

Corporate Social Responsibility (CSR) Standards and Guidelines – A Legal Perspective

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Abstract

Globalization has influenced trade all over the world; companies have looked for new opportunities in doing business outside their home country. In recent years Corporate Social Responsibility (CSR) has gained growing recognition as a new and emerging form of governance in business. It is already established in a global context, with international reference standards set by the United Nation, Organization for Economic Co-operation and Development (OECD) guidelines and International Labour Organization (ILO) conventions. With brand value and reputation increasingly being seen as one of a company's most valuable assets, CSR is now seen as building loyalty and trust amongst shareholders, employees and enterprises that operate multi-nationally in very different social and environmental settings. This Paper first explains about the advantages of CSR, then discusses about the International Legal Regimes which govern CSR, and how they are 'helpful for the effective implementation of CSR in the present global era, next part of the paper explains CSR Indian scenario and finally ends with a conclusion.

Keywords: Organization for Economic Co-operation and Development (OECD), United Nation, International Labour Organization (ILO)

INTRODUCTION

CSR is closely linked with the principle of sustainable development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends but also based on immediate and long term social and environmental consequences of its activities. CSR has a significant role in controlling the perils of uncontrolled development, satisfying the needs of the present generation and at the same time ensuring that the resources of future generations is not jeopardized'. Companies are more willing to report on their contributions to the maintenance of a sound environment, a healthier society or more ethical business practices through both internal

and external action within the countries in which they operate. The area often lacking is CSR reporting in the area of labour rights and relations. One of the prime concerns of CSR should be the quality of industrial relations within a company.

It must be a contradiction in terms for a firm that fails to apply collective agreements or respect employment contracts to be regarded as 'socially responsible'. One of the most significant issues within the CSR agenda concerns the dynamic relationship between CSR and good public governance. The limits both to corporate accountability through law and to 'voluntary' CSR-related actions by businesses lie with the public good governance agenda. Legislation to deal with worst case instances of irresponsible behaviour and to set a minimum floor for business conduct will not work in the absence of effective drivers for business implementation and enforcement, whether they are market-based, or a result of enforcement through the state.

International CSR Standards and Guidelines:

Following are the leading International CSR Standards and Guidelines:

I. ILO tripartite declaration of principles concerning multinational enterprises and social policy:

The ILO is the first specialized agency of the UN in 1946. It is the only "tripartite" United Nations agency, bringing together representatives of governments, employers and workers to shape policies and programmes jointly. Its mission, scope, audience, governance and its relation with other instruments is briefly described below.

The purpose of the Declaration is to encourage the positive contribution which MNEs can make to economic and social progress, and to minimize and resolve difficulties arising from their operations. The Declaration was one of the earliest international instruments covering the social dimension of business. It was negotiated between the employees, employers and workers in the year 1977. The Declaration sets out principles in the field of general policies, employment, and training, conditions of work and life and industrial relations. All government, employer and worker organizations are recommended to observe the principles on a voluntary basis.

The main areas covered by the Declaration are:

- General policies (obey national laws and respect international standards) Employment (employment promotion; equality of opportunity and treatment; security of employment)
- Training (policy development for vocational training, skills formation)
- Conditions of Work and Life (wages, benefits, conditions of work; minimum age; safety and health)
- Industrial Relations (freedom of association and right to organize; collective bargaining; consultation; grievances; settlement of disputes).

The Declaration was revised in 2000 to include the Fundamental Principles and Rights at Work. It was further revised -in 2006 to update references to other ILO instruments. During this update, the list of ILO Conventions that member States are invited to ratify was extended to all the fundamental ILO Conventions. Moreover, a specific recommendation was added to encourage enterprises, both multinational and national, to take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour, as a matter of urgency.

Multinational enterprises are a key audience; the Declaration's principles regarding the social aspects of MNEs are also for use by small and medium enterprises, as well as by governments,. employers and workers organizations. All the parties are encouraged to contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work. In addition, governments are urged to ratify, along with the conventions already referenced, the minimum age and child labour conventions. The ILO undertakes periodic surveys on the implementation of the MNE Declaration. It does not have a membership structure, so it does not require that user organizations report their use of the Declaration.

The ILO established subcommittee of the Committee on Legal Issues and International Labour Standards of the ILO Governing Body to oversee the Declaration, and to discuss ILO policy concerning CSR issues. The ILO focuses on improved information collection, analysis and dissemination, and coherent action, drawing on its tripartite strength and bringing together contributions from all parts of the organization. It also conducts surveys on use of the Declaration. The MNE Declaration includes procedures for the examination of disputes concerning its application. The ILO also has a standing tripartite committee on Freedom of Association, which deals with complaints concerning freedom of association and collective bargaining. The MNE Declaration is' unique in providing clear guidance of how companies and governments can work together, to help advance national and local economic and social development goals — advocating public-private partnerships long before the term existed. The MNE Declaration also encourages dialogue between home and host countries for foreign direct investment, linking CSR initiatives to a broader dialogue concerning trade and investment. By situating CSR in the broader context of government policies which critically impact enterprise decisions, the MNE Declaration emphasizes that CSR is an important complement to government regulation, but never a substitute.

The MNE Declaration references other authoritative international instruments, such as the Universal Declaration of Human Rights. As a result of the thematic and sectoral complementarity of the ILO Declaration and the OECD Guidelines,. there is a good collaborative relationship between the two organizations. In June 2008 they will jointly host a Conference on CSR, aimed at promoting responsible business conduct in the globalizing economy. The MNE Declaration also references instruments such as the Millennium Development Goals and the UN Global Compact. ILO is establishing a helpdesk for companies, industry initiatives and employers, workers and governments to promote full and accurate inclusion of the principles of the MNE Declaration.

II. OECD guidelines for multinational enterprises:

The OECD MNE Guidelines are subscribed to by all thirty members of the Organization for Economic Co-operation and Development (OECD). A further ten nonmember countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia) have also adhered to the Guidelines. Four additional applications for adherence are currently under consideration by the OECD. The Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (MAC) were involved in their development and endorse the Guidelines. OECD Watch, a coalition of more than 65 civil society organizations, also supports the Guidelines. The Guidelines have been referenced by the UN Security Council and other interested non-OECD bodies.

The purpose of the OECD MNE Guidelines is to offer a balanced, multilaterally-endorsed, and comprehensive Code that expresses the shared values of adhering governments. They are "recommendations jointly addressed by governments to multinational enterprises" that provide "principles and standards of good practice consistent with applicable laws". By providing a clear set of expectations, the Guidelines seek to encourage the positive contributions multinational companies can make to economic, environmental and social progress.

The Guidelines comprise a set of voluntary recommendations in all the major areas of corporate citizenship, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. They form part of a broader OECD investment instrument, the Declaration on International Investment and Multinational Enterprises, which is designed to promote direct investment and international economic development and growth. Implementation of the Guidelines involves a unique combination of binding and voluntary elements. Adhering governments commit to promote them among multinational enterprises operating in or from their territories. The instrument's distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with advancing the Guidelines and handling enquiries in the national context. NCPs also support a unique mediation and conciliation procedure — called "specific instances" — involving claims that the Guidelines have not been respected. Since 2000, some 160 such specific instances have been considered by the NCPs. This process may be engaged whether or not a company has recognized the Guidelines.

While the Guidelines are primarily addressed to MNEs, they are not aimed at introducing differences of treatment between multinational and domestic enterprises. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both. Likewise, while SMEs may not have the same capacities as larger enterprises, they are invited to observe the Guidelines "to the fullest extent possible". The Guidelines are freely available to all user organizations. Since the Guidelines do not require users to publicize their use, the actual number of users is not known. Nonetheless, surveys among large enterprises indicate that a significant proportion refer to the Guidelines in their CSR policies.

The OECD Investment Committee, in consultation with MAC and TUAC, is responsible for oversight of the Guidelines. Adhering governments are individually responsible for promoting use of the Guidelines, and for processing any "specific instances", through their NCPs. They meet annually at the OECD and report to the.

Investment Committee, which conducts a "peer review" of implementation.

The Guidelines were expressly designed to strengthen the existing international normative framework. Among other norms, they reference the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21, and the Copenhagen Declaration for Social Development. The Guidelines can readily be used in conjunction with other instruments. Explanatory materials have been developed to outline their relationship with the UN Global Compact, the Principles for Responsible investment, and with the GRI Guidelines.

III. UN Global Compact:

UN Secretary-General, one of the principal organs of the United Nations, with support from UN agencies, governments, and representatives of business, labour and other civil society bodies. It accepts new adherents on an ongoing basis from all major categories of societal actors. The UN Global Compact has been recognized on a number of occasions by the UN General Assembly, as well as by all Heads of States and Governments in the UN World Summit Outcome document (2005) and the G8.

The UN Global Compact has two broad goals. These are to mainstream ten core principles relating to human rights, labour standards, the environment, and anti-corruption in business activities around the world; and to catalyse actions in support of broader UN goals, such as the Millennium Development Goals (MDGs). A voluntary initiative, it is not a code of conduct. It offers "a policy framework for organizing and developing corporate sustainability strategies while offering a platform – based on universal principles – to encourage innovative initiatives and partnerships with civil society, governments and other stakeholders". The UN Global Compact invites companies to embrace, support and enact, within their sphere of influence, the following ten principles:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

The UN Global Compact is directed primarily to the business sector, but is a multi-stakeholder initiative and engages all kinds of societal actors, including public agencies, labour and civil society organizations. Companies participating in the Compact initiate their involvement by expressing their support in writing at CEO level. Among other things, each participant commits to integrate the principles into organizational strategy, culture and operations; to publicly advocate the UN Global Compact and its principles; and to publish annually a "communication on progress", a description of the ways in which it is supporting the Global Compact and its ten principles. Since its launch in July 2000, the initiative has grown to over 5,000 participants, including over 3,600 businesses in 120 countries around the world. It is widely regarded as the world's largest global corporate citizenship initiative.

The Compact has a "multi-centric" governance framework. This includes a triennial Leaders Summit, annual local networks forum, the Global Compact Office and a UN Inter-Agency Team, as well as a 20 person global Board comprising representation from business, civil society, labour and the UN family. The Compact's principles are derived from the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development, and the UN Convention against Corruption. The Global Compact has developed guidance materials that help users understand its relationship with the OECD MNE Guidelines, and with the GRI Guidelines. The Compact endorses but does not require the use of the GRI Guidelines in making "communications on progress".

IV. The Universal Declaration of Human Rights:

The Universal Declaration of Human Rights states that "every individual and organ of society" has the responsibility to strive "to promote respect for these rights and freedoms" and "by progressive measures, national and international, to secure their universal and effective recognition and observance". As important "organs" of society, businesses have a responsibility to promote worldwide respect for human rights. The ILO Conventions establish norms covering all aspects of working conditions and industrial relations. Some of the most important cover core labour standards (i.e. basic human rights in the workplace). These include the right to freedom of association, the right to organize and to collective bargaining, and freedom from forced labour. ILO conventions are binding on all countries that have ratified them.

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: It is a global instrument designed to provide guidance to government, employer and worker organizations in areas of employment, training, conditions of work and industrial relations. All core labour standards are covered. Although it is a non-binding instrument, its implementation is nevertheless the object of regular reviews.

The ILO Declaration on Fundamental Principles and Rights at Work: It is based on the core labour standards outline in the ILO Conventions. The Declaration is not binding but applies to all ILO member states. As part of a strategy to help countries to have well-functioning labour markets, it provides for a mechanism for annual review of the efforts made by member states that have not yet ratified the core labour standards. The Declaration also reinforces the application of core labour standards in private voluntary instruments. The 1992 Rio Declaration sets out 27 principles defining the rights and responsibilities of states in relation to human development and well-being. The Agenda 21 agreement provides guidance for governments, business and individuals on how to contribute to efforts to make development socially, economically and environmentally sustainable. Its Chapter 30 recognizes the value of promoting "responsible entrepreneurship".

The Millennium Development Goals: It identifies a series of government-agreed targets and timetables in relation to issues such as poverty reduction, improvement of child health care and education, and the promotion of gender equality.

The Johannesburg Declaration on Sustainable Development (2002) It says, that the private sector has "a duty to contribute to the evolution of equitable and sustainable communities and societies", and that "there is a need for private sector corporations to enforce corporate accountability". -Its Plan of Implementation notes the need to "enhance corporate environmental and social responsibility and accountability". The UN Framework Convention on Climate Change and Convention on Biodiversity were also signed by a majority of governments.

The 2005 World Summit Outcome:-It reiterated the importance of full respect for existing labour, human rights and environmental commitments and encouraged "responsible business practices, such as those promoted by the Global Compact".

UN Convention against Corruption (2003):- It ratifies countries undertook to criminalize an array of corrupt practices; develop national institutions to prevent corrupt practices and to prosecute offenders; co-operate with other governments to recover stolen assets; and help each other to fight corruption.

CSR - The Indian Scenario:- In an economically globalized world, corporations are subject to global expectations, and a globally accepted and broad concept like sustainable development fits well with the economic, social and environmental responsibilities of global corporations. Accordingly, the triple bottom line approach to CSR suggests that a business organization must strive to balance these three areas of responsibility. Because of its alignment with the concept of sustainable development, this approach is widely applied around the world. Associating CSR with

sustainable development has become so common that CSR reporting is often called sustainability reporting. In India, till very recently, the focus was on charity, which is not really CSR. Sustainable CSR programmes mean a cohesive mix of economic, legal, ethical and philanthropic tenets. In today's changed business scenario, there is an increased focus on giving back to society and creating a model which works long term and is sustainable and it is imperative that the best practices for inclusive growth are shared with the stakeholders. Recent rash of scandals involving major corporate giants throughout the world have brought to the attention of public and academia the need to analyze these issues.

Corporate Scandals:

Satyam Story:- Satyam was recognized for its work with the Byrraju Foundation, founded by Ramalinga Raju, Chairman of Satyam Computers. Byrraju Foundation builds progressive, self-reliant rural communities in India through a holistic, transformational approach. The foundation provides a broad range of services to villagers, including. Healthcare, Education, Literacy, Water, Environment, Sanitation, Livelihoods, and .Disability Rehabilitation. Satyam was specifically honored for its participation in The Byrraju Foundation's program to provide remote electrocardiograms (EK.Gs) check ups to villagers all over Andhra Pradesh. So far, the Byrraju Foundation's work has impacted more than 3 million people in 199 villages in six districts of Andhra Pradesh, a state of 80 million people in Southern India. It will expand into other states shortly. A spokesperson Award which was awarded to Satyam Computers for the work of its foundations in rural India and the establishment of the Emergency Management Research institute (Popularly known as 108 services)which draws on Satyam's technology to improve the responsiveness of India's emergency services. We believe that Corporate Social Responsibility is about. giving back to the community and promoting inclusive values in corporate Organizations • and that Satyam Computers has demonstrated this in full measure."

If we look at the present situation its chairman Rama Linga Raju is in the jail for misleading stake holders and government for wrong accounting practices , the 13airaju Foundation is about to close. This is the situation in India regarding CSR. In order to tackle this case the Indian government should learn lessons from the western governments who were successful in timely punishing the offenders.

Labour Law Problems:- Labor law violations as a major problem in India's garment industry: "Workers are not being paid even statutory wages, as payment is linked to reaching unreasonably high production targets--simply put, unpaid overtime." In short, the global outsourcing world has a long way to go merely to attain legal compliance.

When subcontractors-even those that are subject to monitoring--still routinely violate local labor law, CSR programs and their advocates may be muddying the waters. The advocacy community presents wage demands--e.g. the demand that subcontractors pay a "living wage"--which is aspirational. But urging multinationals to pay higher wages assumes that legal wages arc already being paid.

Let's look at this situation in a real context. With its marketing strategy built on rhetoric of "social justice," The Timberland Company is a multinational that plays actively in the CSR field. The company's recently released 2004 CSR report includes a breakdown of factory violations by category that closely mirrors the FLA breakdown, with "compensation (i.e., minimum wage)" the second highest category of violations (12%). By definition, violations of this part of Timberland's code of conduct constitute primarily violations of law. Timberland's CSR report claims the company is stepping up its program "from compliance to enablement." If companies merely ensured that their suppliers obeyed the law that could bring economic restitution to millions of workers whose pay is purposely miscalculated.

Human Rights Issues:- However, a legal linkage does exist through standard manufacturing contracts, which contain compliance clauses, and a recent case suggests that such contract language can have teeth. In *Doe vs. Unocal*, Burmese workers who suffered human rights abuses on a pipeline project brought suit against Unocal, which was a partner in the project. Commenting on the findings, the *Chapman Law Review* noted, "future plaintiffs seem on firm ground for pursuing corporations in federal court... for their human rights abuses abroad. Such plaintiffs may have even greater success pursuing comparable state claims based on state constitutional and statutory provisions forbidding forced labor, unfair competition, and unjust enrichment."

The Unocal case "shows that corporations have both direct and indirect human rights responsibilities," says Susan Aaronson, director of globalization studies at the Kenyan Institute, a Washington think tank. Today, human rights cases usually stem from extreme physical abuses, but society's concept of what constitutes "abuses" will likely continue to expand. If labor laws are consistently broken with the knowledge of business partners, this could conceivably be considered "unjust enrichment." Apart from the above situations the following examples are worth reading regarding MNC attitude towards Indian people.

Example No.1:- Bhopal Gas Disaster:- In the year 1984 chemical gas leaked from the Union Carbide plant in Bhopal, India. Referred as the worst industrial disaster in human history, on the horrific night of December 2nd and 3rd, more than 40 tons of the deadly gas methyl isocyanate escaped from the pesticide factory. Approximately half a million people were exposed to the gas and 20,000 have died to date as a result of their exposure. More than 120,000 people continue to suffer from severe health ailments related to the accident and contamination. In 2001, the US-based gigantic Dow Chemical purchased Union Carbide, thereby acquiring its assets and liabilities. However it has been steadfastly refusing to clean up the site, provide safe drinking water or compensate the victims, or even disclose the composition of the gas leak, Dow, like UCIL, earlier, claims that it has no liability of the past. The Dow Chemical Company, with annual sales of \$28 billion, says in its web site: it is "committed to • the principles of Sustainable Development and its approximately 50,000 employees seek to balance economic, environmental and social responsibilities."

Example No.2:- In the year 2001 the Unilever Company has dumped 300 metric tones of mercury at Kodaikanal

located at South India. As a contrast to the above activity the Unilever website states, "We are committed to conducting our operations with integrity and with respect for the interests of our stakeholders....We are also committed to making continuous improvements in the management of our environmental impacts and to working towards our longer term goal of developing a sustainable business."

In order to tackle above situations a new initiative has taken by Government of India, that is CREP, or "**The Corporate Responsibility for Environmental Protection**" initiated by the Indian government recently this year in 2003, is a case in point. A guideline for a set of non-mandatory norms for 17 polluting industrial sectors has been set but there is no real pressure for implementation or internalization. An ethical being which claims to respect the earth cannot have discontinuities in its practices. Ethical practices have to place in an integrity framework, and that implies at the very least a lack of multiple ways of 'being.' This can be no different for individuals as for companies. Contrast to the above news the Unilever website states "All Unilever companies must comply with local laws and adopt the same standards for occupational health and safety, consumer safety and environmental care."

Conclusion & Suggestions:

In India, till very recently, the focus was on charity, which is not really CSR. Sustainable CSR programmes mean a cohesive mix of economic, legal, ethical and philanthropic tenets. In today's changed business scenario, there is an increased focus on giving back to society and creating a model which works long term and is sustainable and it is imperative that the best practices for inclusive growth are shared with the stakeholders. Getting multinationals to comply with local laws is not an easy task. Many countries, north and south, do not direct sufficient resources to enforcement. Management practices that evade regulations persist. Furthermore, labor laws can indeed be difficult to interpret. But suppliers, companies, and countries can't point to these difficulties to elude legal accountability. Legal compliance will be hard to achieve, whether within the CSR rubric or not, but extracting legal compliance from CSR has the advantage of bringing to light a range of workplace and wage issues that companies are required by law to attend to. Finally the author of this paper hopes that the companies' attitude towards CSR is more on transformation rather than giving information in web sites

Suggestions:

1. Provide greater incentive for companies to focus on first keeping the law Corporate leaders and their general counsels would give compliance issues a higher priority if they recognized the risk of increased scrutiny on the legal angle of their global operations. In Timberland's case, its sole performance indicator for monitoring is "percentage of factories assessed." If the company were mandated to report legal compliance, this would be a much stronger indicator of actual working conditions.
2. Give greater accuracy to CSR ratings". Company CSR assessment questionnaires frequently put more emphasis on asp rational issues. While legal compliance is also included, it is not meaningfully probed. The

socially responsible investment community would do well to separate out legal requirements and form one assessment on these, and then evaluate a company on "beyond compliance" issues.

3. Support company compliance staff, who must often make unpopular requests. In the experience of many staff, it seems as if upper management must be persuaded to support not only CSR goals, but regulatory recommendations as well, e.g., factory reimbursement of workers who were not paid legally.
4. Increase the number of companies engaged in these issues. If companies regard factory monitoring as a potential legal liability, they are more likely to attend to it whether or not they have a penchant for CSR.

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