

## **Corporations and the Practice of Corporate Social Responsibility in Nigeria**

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#### ***Abstract***

*The coverage of this writing will include an exposition on the concept of corporate social responsibility as regards the various factors and events that gave rise to its existence and now culminated into the present practises in the Nigerian corporate world. We shall also go further to examine the different areas of the operations of corporate social responsibility and how far reaching the practises have gone at this present time. This work examines some available legal provisions, most especially in Nigeria that provides for the observation and compliance with the principle of corporate social responsibility and their enforceability.*

### **1. Introduction**

Until recent times, the focus of entrepreneurs has been mainly that of generating profits as against sustainability. In fact, the concept of sustainability as at then was tantamount to committing a crime against investors as it was not a popular concern among companies and they were not in any way willing to embrace it. The idea of the capitalist was that a business concern should be mainly business without having any recourse to the impact of their business operations even within their closest environment. Now, in our present world of globalization, multinational corporations and local businesses are no longer able to conduct destructive and unethical practices, such as polluting the environment, without attracting negative feedback from the public. This therefore gave birth to the call for the companies to be sensitive more than ever before to the sustainability of the environment of their operations and this is the core of corporate social responsibility.

The upsurge in the acceptance of the concept of Corporate Social Responsibility was nonetheless identified with increased media attention, pressure from non-governmental organizations, and rapid

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global information sharing. This therefore motivated the surging demand from civil society, consumers, governments, and others for corporations to conduct sustainable business practices.

As corporate social responsibility takes hold, big business is increasingly becoming part of the solution rather than the cause of the problem. From cleaning up their own act to taking proactive steps to help others, companies are stepping up to do more than just make money.

Business leaders, government officials, and academics are now focusing considerable attention on the concept of “Corporate Social Responsibility” (CSR), particularly in the realm of environmental protection. Treating the issue of CSR presents us with certain thoughts which will be the centre point of this discuss. Such provoking thought includes; should the concept of Social Responsibility not go beyond the initiative of the corporate organisations? Do firms have additional moral or social responsibilities to commit resources to environmental sustainability? How should we think about the notion of firms sacrificing profits in the social interest? Should they do so within the scope of their fiduciary responsibilities to their shareholders? Can they do so on a sustainable basis, without the force of the law? Finally, are there any law mandating the companies to ensure the observation of the concept of social responsibility and how far have such laws gone in ensuring compliance? All these questions and many more will be addressed from the insights from legal analysis and business scholarship as contained in this writing.

We shall, for a proper flow of understanding, discuss the CSR as regard the following: (i) Social Responsibility (ii) Corporation/Company (iii) Corporate Social Responsibility (iv) The enforceability of the laws on CSR.

## **2. Understanding Social Responsibility**

The description and level of responsibility required for the creation of a sustainable development is collective. A safe and conducive society can only be guaranteed for all when all, government and individuals collaborate together on a mutual understanding to carry out activities that will preserve and promote the value of our society and this is regarded as the social responsibility towards the environment. Social

responsibility is an ethical or ideological theory that enjoins an entity, whether a government, corporation, organization, individual has a responsibility to the society. This responsibility is believed to be exercisable in two ways which are “negative” or “positive.” It can be negative when one refrains from acting and becomes positive when one acts proactively.

In the recent times, the idea of social responsibility has not only been linked primarily or associated with governmental practices and communal expectations, activist groups and international organisations also, have not relented in advancing the call to the business world. The idea of social responsibility comes with the idea that, everyone within a given society should endeavour to engage in the activities that will encourage the socio-economic development of the society.

Social responsibility is voluntary, so it does not employ the machinery of force; it is about going above and beyond what is called for by the law (legal responsibility). It involves an idea that is better to be proactive towards a problem rather than reactive to it. Social responsibility means eliminating corrupt, irresponsible or unethical behaviour or attitude that might bring harm to the community, its people, or the environment in its entirety.

A landmark contribution to the concept of CSR came from the Committee for Economic Development (CED) in its 1971 publication *Social Responsibilities of Business Corporations*. The CED got into this topic by observing that “business functions by public consent and its basic purpose is to serve constructively the needs of society to the satisfaction of society.”<sup>1</sup>

### 3. Definition of CSR

According to the International Labour Organisation:<sup>2</sup>

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<sup>1</sup> Archie B. Carroll, “Corporate Social Responsibility: Evolution of a Definitional Construct,” Retrieved Feb. 2012 at <http://www.sagepublications.com>

<sup>2</sup> Remi Clavet *et al*, *Governance, International Law and Corporate Social Responsibility*, (Geneva: International Labour Organisation, 2008), available at: [www.ilo.org/public/english/bureau/inst/download/116.Pdf](http://www.ilo.org/public/english/bureau/inst/download/116.Pdf), visited 23/06/2012.

CSR is a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors.

The European Union has described CSR as:<sup>3</sup>

A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.” Also, the International Chamber of Commerce (ICC) and the International Organisation of Employers (IOE) have defined CSR to mean voluntary measures.

The Lisbon Agenda as a result of the momentum gathered at European level led the European Community to issue a much downloaded Green Paper on CSR entitled “Promoting a European Framework on corporate social responsibility.” This public consultation document defines the concept of CSR and outlines the important contribution that this practice can make in helping the EU achieve the goals of the Lisbon strategy. The document described CSR as:<sup>4</sup>

A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with stakeholders on a voluntary basis.

CSR is sometimes described as being a tacit contract between business organizations and a hosting community, whereby the community permits the business to operate within its jurisdiction to create job opportunity for its residents and revenue through taxation. Additionally, the community expects the business to preserve the environment and to make the community a better place to live in and to work within through charitable activities.<sup>5</sup>

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Hurst, N.E. 2004, “Corporate ethics, governance and social responsibility: Comparing European Business Practices to those in the United States,” available at: [www.scu.edu/ethics/.../hurst/comparitive\\_study.pdf](http://www.scu.edu/ethics/.../hurst/comparitive_study.pdf) - United States, visited 23/06/2012.

The awareness for environmental protection has now provoked actions at international, national and local levels for the prevention and, where possible, reversion of environmental degradation. It is therefore expected that corporate organisations should also be part of that action which includes conserving resources, recycling old product, reducing the production of waste and disposing of it safely.

The idea of corporate social responsibility stipulates that corporations should respect the human rights of not only their employee but of the general environment of their operations. The corporations in living up to their responsibility to the members of the society will have to help to improve the society by taking proactive stance in their societal roles. It also implies that corporations have implicit obligation to give back to the society as much as they take from it.

The Concept of CSR projects environmental friendly exploration, a positive impact on the field or locality of a business activity. It suggests incorporating community sustainable thinking in the positive and profitable ways while carrying out business activities.<sup>6</sup>

This concept also has to do with getting employees to tune in to cutting waste, understanding the correct way to package company's product in a way that is friendly to the environment, and adapting productivity to the challenges of the environment in a developing and changing world. It includes a company's direction to task itself to be responsible to the people by allocating resources to deal with environmental and general development issues.

Reduction of waste and maximising resources effectively have been said to be the two major ideas of the concept of corporate social responsibility. Waste reduction, is not just in terms of raw material, but can also be found in human effort, energy expenditures, facility use and of course, money.

'Resources,' on its own refers to both the company's resources (raw material, energy, supplies, facilities, inventory, capital, people) and the earth's resources (water, air, plants, animals, land). Carrying out these two basic goals has nothing to do with the size, status and

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<sup>6</sup> Joel Makower: *The E-Factor*, [England: Penguin Books Limited, 1994), p. 4.

kind of company. It is all about becoming competitive and getting better return on investment through positive activism.<sup>7</sup>

The concept of CSR will be properly understood by viewing a company in a new light as an integrated system rather than a series of independent parts and the company itself is a part of a larger societal system involving consumers, suppliers, communities, stake holders and others. All these are better viewed and made effectively operative when all component parts will not only do its part but rather work closely with all other parts.

#### **4. The Origins of CSR**

A consideration of the origin of CSR will leads us to sort of comparative discussion, most especially as the concept is one that developed through several processes within different countries and jurisdiction. The reference in this discussion will basically be a consideration of the origin from both the American and European perspective as the long history of CSR is basically traceable to these two societies.

Over the last decade the concept of CSR has merited a great deal of attention from policy makers, social partners and the business community across the EU. CSR is believed to have started in the early 1990s as an appeal by political leaders for the business community to take part in the fight against social exclusion and this quickly turned into a much wider policy debate about corporate ethical behaviour in the 21st century.<sup>8</sup>

Social Responsibility as a business behaviour in Europe dated back to the days of the Industrial Revolution, where certain entrepreneurs of the time took a paternalistic approach to their business conduct by devoting more attention to social and human aspects of enterprise management. One such pioneer was the Scotsman Robert Owen, who in the early 1800s set up a series of social villages around his textile mills in Lanarkshire (Scotland). These villages catered for the education of employees and their children as well as providing health care, food cooperatives, banking facilities and leisure activities. The doctrine of

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<sup>7</sup> *Ibid.*

<sup>8</sup> Remi Clavet *et al*, above note 2.

‘Owenism’ became so popular that it was soon exported across the Atlantic to the USA where similar practices were introduced in a number of cotton farms.<sup>9</sup>

It was believed that concept of CSR found its next expression in North America. The business theorist of Norwegian origin, Thorsten Veblen, wrote about the concept of enterprise accountability back in the 1920s in his widely quoted book, ‘The Engineers and The Price System.’<sup>10</sup> Another father of early corporate social responsibility theory was the German economist Karl William Kapp. During his long stay in the USA, Kapp published his most acclaimed work, ‘The social costs of private enterprises’ in the 1950s, in which he openly criticised the lack of social and environmental conscience of American enterprises.<sup>11</sup>

In the American Society, the origin of CSR is also traceable to a long history of literature evolution from the formal writings on social responsibility which are largely a product of the 20th century, most especially dating back to the past 50 years.

In the early writings on CSR, it was referred to more often as social responsibility (SR) than as CSR. Perhaps this was because the age of the modern corporation’s prominence and dominance in the business sector had not yet occurred or been noted. The publication by Howard R. Bowen (1953) of his landmark book *Social Responsibilities of the Businessman* is argued to mark the beginnings of the modern period of literature on this subject.<sup>12</sup>

All this writing explorations gave rise to several debates on the issue, and this in turn provoked the existence of the pattern of thought on CSR which gradually came to the embrace of the different pressure groups and this gingered a positive response from many of the multinational companies which now became aware of the need to be positively responsible to the general wellbeing of the society.

It is worthy of note that CSR also has its root in Africa, although, it is the general belief that CSR is a Western invention and is

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Carroll, above note 1.

novel to developing worlds, there has been ample evidence that CSR in developing countries draws strongly on deep-rooted indigenous cultural traditions of philanthropy, business ethics, and community development. Indeed, some of these traditions go back to ancient times. For example, Visser and Macintosh recall that the ethical condemnation of usurious business practices in developing countries that practice Hinduism, Buddhism, Islam, and Christianity dates back thousands of years. Similarly, Frynas notes that ‘business practices based on moral principles were advocated by the Indian statesman and philosopher Kautilya in the 4th century BC.’<sup>13</sup>

Thus, having presented the basic understanding of the concepts here, this work will examine the socio-economic responsibility of corporate organisation towards the environment. The work further examines the possible benefits of such activities not only to the society but also to the organisation vis-à-vis surrounding difficulties.

## **5.0. The Concept of Corporation and Social Responsibility.**

### **5.1 A Corporation**

According to Karibi Whyte JSC, the word “Corporation” has been described to be a concept as against being a tangible thing. The learned justice of the Supreme Court, Karibi Whyte JSC in his decision said, a corporation is: “an intangible being, existing only in the contemplation of the law.”<sup>14</sup> It does imply that the word “Corporation” can be given a more befitting definition by description and explanation of its existence and operation as powered by the law rather than a sensation. It is an abstract expression not having a real physical manifestation in its self except through human mechanism.

It has been said that the word “corporation” like many other words, can be used in a variety of expression which includes the ordinary and legal parlance. In its ordinary sense, it is a group of persons authorized to act as an individual. That is, a body or society

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Gani Fawehinmi v Nigeria Bar Association* [No. 2] (1989) 2 NWLR [Pt. 105] 588, 633.



entitled to act as a single person, especially as a body of municipal authorities. This means a group of persons elected to govern a town.<sup>15</sup>

It can be deduced from the above that a corporation is basically an organisation comprising of a group or groups of persons, who are so recognized or empowered to so exist by the authority or the operational law for that purpose.

In Nigeria, an organisation will only be deemed to be a corporate body and allowed to so operate if it has become so recognized by the law as having a legal personality having complied with registration or incorporation procedures as provided for by the Companies and Allied Matters Act 1990. It is this compliance that gives an organisation a legal entity by virtue of which its corporate existence is guaranteed, respected and promoted.

The Nigerian law provides that any two or more persons may form and incorporate a company by complying with the requirements of the Act in respect of registration of such company.<sup>16</sup> The life of a corporation is embedded in its legal personality, that is, the personality that the law gives to it to exist and operate like a natural person, with the same rights and duties. This position has been justified by the decision of the Supreme Court where *Oputa JSC* declared that; where a corporation is given or has acquired powers at common law or by custom or charter, then, it is “a person at common law and may do anything which an ordinary person can do.”<sup>17</sup>

Having fully registered under the law, the corporation has its legal entity different and separate from those who formed it.<sup>18</sup> Notwithstanding its separate entity in law, a corporation will only be able to act and operate through human agents who are referred to as the directing mind of the organisation. This position has been

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<sup>15</sup> Akintunde Emiola, *Corporation Law* (Ogbomosho: Emiola Publisher, , 2005), p. 1.

<sup>16</sup> s.18, Companies and Allied Matter Act, Cap C20, LFN, 2004.

<sup>17</sup> *Olaniyan and Ors. v University of Lagos* (1985) 2NWLR [Pt.9] P.599 at 623

<sup>18</sup> *Salomon v Salomon & Co.* (1897) A.C. P.22.

judicially authenticated as said by Aniagolu J.S.C. while quoting from Lord Haldane when he said as follows:<sup>19</sup>

My Lords, a corporation is an abstraction, it has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality.

It is worthy of note that the concept of corporation can be better understood in the description of its operations which has been found to be much more wider in scope than just the as established by or under the statutes, it encompasses a whole lot, more than expected and these are hereby further discussed.

### **5.2 Types of Corporation**

There are three main types of corporation, they are: Corporation aggregate; Corporation sole and; Statutory corporation.

Corporation Aggregate has been said to consist of many persons united together into one society, and sustained by a perpetual succession of members, so as to continue its existence.<sup>20</sup> It is believed that the main object of the concept of corporation aggregate is to facilitate and enable the conferment of powers on a unified persons with whom transactions may be effected and thus avoiding difficulties attendant upon or involved in dealing with a large number of individuals.

This therefore gives rise to obligations and liabilities to the unity collectively.<sup>21</sup> It can therefore be referred to as a system by which the organisation's life and identity is protected and sustained by a group of people as against an individual.

Corporation sole under the common law existed by custom long before the crown began to create other corporations by charter. It is a situation where the existence of an organisation is linked with an

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<sup>19</sup> *Trenco Nigerian Company Ltd. v African Real Estate Ltd* (1978) I.L.R.N. P. 153.

<sup>20</sup> Emiola, above note 15, at p. 8.

<sup>21</sup> Tom, above note 16 at p. 22.

office held by an individual in succession for another. Example of this includes the head of a religious seat, e.g. Bishop or Pope.

Statutory Corporation on the other hand exists only at the mercy and creation of the law. The law of the land confer attributes or legal existence on this kind of organisation. It is a body or company created by statute. Example of this include: Power Holding Company of Nigeria (PHCN), Ambrose Alli University, Ekpoma, etc.

### **5.3. Origin and Essence of Corporation**

The first existence of a corporation is traceable to the earliest forms which were known as the ecclesiastical and lay corporations. These existed as early as the thirteenth century. These types of corporation were recognized as legal persons with all rights and obligations of natural human beings.<sup>22</sup>

This event led to this present day development of incorporation which is now made possible by the effect of a law passed to that effect. Such example is the Company and Allied Matters Acts 1990, which serves as the basic statute for the incorporation of any organisations whatsoever in Nigeria. By way of incorporation under the law, an organisation becomes a body corporate so created, having perpetual succession and a common seal. The common seal as it is to be, is the emblem or corporate identity of the organisation, it is the mark of authority of the organisation which must be seen to be visible on all its important and official documents and acts.

Once a company is incorporated, it is expected that it will operate only within the coverage of activities as registered and not otherwise, which can render its activities ultra-vires. By virtue of the doctrine of ultra-vires, once a company becomes incorporated, its activities must be within the purview of what is permitted in its Memorandum and Article of Association.<sup>23</sup> This notwithstanding, the statute itself had a little variation to this by providing that any act done by the company, even when not done in furtherance of the business

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<sup>22</sup> Emiola, above note 15 at 9.

<sup>23</sup> S.39 (1) Companies and Allied Matters Act, Cap C.20 LFN 2004

objectives shall by no means be rendered invalid except on the application of certain persons to the company.<sup>24</sup>

#### **5.4. Social Responsibility and Corporation**

Social responsibility as earlier stated, deals with the ideological or ethical theory that an entity of whatsoever form has a responsibility to the society.

Social responsibility comes with the idea that societal interest is paramount and every organisation is expected to view it in the same light and ensure a positive action towards it by making the impact of their activities positively visible on customers and suppliers, employees, shareholders, communities, other stake holders and most importantly the environment. This obligation is seen to extend beyond the statutory obligation to comply with certain legislations but rather a voluntary step to improving the social wellbeing of all affected and likely to be affected by its activities.

In today's society, social responsibility comes with the idea that, a business must maintain ethical principles in order to be successful. It is believed that business can use ethical decision making to strengthen their business in three main ways.

In the first place is the use of ethical decision making to increase productivity? This can be done through the promotion of programmes that make the employee benefit directly from the corporation, programmes like better health care or a better pension programme. This is necessary because employees are stake holders in the business, they have vested interest in what the company does and how it is being run. When the company is perceived to feel that their employees are a valuable asset and the employees feel they are being treated as such, productivity increases.

Secondly, the business can use ethical decision making to strengthen their business by making decisions that affect its health as seen by those stake holders that are outside of the business environment, e.g. customers and suppliers.

The third way is by making decisions that allow government agencies to minimize their involvement with the corporation. For

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<sup>24</sup>S.39 (3), *ibid.*

example, complying with legislative requirements, such as provided for by the Environmental Impact Assessment Act. The call for business corporations' adaptation of social responsibility is a welcome idea as it tends to be more beneficial to the society, notwithstanding the fact that the major objective of the company is profit making.

#### 5.4.1. Criticism and Projections

The subject of corporation *vis-a-vis* social responsibility has been subject of several criticisms. Critics argue that corporate social responsibility distracts from the fundamental economic role of business; others argue that it is nothing more than superficial window-dressing; others argue that it is an attempt to pre-empt the role of governments as a watchdog over powerful multinational corporations.

Critics and proponent of corporate social responsibility have debated a lot of issues relating to its acceptability and necessity. Such debates include corporate social responsibility's relationship to the fundamental purpose, nature of business and questionable motives for engaging in corporate social responsibility. It also includes concerns about its sincerity and hypocrisy.

It has been argued that the sincerity of the corporate organisation as regards the practise is CSR is not genuine, giving consideration to a lot of underlining factors which might be secret to the public eyes. It was contended that CSR is supposed to be win-win situation where the companies make their profits and the society at large is also benefitted in one way or the other. But the crux of the argument is that, is there really a win-win situation and does the society actually benefit anything from the corporate organisation?<sup>25</sup>

It has been argued that the prevailing practises of CSR have been marked with ulterior motives. One study showed that over 80% of corporate CSR decision-makers were very confident in the ability of good CSR practice to deliver branding and employee benefits, for example when corporations make donations to charity they are giving away their shareholders' money, which they can only do if they see a viable potential profit in it. In some other situations, it may be because

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<sup>25</sup> What's Wrong With Corporate Social Responsibility...[www.corporatewatch.org/?lid=2688](http://www.corporatewatch.org/?lid=2688) - , visited 12/04/2012.

they want to improve their image by associating themselves with a cause in order to counter the claims of pressure groups, but the truth of the situation is the fact that there is always an underlying financial motive, so the company benefits more than the charity.<sup>26</sup>

Another point of contention is that CSR diverts attention from real issues, helping corporations to: avoid regulation, gain legitimacy and access to markets and decision makers, and shift the ground towards privatisation of public functions. CSR enables business to pose ineffective market-based solutions to social and environmental crises, deflecting blame or problems caused by corporate operations onto the consumer and protecting their interests while hampering efforts to find just and sustainable solutions. It has also been argued that CSR is more of a Public Relation Issue where the companies act mainly in order to appeal to customers' consciences and desires but with the true intention of benefitting them. CSR helps companies to build brand loyalty and develop a personal connection with their customers. Many corporate charity tie-ins gain companies access to target markets and the involvement of the charity gives the company's message much greater power.<sup>27</sup>

CSR also helps to green wash the company's image, to cover up negative impacts by saturating the media with positive images of the company's CSR credentials. As Deborah Doane points out in, CSR enables business to claim progress despite the lack of evidence of verifiable change. Since much of the business case for CSR depends on corporations being seen to be socially responsible, CSR will continue to be little more than PR for as long as it is easier and cheaper to spin than to change.<sup>28</sup>

An example in this regard is the prominent America case against Nike in the US Supreme Court. In 2002, the Californian Supreme Court ruled that Nike did not have the right to lie in defending itself against criticism; chaos ensued in the CSR movement. Activist Marc Kasky attempted to sue the company over a misleading

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

public relations campaign. Nike defended itself using the First Amendment right to free speech. The court ruled that Nike was not protected by the First Amendment, on the grounds that the publications in question were commercial speech<sup>79</sup>. The case proceeded to the US Supreme Court. Legal briefs were submitted to the Supreme Court by public relations and advertising trade associations, major media groups, and leading multinationals, arguing that if a company's claims on human rights, environmental and social issues are legally required to be true, then companies won't continue to make statements on these matters.<sup>29</sup>

### **5.5 Corporate Social Responsibility and the Nature of Business**

Corporations exist mainly to provide products and/or services that result to profits for the shareholders. Several writers like Milton Friedman and others argued that the outmost aim of a corporation is to maximise returns for its shareholders. They believe that it is only people individually that can be socially responsible to the society. To them, corporations have no business in becoming socially responsible to the society as they are only accountable to their shareholders and not the society at large. Milton Friedman was of the view that corporations should abide by the laws operational in the society of their exploration, but should have no extra attachment to that society. Some other writers in their perception were of the view that the idea of corporate social responsibility is incongruent with the very nature and purpose of business and can indeed hamper or hinder the free flow of business profit.<sup>30</sup>

### **5.6 CSR and Questionable Motives**

The way some companies go about the practise of environmental protection as a proof of their social responsibility to the society has been subjected to certain criticism by some writers who believe that

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<sup>29</sup> *Supra*

<sup>30</sup> R.P. Chamila, Three Types of Corporate Social Responsibility Engagement; Self-Interest & Altruism on Sustainability. Retrieved Sept., 12 2006 from [http://www.slideshare.net/Alistercrowe/2007\\_bai\\_7568docdoc](http://www.slideshare.net/Alistercrowe/2007_bai_7568docdoc).

such projection is an attempt to distract the public from asking ethical questions posed by the core operations of such companies.

It has been argued that certain corporation starts corporate social responsibility programmes solely for the commercial benefit they enjoy through the raising of their reputation with the public and the government. These critics are of the view that such companies are out solely to maximise profit and so will not be able to genuinely advance the interests of the society as a whole.<sup>31</sup>

As rightly pointed out, one major concern worthy of note is the discrepancies in the acts of the companies who claim to be committed to the promotion of sustainable development. These companies continue to carry out business practices that are harmful to the society. For example, in Nigeria, the Oil Companies like Shell, Mobil, e.t.c. always project themselves as promoters of sustainable development yet never stop to engage in activities that are harmful to the society. Such activities include, gas flaring, oil spilling, thus causing environmental pollution and degradation.

Critics of corporate hypocrisy and insincerity generally suggest that better governmental and international regulations and enforcement, rather than voluntary measures are necessary to ensure that companies behave in a socially responsible manner towards the society.<sup>32</sup>

### 5.7 CSR Issue of Law or Morality?

Generally speaking, Social responsibility, comes down with the idea of voluntary practices “that exceed legal obligations” thus subjecting its applicability to the norms created by companies themselves for that sole purpose.

It has been said that CSR always refers to norms, of different types and covering different fields ranging from that of human rights, the environment or labour relations. It is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance

<sup>31</sup> Mikibben, B. November, 2006. Is Corporate Do-Goodery for Real. Retrieved December, 2006 from [www.organicconsumers.org/2006/article\\_3342.cfm](http://www.organicconsumers.org/2006/article_3342.cfm) – Cached, visited 20/04/2012.

<sup>32</sup> Chamila, above note 30.



with the law.”<sup>33</sup>

The development of the concept of Corporate Social Responsibility (CSR) over the years has occasioned the rapid growth of many voluntary initiatives and Codes of Conduct by the firms, thus an indication of the willingness of corporations to abide by human rights and contribute to sustainable development. This notwithstanding it has been proposed that there are continuous reports of human rights violations by corporations; this therefore makes it imperative to introduce legally binding minimum CSR standards.<sup>34</sup>

There have been attempt made to introduce legal standards to the operation of CSR and prominent among that attempt came from initiative of the UN Sub-Commission on Human Rights with the Draft UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms). However, this instrument has been found to occasion a lot of controversy and did not find support by most other UN agencies.<sup>35</sup>

Presently in Nigeria, there is no particular legal provision tagged as ‘CSR Law’ but there have been several legislations which certain provisions can be deduced to provide for a safe haven for the practise of CSR.

Such provisions which are available are largely laws bothering on the protection of the environment and most of them come down with criminal sanctions for non-compliance as opposed to voluntary adherence. Such legislations include:

1. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act.<sup>36</sup>
2. Harmful Waste (Special Criminal Provisions Act).<sup>37</sup>
3. Environmental Impact Assessment Act.<sup>38</sup>

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<sup>33</sup> Governance, International Law and Corporate Social Responsibility- available at: [www.ilo.org/public/english/bureau/inst/download/116.pdf](http://www.ilo.org/public/english/bureau/inst/download/116.pdf), visited 20/02/2012.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> 2007, replaced the repealed FEPA, Act. Cap F 10, Laws of the Federation of Nigeria, (LFN), 2004.

<sup>37</sup> Cap. H 1, LFN, 2004.

<sup>38</sup> Cap E 12, LFN, 2004.

#### 4. Criminal Code.<sup>39</sup>

For a clearer picture of the issues here, a brief review of the provisions of these laws are given as follows:

##### **a. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007**

This act provides for the standards of compliance with environmental protection. It also provides for offences and corresponding punishment as it relates to the environment. Sections 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 stated the expected standards of ensuring environmental protection. Section 30 provides for the powers of the Officers of the Agency to enter premises, take sample, investigate and even exercise right of seizure. Sections 31 and 32 provide for the offences. Section 20 particularly relates air quality of the environment. Section 27 deals with the discharge of hazardous substances and related offences. The Act gives the power to define what hazardous substances are to the Minister.

Section 31 declares as offence the obstruction of authorized officer from carrying out his lawful duty under the law. It also declares as an offence the failure of any one to comply with the lawful enquiry made by an authorized officer.

##### **b. The Harmful Waste (Special Criminal Provisions) Act**

This act prohibit the carrying, depositing and dumping of harmful waste on any land, terminal waters and matters relating thereto.

Section 1(1) prohibits all activities relating to purchase, sale, importation, transit, transportation, deposit and storage of harmful waste. Section 1(2) enumerates the offences. This act provides for the penalty of the imprisonment.

The Act makes it a general offence for anyone to deal with harmful waste. It also has provision for the exclusion of diplomatic immunities to foreign nationals who will want to hide under the said Act to perpetrate this offence.

##### **c. The Environmental Impact Assessment Act**

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Cap C 38, LFN, 2004.

This refers to the process in which changes in the environment as a result of development are assessed to measure how beneficial or deleterious these changes might be. Section 66 of the Act provides for offences and prescribes penalty. Its penalties range from fine to imprisonment.

d. The Criminal Code

Certain sections of the code specifically provide for the protection of the public health. Sections 234 to 248 of the Criminal Code provides for offences against public health. Section 245 declares as offence the corruption or fouling of the water, spring, stream, well, tank, reservoir or place.

Section 247 provides for noxious acts and section 243 provides for exposing and adulteration of food or drinks. Section 244 provides for offences relating to dealings with and in diseased meat and section 246 provides for offences against burial in houses.

It is pertinent to note that, although all the laws above highlighted did not particularly provide for a situation in which the Corporate Organizations can be made to comply with the social responsibility of ensuring a safe environment, it does come with criminal sanctions which to certain extent often becomes difficult to enforce against an erring company. It is very unlikely that while some of these laws were being made, the makers had the picture of companies in mind, because although it comes with force of law, to what extent could they be enforced against an artificial person in law?

Since corporate social responsibility under the Nigeria situation cannot be presently ensured through the mechanism of the law, it therefore comes with the idea of moral obligations. It then means that a company's inclination to environmental protection as its social responsibility relates to persuasiveness as against coerciveness, thus a matter of morality and not of law. The implication of this is that such moral obligations are not enforceable. If this is the case, then we have to look for a way of ensuring compliance thereto. This therefore makes a question to readily come to one's mind and this is; can law be used to uphold moral values in any given society?

Answering this question will take us a bit into the jurisprudential study on law and morality for a clarity effect. While law is a coercive order, morality is a persuasive system. Law seeks to

bring about a specific mode of human conduct by force, but morality appeals to the conscience of the individual required. A rule is a rule of morality if by common practice of the community, it applies only to the conscience of the addressee for ultimate compliance, but a rule is a rule of law if by the common practice of the community it will eventually be enforced by a power external to the addressee, i.e. the state or community.

The extent to which law can be used to enforce morals has been the subject of expression in some decided cases. In England the House of Lords held that the Queen's Bench Division is the Custodian of good morals and that it has jurisdiction to punish a person for contravening the rules of morality.<sup>40</sup> It was also held in another case that the Court is the custodian of public morals and it is its duty to preserve the moral welfare of the state.<sup>41</sup>

It is worthy of note that the English court in a latter decision took a bold step to revert the position as expressed in the above cases. The House of Lords deciding on the Court's residual powers of enforcement of the supreme fundamental purpose of the law held that, the courts no longer have any residual power to supervise morality in the society.<sup>42</sup>

So many writers and Philosophers tried to explore the issue of using law to enforce morality and therefore came out with different divergent views which have been summarised into four different groups. These groups are as follows:

1. Those who state that is impossible to legislate morality.
2. Those who are of the view that no particular set of moral ideas should be imposed on the society through the law.
3. Those who say that only the 'Harm Principle' justifies obliging somebody to act in a certain way.

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<sup>40</sup> *Shaw v D.P.P.* (1962) A.C P.220.

<sup>41</sup> *Knulier v D.P.P.* (1972) 2 A.E.R P.898.

<sup>42</sup> *Ibid.*

4. Those who believe that there exists 'Public' and 'Private' spheres of action; and the latter should not be the concern of law.<sup>43</sup>

Lord Denning and Prof. Hart were among the writers who have expressed their view on this issue. Lord Denning was an apologist of the view that the society reserves the right to use criminal law to preserve morality in the same way as the society uses criminal law to preserve anything it considers essential for its survival. Prof Hart on his part was of the view that it was wrongful to enforce morality through the criminal law without first ensuring that failure to do so will endanger the social fabrics.<sup>44</sup>

Notwithstanding the divergent views, both writers agreed to the fact that moral values are very important to the society and that there is need for law to uphold some moral position in the society on different grounds.

Under a democratic government the decision for the enforcement or the non-enforcement of moral values through the mechanism of the law lies strictly within the purview of the power of the law makers of that society. But in as much as such moral values have not been made to carry the force of law, it remains a moral obligation which is within the prerogative power of an individual expected to adhere to such values. An individual has the right to either carry out or neglect to carry out such moral obligations as expected of him. This therefore also applies to corporate organisations, especially as it relates to the societal expectation of carrying out activities that ensures the preservation of the environment as part of their corporate social responsibility.

As at present, there is no law in Nigeria that makes it mandatory for companies to either incorporate environmental preservation into their company policies or enforce the compliance thereto. If there is therefore no legal provision upon which the companies can be held accountable for environmental protection, then no offence can arise and there can never be any sanction.

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<sup>43</sup> Elegido J.M. *Jurisprudence*. (Spectrum Books Limited: Ibadan, 1994), p.347-353.

<sup>44</sup> Edeko E.S. *Jurisprudence*, (Tide Publishers: Benin City, 2003), p. 47-51.

Where there is no offence known to law, a conviction cannot be sustained. This position has been upheld in a Nigeria case where the High Court sitting on appellate jurisdiction held that there was no written law upon which the lower Court convicted the appellant. The court held that the conviction of the appellant was contrary to the provisions of Section 21 (10) of the Constitution of the Federation 1960, which provides that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty therefore is prescribed in a written law. The conviction of the appellant was thereafter quashed.<sup>45</sup>

Going by the above, it is obvious that the issue of corporate social responsibility is solely a matter of discretion and one within the powers of the Directors of the company who may refuse to so act. A company may or may not incorporate social responsibility into their fiscal policy. Whichever way it goes, the failure of a company to comply with the social responsibility of environmental protection will not merit any legal consequence because it would not have resulted in the commission of any offence known to law.

Notwithstanding the above, there is an instance when an offence will arise against a company for not complying with the environmental standard of the place of its operation. This can arise under the doctrine of vicarious liability, when the company will be held liable for the offence of its employee.

It is worthy of note that it is hopeful that very soon in Nigeria, the atmosphere will soon be cleared as regards the commitment of the concept of CSR to the rudiments of the law having regard to the present novel development where a bill on Corporate Social Responsibility sponsored by Senator Uche Chukwumerije, a Senator from Abia North which is presently before the National Assembly.<sup>46</sup>

The CSR Bill seeks to establish the Corporate Social Responsibility Commission ("CSR Commission"). The Commission will see to the formulation, implementation, supervision and provision of policies and reliefs to host communities for the physical, material,

<sup>45</sup> *Aoko v Fagbemi* (1961) 1. ANLR 400.

<sup>46</sup> Senate of the Federal Republic of Nigeria [www.nassnig.org/nass/ordersenate.php?id=652](http://www.nassnig.org/nass/ordersenate.php?id=652), visited 20/02/2012.

environmental or other forms of degradation suffered as a result of the activities of companies and organisations operating in these communities.

The Bill proposes five main divisions which respectively provides for the establishment of the CSR commission which shall be a body corporate with its own common seal and the legal authority to sue and be sued, to purchase or sell its property the power of the commission, the staff and officers of the commission, the function and power of the commission, the funding and miscellaneous provision.

Considering the provisions of this Bill, its successful passage in the house will be a welcome development and indeed a great reformation of the practise of CRS in Nigeria and will help in firmly establishing corporate ethics among the firms in Nigeria.

The provision of the Bill notwithstanding, there is a legal alert as to the identified deficiencies of the proposed bill. The Bill is seen not to make provision for extensive enlightenment of the society on the benefits of CSR and does not reiterate the minimum constitutional duties that are imposed on the Nigerian government.<sup>47</sup>

The CSR Bill has been described as a reactive legislation as opposed to a proactive Law and therefore needs to be subjected to an amendment. It was also argued that CSR contributory charge could be a disincentive to investments in Nigeria in the light of the already existing high and multiple taxes at various strata of the Federal, State and local governments. It was therefore recommended that the proposed charge of 3½% could be reduced to a basic minimum charge for all companies and organisations whilst the penalty charge for none compliance with the statutory requirements of the Law could be increased by the same margins of the CSR charge itself.<sup>48</sup>

It has also been pointed out that CSR Bill has failed to follow recent legislative practices which impose criminal liability on both the corporation and all the directors and managers of any corporation or

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<sup>47</sup> Legal Alert October 2008 Corporate Social Responsibility Bill. Retrieved Feb. 2012 from [http://www.oseroghoassociates.com/pdf/2008\\_10.pdf](http://www.oseroghoassociates.com/pdf/2008_10.pdf).

<sup>48</sup> *Ibid.*

company who are aware of the breach of an existing Law and this therefore should be subjected to the necessary amendment.<sup>49</sup>

It is worthy of note that if the provision will be able to achieve adequate result as sought, all these deficiencies must taking into consideration and be addressed before the Bill is fully passed into law.

Standards would assist corporations by clarifying their responsibilities, so that companies are no longer subject to arbitrary allegations and demands from various stakeholders. Companies would further be assisted by a clear reference document outlining their responsibilities, as this would limit costs associated with supply chain management, a process that more and more companies are engaging in, in response to the growing pressure by civil society to ensure that there are no human rights violations throughout the supply chain.<sup>50</sup>

### 5.8 Companies and Vicarious Liability

Vicarious liability is the liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties.<sup>51</sup>

Prior to the nineteenth century, employers were not being held liable for the offence or crime of their employee. But with the progressive development in law, the principle of vicarious liability is now being employed. An Employer can now be made to be responsible for the crime of his employee, particularly with respect to statutory social offences. Instances in which this can happen are where the statute expressly says so, or where the licensee knows that there is a statutory obligation for him to fulfil certain conditions and he fails to stop his employee from contravening such conditions. Again, an

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<sup>49</sup> *Ibid.*

<sup>50</sup> *Governance, International Law and Corporate Social Responsibility-* Retrieved Feb. 2012 from, [www.ilo.org/public/english/bureau/inst/download/116.pdf](http://www.ilo.org/public/english/bureau/inst/download/116.pdf).

<sup>51</sup> Bryan A. Garner, (ed.) *Black's Law Dictionary*, (8<sup>th</sup> ed.) (USA: West Publishing Co., 1999).



employer would be criminally liable for the crime of his employee where, as a licensee he delegates the control of his business.

In a particular case, the licensee of a refreshment house employed a manager for it and instructed him not to allow prostitutes to frequent the house. The manager knew that they were resorting to it. The licensee did nothing but was convicted because he had delegated control to the manager. In this case, the knowledge of the manager was imputed to the licensee to make the licensee criminally liable.<sup>52</sup>

## 6. The Limits of CSR

The issue of Corporate Social Responsibility in the Nigeria scenario should be of main concern to every individuals and corporate organisations, most especially those who are in the oil and gas industries because they are the major perpetrators of the felony of polluting the environment. But to our disappointment and amazement, these companies put in all their efforts and resources only in exploring and exploiting the society.

The activities of the companies dealing in oil exploration in Nigeria portray them to be non-sympathetic to the plight of the host communities of their exploration by their uncaring and self-centred attitude which confined them only to profit making while the society suffers from major social amenities. This negative attitude has been motivated basically because the companies know quite well that they cannot be compelled to be responsive to the need of the society. They believe that having settled all their legal obligations such as payment of revenues and taxes, all other things which are not directly affecting the company, should be taken care of by the government.

A closer look at such position maintained by the companies as stated above might arouse one's mind to their favour, reason being that companies are only expected to act in line with the provisions of their Memorandum and Article of Association. And since the issue of being socially responsible to the environment is generally not one provided for in the Memorandum and Article of Association of the Company, the intention of a company to so act will be limited. Giving this circumstance therefore, a company will only be disposed to acting

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<sup>52</sup> *Allen v Whitehead* [1930] 1 K.B. 211.

favourably towards the environment of their exploration or any other matters extraneous, only if such will be advantageous to the company or necessary for the smooth running of the affairs of the company.<sup>53</sup>

### **7. The Problems of CSR**

Every projection in life comes with its problems so also the corporate organizations are not exempted from encountering certain problems in the attempt to embrace sustainable development of the society.

Problems are simply difficulties or hindrances to the achievement of certain set goals. Certain factors that make it difficult or impracticable for corporate organizations to be socially responsible to the society have been identified and they are itemised and discussed as follows:

#### **i. Archaic Business Mentality**

The orthodox business principle states that the business of an organisation is strictly to benefit its shareholders, meaning that business organizations' major motive and target is the ability to make profit, and maximise profit even at the expense of the environment of their operation. Supporter of this says that corporate social responsibility distracts from the fundamental economic role of business. The general belief of business minded people is to take as much as possible from everywhere and everyone to better the lot of the business and its proprietors. This orthodox business believe still lingers on even in this present generation and this tells negatively on all aspect of the society especially as it affects environmental protection.

Any business or business organization that operates by this principle will certainly care little or less about their expected social responsibility to the society. The principle encourages investors to work very hard to take all and as much as possible from the people and leave it with nothing. Such principle is exploitative; it exploits not only the natural resources but also the human resources.

#### **ii. General Carefree Attitude**

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*Hutton v West Cork Rail Co.* (1883) 23 Ch. D. 654, P673.

It is often said that things remained undone when someone expects somebody to do what everyone should have done, nothing gets done. This concise statement simply infer the shifting of collective responsibility or duty to another, such as we have in Nigeria where everybody expects the government to do practically everything, even things that an individual could have conveniently done.

People often tend to forget that the basis of the government is the people. The government is simply made up of the people 'all of us' as postulated in the principle of democracy which is the government of the people, by the people and for the people. Thus, the individual passive attitude towards the environment will negatively affect and influence everyone.

It is worthy of note that most corporate organizations have this attitude of burden shifting, this I regard as a very wrong attitude or rather a failure attitude which tends to shift the total responsibility of provision of basic amenities and maintenance of the environment over to the government.

The corporate organizations tend to believe that they have no business improving their environment, especially after having paid all dues, taxes and levies. This type of attitude does not encourage even development and if not properly cautioned, will continue to leave the society in a complete state of devastation. This is premised on the fact that the burden on the government is too enormous that it might find it difficult to attend to certain environmental or societal issues. This therefore will necessitate the Corporate Organisations taking up the challenges of meeting such need.

### **iii. Inefficiency of Legislations**

There are few legislations in the area of corporate social responsibility and the ones that are available are either poorly managed or unenforceable, and this surely is a clog in the wheel of the progress to ensure a rapid sustainable development. Legislations are made to order the cause of life and event within a society, but when such legislations when made are not adequate not in terms of the volume or variety but in terms of specification, the effect becomes insignificant. Some of the provisions of the existing laws most especially on environmental protection are not adequate in safeguarding the life and rights of the

people. For example, National Environmental Standards and Regulation Enforcement Agency (Establishment) Act which provides for the spiller's liability. It makes it unlawful to discharge such harmful quantities of any hazardous substances in to the Air, or upon the land and the waters of Nigeria or at the adjoining shoreline.<sup>54</sup> The violation of this provision has a criminal sanction with the penalty of fine or imprisonment for an individual offender and no clear sanction for a corporate offender.<sup>55</sup> The question is, if the pollution has caused grievous damaged to a citizen will the fine or damages awarded, be sufficient to remedy the harm done to such individual.

Also, the commission of some of the offences provided for by the existing legislations can only be prosecuted by the State, especially those offences that fall under the public nuisance. Private persons are not given the power to so do, notwithstanding the fact that such an individual might have suffered severely from a grievous harm occasioned by corporate activities.

#### **iv. Poor Enlightenment**

Poor enlightenment as to the benefits of social responsibility of individual vis-à-vis that of the corporate organisations to the society is a major factor which encourages the persistence of passive attitude towards ensuring a rapid sustainable development of the society by both individuals and corporate organizations.

The lack of awareness as to the need to be socially responsible to the environment makes people to be ignorant of the effect of their negative or improper dealings to the environment. When this therefore happens, danger is imminent, just as the Holy Bible rightly put it: "my people are destroyed for lack of knowledge."<sup>56</sup> Where there is the scarcity of social awareness as to the benefits of environmental friendly actions and policies, which an organization should imbibe; such organization tends to continue to carry out nefarious activities that can occasion environmental hazards.

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<sup>54</sup> Section 27 (2) NESREA ACT.

<sup>55</sup> Section 27 (3) *ibid*.

<sup>56</sup> The Holy Bible; (King James Version), Hosea 4:6.

Since some of the companies are not properly aware of the importance of corporate social responsibility towards the environment, especially as regards the promotion of their business value, it keeps them in the dark of any probable benefits that can accrue to them for being environmentally friendly.

#### **v. Insincerity and Insensitivity of the Government**

The practises and responses of Nigerian Government to negative corporate activities like gas flaring has not portrayed the government to be sincere enough in ensuring the practise of social responsibility in our societies. Insincerity and insensitivity on the path of the government has to do with the system of government that encourages the passive attitude of the corporate organizations towards their corporate social responsibility to the people. In Nigeria, the government seems to concentrate more on generating income from the default or failures of the corporate organizations in meeting up with their social/legal responsibility to the environment. The fund generating drive of the Nigerian government encourages the non-compliance of the companies to environment laws. Monetary compensations are being accepted in lieu of the companies' obnoxious acts of environmental degradation at the expense of the preservation and conservation of the environment.

While the world in general has started advancing the cause of safe environment for all, and is taking a strong stand against gas flaring and all other instances of atmospheric pollution and environmental degradation, our government allows such criminality for the token of a fee. The projection of monetary gain is placed far above the public welfare and social wellbeing. Rather than prosecuting some of the offending companies by either suspending their activities or shutting them down totally, the government award fines against them. And since these companies, especially those in the exploration of oil are very financially buoyant; they prefer to keep paying the fines and keep committing the same offence over and over again. They find it more convenient and rather cheaper to keep paying the fine as against safe guarding the environment for the common good.

### **8. Conclusion**

Taking a clue from the above discussion, it has become obvious that the concept of corporate social responsibility is being widely embraced and accepted as a societal virtue that will eventually help in promoting positive values, this nonetheless, is a sign that the rules of the corporate governance operations are gradually changing from a profit based view only to that of the general wellbeing of the society at large. Corporations are now being subjected to the call for accountability to environmental, economic and social impact of their decisions and this is a sort of social crusade which its observance will positively enhance the life of the people and the society in general.

It is therefore noteworthy that as the society's views evolve regarding acceptable standards of corporate behaviour; the standard of the observation or practise of corporate social responsibility should migrate from the realm of corporate discretion to the platform of regulatory compulsion, thus, eliminating any fear or doubt as to its sustainability.