

ESG

summary notes

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CHAPTER 10

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Ch10 - Stakeholders Rights

- 1) Every business has a responsibility to respect & uphold the human rights of all its stakeholders.
- 2) The UN Guiding Principles on business & human rights give 3 pillars, which are:
 - Pillar I: state duty to protect human rights
 - Pillar II: Business responsibility to protect human rights
 - Pillar III: Access to remedy for victims
- 3) Whistle Blowing in simple means, making a disclosure in the public interest. In this the employees are provided a ~~get~~ gateway through which they can report to the public body about any unlawful practices happening within the organisation.
- 4) When such kind of whistle blowing is done in corporates, it becomes corporate whistle blowing, which plays a very important role in promoting good corporate governance.
- 5) Every corporate should have a whistle blowing policy, which protects the identity of whistle blowers & also there should be law that protects the employees.
- 6) Following are certain benefits of whistle Blowing:
 - a) Promote transparency
 - b) Prevent victimization of whistle blowers
 - c) Promote an open enterprise culture
 - d) Reduce corruption
 - e) Uphold role of law & democracy

7) The purpose of a whistle Blower Policy is to establish a mechanism to receive complaints of any corruption, misuse of power, mis use of discretion, fraud which may be actual or suspected against any employee and to inquire into such disclosure and to provide safeguards against victimization of person making the complaint.

8) So the 3 pillars on which whistle blower mechanism works:

- (a) To allow employees to report their genuine concerns.
- (b) To inquire into such disclosure.
- (c) To provide safeguards to the person reporting.

9) Types of Whistle Blowers:

(a) Personal -

When wrongdoings are to harm a particular person then disclosing such amounts to personal whistle blowing.

(b) Impersonal -

When wrongdoings are to harm others then disclosing such amounts to impersonal WB.

(c) Internal -

When WB reports the wrongdoings within the organisation but at a higher position regarding improper conduct, insubordination, disobedience.

(d) External -

When wrongdoings are reported outside the organisation like media / any other pub int group.

(e) Alumini-

When WB is done by former employee of org.

(f) Open-

When the identity of the WB is revealed.

(g) Government-

When the disclosure is about the unethical practices of the officials of the government.

(h) Corporate-

When the disclosure is about the unethical practices of the officials of the business corporations.

10) The idea of whistle blowing has been from the ancient time though the term WB is recently added.

11) A similar practice in time of Kautilya wherein a person was awarded $\frac{1}{6}^{\text{th}}$ of amount involved if the same was reported & can also be proved, However the amount was reduced for govt. employees to $\frac{1}{12}^{\text{th}}$ for the same action.

12) Later on, the Govt notified the Whistle Blowers Protection Act, 2014 which deals with non-corporate cases & for hearing complaints against public servants.

13) The CVC is responsible for :

(a) Receiving complaints against pub. servants

(b) Reviewing the requests

(c) Ensuring that complainants are protected.

- 14) Under the Act a mechanism is created to deal with complaints of corruption, misuse of power, but the law does not allow anonymous complaints, and if there is any such complaint the same would not be acted upon.
- 15) The limitation period for filing complaint under this act is 7 years.
- 16) Any person dissatisfied with order of competent authority may file an appeal in front of HC within 60 days.
- 17) Act does not apply to Special Protection Group (SPG) personnel.

18) Whistle Blower Around the World

US:-

(a) Whistle Blower Protection Act, 1989.

- The WB Protection Enhancement Act (WPEA) was passed with the intent of restoring what WPA actually intended to.

- Under the act a disclosure would not lose protection because of:

a. Made to a person who himself was participant in wrongdoing.

b. Info is prev available

c. Motive of employee

d. The time passed since occurrence of event.

(b) Sarbanes-Oxley Act

- Act requires every audit comm. of Board of Pub Corporation to establish a mechanism for employees to anonymously and confidentially file complaints regarding any auditing matter or internal accounting control.
- Act is primarily limited to financial matters.
- To file a complaint against their employers to any person which includes their supervisors / employers / Federal authorities / member of the Congress
- It protects the whistle blower against any retaliation & punishes those who are guilty for the same for imprisonment upto 10 years.

(c) False Claims Act

- This is the oldest legislation which provides the WB between 15 to 30% of total recovery depending on his role in the entire process.

19) Companies Act, 2013

- As per sec 177 (9):
 - Every listed co.
 - Cos having pub deposits
 - Cos which have borrowed money in excess of 500 crs to establish vigil mechanism.
- For those cos which are required to have audit comm, vigil mechanism shall be overseen by that comm & for those cos which are not req. to have audit comm, a dir shall be nominated to play role of audit comm.

- The mechanism should provide for adequate safeguards against victimization of the employees and to provide direct access to chairperson of audit comm in exceptional cases.
- Details of vigil mechanism shall be disclosed in Board's report as well as on website if any.
- In case of frivolous complaints audit comm may take suitable actions including reprimand.
- For every listed companies the act has mandated reveal all the whistle blower complaints to the auditor & same shall be added in auditor's report.

20) SEBI (LODR)

- As per Reg 46 the listed co. must disclose their vigil mechanism policy on its website
- Further it should also be added in annual report under the head corporate governance.
- Further listed co. has to make declaration that no personnel has been denied access to audit comm.
- AC of co. shall be responsible for reviewing the functioning of vigil mechanism

21) Safeguards to Whistle Blowers

- In order to promote whistle blowing there should be certain safeguards in favour of whistle blower, which could include:

(a) The names of the witness need not be disclosed to the accused if it is not required in the interest of justice or public interest.

(b) In exceptional circumstances accused may be denied right to cross examination.

(c) Necessary confidence has to be created in the minds of witness / whistle blowers that they would be protected against the accused in any situation.

(d) The supreme Court has upheld the above in many cases, for instance in Gurubajan Singh v/s the State of Bombay. The Court upheld a rule which prevented the accused from questioning the witness of who testified against it.

(e) In Maneka Gandhi v/s Rani Jethmalani the Court emphasises the importance of creating a friendly environment for free & fair trial.

(f) In AK Roy v/s UOI the Supreme Court held that the disclosure of identity of the whistle blower will abort the very purpose of vigil mechanism because no one could be willing to come forward to give any such information if that prejudicially affects the interest of person making the disclosure.

(g) Way forward: in order to promote WB the following can be done.

1. Awareness Programmes:

- People should be made aware about the laws, their usage and the benefits if they disclose the wrong doings.

2. Protecting the identity of whistle blowers:

- At no cost the individual's identity should be disclosed unless he consents or it is required in greater interest of public.

3. Widening the scope:

- It should be made mandatory in all the Govt as well as private bodies.

22) Health & safety (Workplace Practices)

- workplace practices play one of the most important role in protecting the employees ~~for~~ from any harm because of the organization's activities.

- further, the Const. of India has also emphasized the same in the directive principles recommending the regulation of all the economic activities conducted by the management in a way which ensures the safety & health of its workers.

*Why occupational health & safety is important?

1] The primary aim of OHS is reducing the workplace accidents and injuries as well as the exposure of workmen towards the harmful substances.

2] In the event of any unforeseen accident, it should be employer's responsibility to take steps to redress the mishap and to reduce the occurrence of such incidents in future.

3] It brings the following benefits:

- (a) Reduced risk of accidents
- (b) Reduced risk results into reduced illness & injuries resulting into efficiency & productivity.
- (c) Better employee relations & morale.
- (d) Lesser insurance premiums as well as overall reduced cost associated with such accidents.

4] The OHS also follows a simple strategy in which first the policy tries to identify all the possible hazards, forms and implements measures to deal with such hazards.

5] Failure to do the same can lead to reduced productivity, more injuries, more absenteeism, a spike in the cost.

UCIPL case covered in ch II.

* Prevention of Sexual Harassment (POSH)

- The guidelines on prevention of sexual harassment were first given in Vishakha v/s State of Rajasthan, popularly known as Bhanwari Devi Case, in which a woman named Bhanwari Devi was gang raped because of her efforts in trying to stop a child marriage.

- This case raised a serious concern about the workplace safety of women wherein, the Supreme Court stated that workplace sexual harassment is a violation of many fundamental rights of a woman, which includes Article 14, 15, 19 & 21.

- The court gave the following guidelines:
(a) The courts set up the responsibility upon the employer for the prevention of Sexual harassment at workplace.

(b) Formation of committee at workplace (1c)

(c) Such committee should be headed over by a woman officer alongwith a woman from NGO working for cause of woman. Atleast half of committee must comprise of women.

- This case became the baseline i.e. source of the POSH Act, 2013.

- Sexual Harassment under the act means:

• Any kind of unwelcoming sexually determined act, which includes the following:

- (a) Physical contact or advances,
- (b) Demand / Request for sexual favours
- (c) Making sexually coloured remarks
- (d) Showing pornography
- (e) Any other unwelcoming conduct of sexual nature.

- Workplace means any place visited by the employee in the course of employment including work from home as well as the transportation.

- Impact of sexual harassment can be categorized into:

A) Professional - Decreased work performance / increased absenteeism / loss of pay / subjected to gossip / being objectified.

B) Personal - Depression / anxiety / panic attacks / Headache / stress etc.

* **Employee turnover / Attrition.**

- Employee turnover & employee attrition rate is commonly used interchangeably, but the same is not the case, because turnover is a generalized term wherein both voluntary as well as exits are considered on the contrary in case of attrition forced reduction & termination are not counted.

- In case of turnover the number of employees leaving & who are replaced both are considered on the contrary in case of attrition the factor of immediate replacement is not considered.

- For example - if 10 employees left & some are replaced by 10 new employees this will be showing the total employees turnover, however, if 10 employees left the job at their discretion & the same are not replaced now that's attrition.

It can further be of two types:

A] Voluntary Turnover

- This is when the employee parts ways as per their own discretion and are not forced to leave.

- This could be because of resignation, retirement or relocation.

- This is generally unpredictable as well as uncontrollable and can cause major disruptions in the workplace.

B] Involuntary Turnover

- This is when the employees part ways but because of reason outside the employee's control.

It further could again be of 2 types:

(a) Controllable

- Controllable involuntary turnover is when the employer is voluntarily terminating employee's contract or forces them to resign.
- It is generally done when the employees are performing not upto the expected mark.

(b) Uncontrollable

- In case of uncontrollable involuntary turnover, neither parties have any control and it happens generally because of some mishappening like death, disability or forced downsizing.

Effects of High Employee Turnover are:

(1) Disruption of workflow -

since a large number of employees have left it puts up pressure on the existing workforce which may create a noticeable disruption of the workflow.

(2) Low workplace morale -

Since more responsibilities have been added because of high turnover, the extra workload demotivates employees sometimes, at the sometime it also makes them insecure about their job stability.

(3) Financial losses -

Higher the turnover rate higher would be the appointments and higher would be cost of recruiting the same resulting in losses.

(4) Creates a negative workplace reputation -
As the employee turnover rate increases many aspirants tries to avoid such cos. for the obvious reason of stability.

(5) Risking loss of talented and experienced employees

Question:-

* Gender Parity (Gender equality will lead to Gen. parity)

- Gender parity is equal representation of each gender at the workplace. So in simple, it is creating a numerical balance between men & women.
- Gender equality is a broader concept which focuses on providing equal rights to everyone, further it includes equal opportunities, equal pay.
- Equality and parity are not synonyms as there might be parity by having equal number of women but they might not have equality if for similar work men & women are paid differently.
- Further this would be correct that to reach gender parity, gender equality is very important, this will require the following:
 - (a) Equal access to education & employment
 - (b) Pay equity i.e. equal pay for equal work
 - (c) Removal of barriers so that women can equally participate.
 - (d) Eliminating discriminatory practices based upon gender.

- By the above it is clear that gender equality ensures fairness & right treatment towards either gender which will lead to gender parity.
- Gender parity will result into :
 - (a) Increased organizational performance.
 - (b) Enhanced ability of the companies to attract & retain talent.
 - (c) Enhanced reputation.

* Women on Board

- 1) Attention has been directed towards increasing the number of women at the board level and also to some extent at the executive level.
- 2) These initiatives has led to an increase in the percentage of women on the board.
- 3) Having more diversity on the board will break down the stereotypes and encourage women to enhance their professional imagination.
- 4) As per a recent survey cos with better gender diversity were more likely to outperform their competitors.
- 5) Having more women on board reduces excessive risk taking, improves co's reputation & promotes sustainability.
- 6) Way forward
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- (a) The companies should promote more women into senior mgmt position.
- (b) Investing into women talent early can have multiple benefits, amongst other it allows a woman to become a leader, remove the negative stereotypes against a woman's ability to lead which can hopefully address the unequal pays and the gaps.
- (c) Lastly, it will shift the traditional branding of appointing women as diversity trophies to recognize them for their skills & experience.

* Monetary & Non-monetary Benefits.

Sometimes an organisation in order to motivate its employees passes on certain benefits, which could be either monetary or non monetary.

Monetary benefits are financial incentives & on the contrary non monetary benefits are in the nature of incentive programmes which are more memorable and are not always in the form of monetary records.

Types of monetary benefits-

- 1) Piece rates
- 2) Pay raise
- 3) Bonuses
- 4) Sharing profits
- 5) Contracts.

Types of non monetary benefits

- 1) Flexible working arrangements
- 2) Physical rewards
- 3) Experiential rewards
- 4) Growth Opportunities
- 5) Recognition and praise
- 6) Extra time off.

Supplier Practices :-

1) Supplier code of conduct

- It refers to standards and guidelines given by an organisation to its suppliers concerning both ethical & sustainable practices that supplier needs to follow while conducting business with the company.

- This in turn helps the companies in establishing ethical & sustainable practices in its value chain.

- It also means that companies should set up additional checkpoints for their TPM (3rd party RM) and ensure that suppliers are making serious efforts in areas like sustainable labour practices, human rights.

2) Local Procurement

- This in simple means the purchase of goods & services from local businesses.

- By following the culture of local procurement the company shows areal commitment towards

the economy wherein it works with the local suppliers in a way that builds their capacity & makes them more competitive & profitable,

- The entities generally include SMEs & the task of the companies is to train them & bring them to the required level.
- A local procurement programme should be put in place to bridge the gap between the company's expectations and the existing capacity of SMEs.

Benefits of local procurement:

- (a) It benefits the local suppliers & in turn the company enjoys greater support from the community.
- (b) It shortens time frame which means that the time required to source material is dramatically reduced.
- (c) It reduces cost as the travelling distance is shortened as well as lesser storage is to be done.
- (d) Lesser distances means lesser consumption of fuels resulting into more environmental benefits.

Make In India is one such initiative wherein the aim was min govt max governance., under this the govt issued public procurement norms in which a minimum of 50% should be local procurement and a margin of purchase preference should be 20%.