on the company's official website, if any, in such manner as may be prescribed. If the company fails to spend the prescribed amount, the board, in its report, shall specify the reasons.

3. Business responsibility reporting

The other reporting requirement mandated by the government of India, including CSR is by the SEBI which issued a circular on 13 August 2012 mandating the top 100 listed companies to report their ESG initiatives. These are to be reported in the form of a BRR as a part of the annual report. SEBI has provided a template for filing the BRR. Business responsibility reporting is in line with the NVG published by the Ministry of Corporate Affairs in July 2011. Provisions have also been made in the listing agreement to incorporate the submission of BRR by the relevant companies. The listing agreement also provides the format of the BRR. The BRR requires companies to report their performance on the nine NVG principles. Other listed companies have also been encouraged by SEBI to voluntarily disclose information on their ESG performance in the BRR format. Business responsibility reporting

7. CONCLUSION

Corporate Social Responsibility in India is not something that is alien to our culture Traditional Indian society has always placed a lot of stress on the charitable nature of the high and the mighty. The term Corporate Social Responsibility has for the first time been used in the Corporate Social Responsibility Voluntary guidelines, 2009. Prior to that, CSR has been granted legal sanction through the constitution, Companies Act, 1956 and Clause 49 of the Listing Agreement. Despite all this companies in India normally adopt CSR techniques out of their own sweet will or as a means to avoid tougher regulations. Still, the

picture is not so grim. The number of companies adopting CSR has been on rise. Corporations are waking up to the fact that a healthy CSR approach will not only give them a positive image, but shall also increase their profits in the long run.

With a view to have a legal framework in respect of CSR government of India has come up with Companies Act (Amendment), 2013. Which mandates companies to maintain CSR agenda besides their economic activity.

