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An Analysis of Corporate Governance in the Context of Corporate Social Responsibility

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ABSTRACT

Making money or becoming wealthy is the sole objective of every business, and the size or quantity of the profit is the sole determinant of how well the firm performs. On the other side, business ethics should ensure that individuals do not neglect their own needs and safety in the pursuit of profit. According to Mahatma Gandhi, business and industry should be conducted for the greater interest of the community, and businesses should view society as a good friend. This indicates that a businessman should generate revenue and spend it for the greater welfare of the community. Along with producing money, they should conduct their businesses for the greater benefit of society, with the greater good of society being their primary objective while making money.

But a lot of companies especially multinational corporations (MNC) have violated this notion of corporate governance by overlooking corporate social responsibilities (CSR) and basic human rights in underdeveloped and developing countries. It is claimed that in order to enable economic growth, third world governments are hesitant to apply human rights due diligence standards mandated by international legal mechanisms for corporations.

Therefore, this paper will look into the concept of corporate governance in relation to corporate social responsibilities and suggest how corporates can be made more accountable to its stakeholders and the society.

Keywords: *Corporate Social Responsibility, Multi-National Corporations, Social Initiatives, Environment, Policies.*

I. LITERATURE REVIEW

Jordan Sundell, Ill-Gotten Gains: “The Case for International Corporate Criminal Liability”, Minnesota Journal of Int’l Law, Vol 20, No.2, 2011.

This article details how companies are complicit in and perpetrators of human rights breaches, and how international law has failed to adequately address the problem of businesses being held accountable and subject to corporate criminal culpability. The essay describes in detail how companies have grown to be enormous, often larger than governments, and how they are perpetrating human rights breaches while evading accountability. The article makes the

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argument that while domestic courts have jurisdiction over minor wrongs/lesser crimes under Torts law and civil law, larger/more serious offences require the International Courts to adjudicate and assign culpability. Additionally, the document emphasises that while governments unwilling to submit to the ICC or other international organisation may be excluded, other states must be safeguarded against corporate crimes.

Wolfgang Kaleck and Miriam Saage-MaaB, “Corporate Accountability for Human Rights Violations Amounting to International Crimes: The Status Quo and its Challenges” *Journal of International Criminal Justice*, No.8, 2010, p 699-724.

When we read this article, we can better understand how law has changed over time and how corporations can be held accountable for their actions from the Nuremberg trials through a number of case laws. The author tries to explain when corporations might be held accountable for things like profiting from state violence, the acts of perpetrators, providing tools for abuse, and directly supporting repression. During war and armed conflicts, corporations might also be held accountable for things like providing illegal funds and equipment, providing intelligence services, and providing military. In his article, he says that the law allows corporations to be held liable, but that the enforcement mechanism is weak. This is true both in international and national jurisdictions, so there is a need to improve the enforcement mechanism and make changes to strengthen the enforcement agencies.

V.S. Khanna, “Corporate Criminal Liability: What Purpose Does It Serve?” *Harvard Law Review*, Vol. 109, No7, 1996, p 1477-1534

This article talks about whether corporations should be held accountable for crimes. The author tries to figure out how corporations can be held responsible for crimes, and he or she finds that it is very difficult to do so. A lot of time was spent on this article, and through it, he came to a conclusion that the enforcement methods used under civil liability and other methods are very similar to those used under corporate criminal liability. He thinks that by giving corporations criminal liability, it will not only change their behaviour, but that a new strategy could be used to deal with and control the corporations and come up with a proper deterrence policy.

Olivier De Schutter, *Transnational Corporations and Human Rights*, Hart Publication, Oregon, 2006.

The book gives an overview of all the international tools that can be used to improve the accountability of multinational firms. Some of the tools are about how the State controls the people who run businesses and the rules they must follow. It shows how corporations can make a code of conduct or other agreement with each other in the international business world and

do business in a way that is ethical. A legal analysis that is very thorough needs to be done in the field of human rights violations by corporations. This will help people understand different concepts and come up with the best analysis.

Shestack, Jerome J.; Corporate Social Responsibility in a Challenging World, in International Bar Association “CSR: the Corporate Governance of the 21 Century”, Second Edition, (Kluwer Law International, the Netherland, 2011 ISBN-9879041132529), p-114.

This book basically talks about Corporate Social Responsibility (CSR) and its fundamental concepts. Second, it defines Corporate governance (CG) and the process through which CG converges with CSR. Thirdly, it demonstrates how many economies are implementing CSR concepts into business legislation.

Aras, Guler & Crowther, David; “Global Perspective on Corporate Governance and CSR”, (Routledge Taylor & Francis Group Publication, London and New York, 2009), p-21

This article mainly examines the overwhelming trend toward corporate social responsibility and how the next upcoming issue will be to bridge the vast gap between corporate governance and corporate social responsibility. It also goes on to say how corporate social responsibility takes on a variety of forms, but it is founded on the recognition that the wasteful and exploitative practises of the past cannot be sustained by people or the world. It is not only a matter of duty that is at stake at the moment but it is also a matter of survival.

II. RESEARCH QUESTION

1. What are the existing different measures that have been provided to stop scams relating to corporate governance?
2. Whether, the current system of corporate social responsibility in India is good enough? Is there any way or need to improve it?

III. OBJECTIVES OF THE STUDY

- Understanding the concept of corporate governance.
- To examine corporate governance, when it comes to crimes and legal accountability.
- To understand corporate social responsibilities and the mechanisms set in place in case of omission of these responsibilities

IV. LEGAL FRAMEWORK

- The Companies Act, 2013.
- Monopolies and restrictive trade practices Act, 1969
- Foreign exchange management Act, 2000
- Securities and Exchange Board of India Act, 1992
- Securities contract regulations Act, 1956
- The depositories Act, 1996
- Arbitration and conciliation Act, 1996
- SEBI code on corporate governance.

V. ANALYSIS

The structure, composition, and practices of a company's board of directors are critical components of corporate governance, since they serve as the link between the board and the rest of management. Effective corporate governance also requires a healthy relationship between the board of directors and the shareholders, the auditors, the regulators, and other shareholders. Thus, Corporate Governance refers to a collection of systems, rules, and practises, as well as standards, put in place by a business to guarantee that relationships with diverse stakeholders are transparent and honest.²

The World Bank's definition of corporate governance shows how important it is for the stability and fairness of society. It says that corporate governance is about balancing economic and social goals and between individual and communal goals. The governance framework is there to make sure that resources are used efficiently and to make sure that people are held accountable for how they use those resources. Individuals, businesses, and the rest of society all have different goals, but the goal is to make them all work together as close as possible. Therefore, giving rise to the requirement for corporate social responsibilities³

Basically, corporate social responsibility says that businesses or companies continue to exist as a result of an implied agreement between corporate entities and society, and the essence of that agreement between them is that businesses will not pursue immediate profit objectives at the expense of the community's long-term interests. Thus, corporate social responsibility comprises of the economic, legal, ethical, and discretionary demands placed on corporations

² Sharma, J.P.; "Corporate Governance: Business Ethics and CSR with Case Study and Major Corporate Scandals", Second Edition, (Ane Books Pvt. Ltd, New Delhi, 2016), p-881.

³ Aras, Guler & Crowther, David; "Global Perspective on Corporate Governance and CSR", (Routledge Taylor & Francis Group Publication, London and New York, 2009), p-21.

by society at any particular period in time. Taking part in corporate socially responsible activities is required by Section 135 of the Companies Act⁴. This has been questioned because it is inherently contradictory and won't work when it comes to real life. Also, the law doesn't make any provisions for enforcement or penalties for not following it.

Another thing that corporations have said is that there haven't been any clear rules or instructions put in place, which shows how vague this model provision seems to be. Valid points have been made that if a company were to follow section 135 of the law, it would be on a level playing field with a company that makes eco-friendly products for the public. Such questions aren't answered by these rules. So, it's suggested that because the provision and the Rules don't give any clear direction on how to implement a socially-minded initiative, an effort should be made to clear up the ambiguities in the statute so that businesses follow healthy practises⁵. To make sure that the two percent mandatory spending rule is met, a proper regulatory system for managing and allocating funds must be put in place. Also, a penalty must be added to section 135, which says that if a company doesn't do good things for the world, they will be punished.

Having no clear policy for starting social business projects has made it difficult for many companies to be responsible investors. This has made it difficult for many companies to look into the need to invest in social business projects. So, it's suggested that only the Ministry of Corporate Affairs should make sure that all businesses that are regulated by Section 135 make sure that they have policies that are ethical and that protect the environment and people's rights.

As well, these must be strictly followed and reported right away, and anyone who breaks them will be punished. There is no punishment for not meeting your company's social responsibility spends obligations. Section 450⁶, which is called "Punishment where no specific penalty or punishment is given," says that these kinds of mistakes will be punished. Section 450 has the following: (a) If a company or any officer of a company or any other person breaks any of the rules of this Act or the rules made under it, or 61. Condition, limitation, or restriction: (ii) any condition, restriction or limitation under which any approval or sanction or consent or recognition has been given, given, or approved for any matter. In this Act, there is no punishment or penalty for breaking the rules above, so there is no penalty or punishment for

⁴ The Companies Act 2013, Section 135(1) of the Act states that every company having the specified net worth, turnover, or net profits must establish a CSR committee. Thus, section 8 companies must also establish a CSR committee and comply with CSR provisions when it meets the specified net worth, turnover, or net profits.

⁵ Joseph, Amita V.; Successful Examples of Corporate Social Responsibility, *Indian Journal of Industrial Relations*, Vol. 44, No. 3, "Corporate Social Responsibility", (Published by Shri Ram Centre for Industrial Relations and Human Resources, Jan., 2009), p-402, Also available at www.jstor.org

⁶ Section 450 of the Companies Act, 2013

that. As long as conditions (a) and (b) are met, if the company and every officer of the company who is in default or any other person who is in violation will be fined up to 10,000. If the violation is a long-term one, there will be a fine of 1,000 for every day after the first during which the violation continues.

A case in point is the Bhopal Gas Tragedy, which resulted in the death of over 20,000 people and continues to inflict pain to this day. Even today, several infants are born with congenital deformities as a result of the chemicals emitted during that historical period. In the Uphara Cinema Tragedy⁷, the owner of the theatre, the Delhi Vidyut Board, the Municipal Corporation Board, and the licencing body are all responsible for the death of the people who went to the Uphara Cinema. 59 people died in a stampede at a theatre in Delhi because of rules that were broken by Delhi Vidyut, the licencing authority did not check the theatre for compliance, and theatre officials broke the rules of construction. The city didn't have to be held accountable for this.

*M. C. Mehta v. Union of India*⁸ said that a leak of oleum gas happened at one of Sriram Foods and Fertilizers Industries' factories, which made dangerous products that could harm people who lived near a densely populated area. The leak could also harm the environment and kill people who lived near the factories and their employees.

In the case of *John Pinder*⁹. John Pinder's employer was well aware that Asbestos is hazardous. This meant that the company bore a greater responsibility for the employees' health. Proagro¹⁰, a German firm, and its subcontractor, Bayer, an Indian corporation, both employ underage labour, which violates ILO guidelines.

UNOCAL¹¹, a US company, was constructing a pipeline in Burma. There were allegations that the corporation employed slave labour, but the US refused to conduct an inquiry due to the company's US citizenship. Three corporations were sued in 2005 in California for trafficking Malian children and forcing them to labour 12 to 14 hours a day on a coco plantation. All three companies were sued: Nestle, Archer Daniels Midland, and Cargill.

In Rio de Janeiro's Women make up the majority of the workforce in Mexico. 50% were typically between the ages of 17 and 23 and unmarried. Because they could earn less than a dollar a day and their quick fingers were useful for repetitive work, they constituted the

⁷ *MCD v. Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481,

⁸ *M.C. Mehta v. Union of India*, (1987) AIR 965 (1987) SCR (1) 819 (Oleum Gas Leak Case)

⁹ *John Pinder v Cape LPC* (2006) EWHC 3630 (QB) (20 December 2006)

¹⁰ Bayer A.G, 'OECD- Beschwerde gegen Bayer wegen Kinderarbeit in Indien' (2004)

¹¹ *National Coalition Government of the Union of Burma v Unocal Incorporated* (1997) 176 FRD 329 (ND Cal.); *Doe L v Unocal Corp* (2002) 395 F. 3d 932;

majority of the workforce. In 1990, almost 2000 violence and sexual assault allegations were submitted in Rio de Janeiro's private sector, but no one was prosecuted, even the corporates.¹²

Therefore, it can clearly be seen from above cases that because corporations' activities have an effect on the outside world, they should be held more accountable to the public and their stockholders. There is a connection between Corporate Social Responsibility and how a business is conducted. Investors are not the sole stakeholders in the business. As there are many people whose lives revolve around the way an organisation conducts its business.

VI. CONCLUSION

To conclude I would like to make the following recommendations:

Corporate governance should prioritise ethical labour practises, and by treating employees fairly and ethically, businesses may also demonstrate their corporate social responsibility. This is particularly true for enterprises operating in countries with labour rules that differ from those in India.

In the event that a company fails to spend the required two percent of its revenue on corporate social responsibility purposes, the existing provisions of the Company Act, 2013 require only that the company provide reasons. However, simply providing reasons will not be a sufficient remedy because corporations may abuse this provision. Therefore, it would be best to add a clause addressing penalty to the Companies Act, 2013.

Making company regulations more transparent to the general public may be a more effective method of ensuring fairness in economic activity. It should be posted on the organization's website so that anybody interested in learning about the organization's ethical behaviour may do so. By making the information publicly available, corporate accountability may be enhanced.

Corporate Social Responsibility will remain significant and broad in breadth as long as there is poverty, illness, and disregard for human rights, unemployment, and a lack of environmental care, among other things. Therefore, a robust method for advocating for and promoting Corporate Social Responsibility must be developed by stakeholders, either independently or in collaboration with specialists.

Corporate Social Responsibility tasks such as eradicating hunger, poverty, and malnutrition, providing safe drinking water, and rural development require specific skills and significant resources. These may be insufficient to be met by the 2% of average net earnings contributed

¹² HRW Criminal Injustice Violence against Women in Brazil (1991)

by an individual firm. As a result, the Act should also establish certain permanent agencies to promote the plan of these operations.

The scope of corporate social responsibility should not be limited to companies with a revenue of 500 crore or more or with a net profit of 5 crore. It is proposed that the government eliminate this restriction for the benefit of society and for social responsibility purposes.

Stakeholders might establish a Corporate Social Responsibility training institute to help increase the quality of Corporate Social Responsibility programs. Corporate Social Responsibility courses can be developed at the undergraduate and postgraduate levels at colleges and universities to educate students about societal needs.

The government must take tough measures against corrupt behaviours. Due to the widespread abuse of hard-earned public funds allocated for development initiatives, there is an urgent need to impose a robust check on corruption. This will result in increased funding for Corporate Social Responsibility efforts.

Finally, I would like to conclude by saying that as a result of the Companies Act, 2013, there has been a rise in activities related to corporate governance and corporate social responsibility but there needs to be significant work to be done in regards to the proper implementation of these provisions.

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