

# CORPORATE SOCIAL RESPONSIBILITY

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Corporate Social Responsibility is a procedure of business, through the company pursues social and environmental aspects in their business process. Purpose of the Corporate Social Responsibility is harmonious relationship between enterprises and society. Its sole purpose of existence to maximize the profit or money for shareholders; instead, it should enhance to the maximum the interests of other stakeholders. Such social interests include employee interests, consumer interests, creditor interests, interests of medium and small competitors, interests of local communities, environmental interests, interests of the disadvantaged group of society, as well as the public interest of the whole society; it include both the human rights of natural person, especially the social, economic and cultural rights, and the rights and interests of corporation organization and non-corporation organization other than natural person. Corporate Social Responsibility is the way companies manage their businesses to produce an overall positive impact on society through economic, environmental and social actions.

There was at one time a serious controversy between two schools of thought, one represented by **Adolf Berle** and the other by **Prof. Dodd**, as regards the nature of duties and obligations owed by directors representing management of a company. **Adolf Berle**<sup>1</sup> took the view that directors are trustees only for shareholders – that is the traditional view which directly flows from a purely capitalistic approach which identifies ownership and dominion with capital- while **Prof. Dodd**<sup>2</sup> believed that directors are trustees not only for shareholders but also for the entire community. Ultimately, however, in his subsequent book, "Twentieth Century Capitalist Revolution," **Adolf Berle** conceded that **Prof. Dodd** was right and that modern directors are not limited to running business enterprise for maximum profit motive alone, but are in fact administrators of community system or of a social institution. That is why we find that in recent

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<sup>1</sup> Adolph A. Berle, *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049, 1049 (1931) (stating that "all powers granted to a corporation or to the management of a corporation, or to any group within the corporation ... are at all times exercisable only for the ratable benefit of all the shareholders as their interest appears"); *For Whom Corporate Managers Are Trustees*, 45 HARV. L. REV. 1365, 1367 (1933) (arguing that the shareholders' wealth maximization norm cannot be abandoned until there is a clear and reasonably enforceable scheme of responsibilities towards other constituencies).

<sup>2</sup> Merrick Dodd, *For Whom Are Corporate Managers Trustees*, 45 HARV. L. REV. 1145, 1148 (1932) (advocating "a view of the business corporation as an economic institution which has a social service as well as a profit making function").

times there is considerable thinking on the subject of social responsibilities of corporate management and it is .... progress.

CSR has been defined by different persons giving it a varied dimension. According to **Michel Hopkins** “Corporate Social Responsibility is concerned with treating the stakeholders of a company or institution ethically or in a responsible manner. ‘Ethically or in a responsible manner’ refers to treating key stakeholders in a manner deemed acceptable according to international norms.”

**European Union** has defined CSR thus “A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”

According to **Business for Social Responsibility (BSR)** “Corporate social responsibility is operating a business in a manner which meets or excels the ethical, legal, commercial and public expectations that a society has from the business.”

According to **United Nations Industrial Development Organization (UNIDO)**, ‘Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.

The CSR was expected to cover the all stakeholders, respect environment and management, ethical functioning, respect for worker’s rights and welfare, good governance, accountability and responsibility.

**Judicial Approach-** In *Dodge v Ford Motor Co.*<sup>3</sup> the Michigan Supreme Court say that purpose of corporation to distribute dividend in the shareholders and not increase number of employees. However, subsequent cases have taken a more flexible approach. In the case of *Smith Mfg. Co. v. Barlow*,<sup>4</sup> the Supreme Court of New Jersey held that “just as the conditions prevailing when corporations were originally created required that they serve public as well as private interests; modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities within which they operate.”

**In India**, in the case of *Charnanjitlal v. Union of India*<sup>5</sup> SC say that company according to the new socio-economic thinking is a social institution having duties and responsibilities towards the community in which it functions. In *Panchmahal Steel Ltd, v. Universal Steel*

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<sup>3</sup> 14 170 NW 668 (1919).

<sup>4</sup> Smith Mfg. Co. v. Barlow, 98 A.2d 581, 586 (N.J. 1953).

<sup>5</sup> AIR 1951 SC 41 at p59: [1950] SCR 869.

*Traders case*<sup>6</sup> Gujarat HC say that time –honored approach that the company law must safeguard the interest of investors and shareholders of the company would be too right a framework in which it can now operate. Hon’ble Justice P.N. Bhagwati, former Chief Justice of Supreme Court of India observed on Social Responsibility of Corporation in *National Textile Worker’s Union v. P. R. Ramakrishnan*<sup>7</sup> case held that today special scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep-rooted affiliations with the rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. It is now accepted on all hands, even predominantly capitalist countries, that a company is not property. The traditional view that the company is the property of the shareholders is now an exploded myth.<sup>8</sup>

Social responsibility of corporation is a very important aspect to public interest. It has been increased in the present globalization era and also increased the government liability to enforce it. India is considered as the first country to have made Corporate Social Responsibility a statutory liability for the corporate entities. The Government of India now includes the new provision for corporate social responsibility in Section 135 and Schedule VII in the Companies Act, 2013.

**Section 135 (1)** say that CSR applies to -

- every company
- its holding company
- its subsidiary company
- foreign company

During<sup>9</sup> [the immediately preceding financial year] having -

- i) net worth of Rs 500 crore or more, or
- ii) turnover of Rs 1000 crore or more, or
- iii) a net profit of Rs 5 crore or more,

shall constitute a Corporate Social Responsibility Committee.

**CSR Committee-** CSR Committee of the Board consisting by-

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<sup>6</sup> (1976) 46 CompCas 706 Guj: (1975) GLR 942.

<sup>7</sup> AIR 1983 SC 75; S. Srinivasan, Chairman And Chief vs All India Bharat Overseas Bank, 2000 (2) CTC 41.

<sup>8</sup> The Joint Labour Commissioner vs Kesar Lal, Civil Appeal No 2014 of 2020 (Arising out of SLP(C) No 2150 of 2020) SC decide date on 17 March, 2020.

<sup>9</sup> Subs. by Act 1 of 2018, s. 37 for "any financial year" (w.e.f. 19-9-2018).

- three or more directors, out of which at least one director shall be an independent director:

- A Private company shall have its CSR Committee two or more directors.

- Consisting of at least 2 persons in case of a foreign Company of which one person shall be its authorised person resident in India and another nominated by the foreign company

**Functions of CSR Committee-** The CSR Committee shall—

- 1) Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the Company<sup>10</sup>[in areas or subject, specified in Schedule VII];

- 2) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

- 3) Monitor the CSR Policy of the company from time to time

- 4) Institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

**Responsibility of Board of Directors-** The Board of director of every company on which CSR is applicable shall:

- After considering the recommendations made by the CSR Committee, approve the CSR Policy for the Company and disclose contents of such Policy in Board report.

- Ensure that the activities as are included in CSR Policy of the company are undertaken by the Company.

- a) shall disclose the composition of the CSR Committee in Board Report

- ensure that the company spends, in every financial year, at least **2% of the average net profits** of the company made during the 3 immediately preceding financial years “or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,”, in pursuance of its CSR Policy. The CSR projects/programs/activities undertaken in India only shall amount to CSR Expenditure.

There are two conditions impose on company-

- 1) Company shall give preference to the local area for the spending amount of CSR, and

- 2) Company shall specify the reasons for not spending whole of earmarked amount (if it fails to spend some) in Board Report.

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<sup>10</sup> Subs. by s. 37, *ibid.*, for "as specified in Schedule VII" (w.e.f. 19-9-2018).

**Use of remaining unspent amount-** Any amount remaining unspent under sub-section (5), pursuant to any ongoing project fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of six months from the date of completion of the third financial year.

**Punishment-** Punishment can be divided in to two parts-

**a) Punishment to the company:** the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees: and

**b) Punishment to officer of the company:** every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

**Power of the Central Government-** The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.

## **Schedule VII of the Companies Act, 2013 provide that where there CSR amount can be spend**

<sup>11</sup> [(i) **Eradicating hunger, poverty and malnutrition,** <sup>12</sup> [“promoting health care including preventive health care”] and sanitation <sup>13</sup> [including contribution to the Swatch Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.

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<sup>11</sup> Substituted by Notification Dated 27th February, 2014.

<sup>12</sup> Substituted by Notification dated 31st March, 2014.

<sup>13</sup> Inserted by Notification Dated 7th August, 2014.

(ii) **Promoting education**, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

(iii) **Promoting gender equality**, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

(iv) **Ensuring environmental sustainability**, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water <sup>14</sup> [including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].

(v) **Protection of national heritage, art and culture** including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

(vi) **Measures for the benefit of armed forces veterans**, war widows and their dependents;

(vii) **Training to promote rural sports**, nationally recognised sports, Paralympics sports and Olympic sports;

(viii) **Contribution to the prime minister's national relief fund** or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

<sup>15</sup> [(ix) **Contribution to incubators funded by Central Government or State Government** or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology engaged in conducting research in

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<sup>14</sup> Inserted by Notification Dated 7th August, 2014.

<sup>15</sup> Substituted by Notification Dated 11th October 2019.

science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).]

(x) **Rural development projects]**

<sup>16</sup> [(xi) **Slum area development.**

Explanation.- For the purposes of this item, the term `slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]

<sup>17</sup> [(xii) **Disaster management,** including relief, rehabilitation and reconstruction activities.]

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<sup>16</sup> Inserted by Notification Dated 7th August, 2014.

<sup>17</sup> Inserted by Notification dated 30th may 2019.