

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

THE FUTURE OF CORPORATE GOVERNANCE IN THE AGE OF STAKEHOLDER CAPITALISM

AUTHORED BY - GAUTHAM A B,

Practicing Advocate at Nedumangad Court, Kerala, India

CO-AUTHOR - TIMNA BRIJIT TENNISON,

CO-AUTHOR 2 - RESHMA R

CO-AUTHOR 3 - PRIYAMOL C P

2nd Semester LL.M (Commercial Law) Student at C.S.I College for Legal Studies,
Kottayam, Kerala, India

ABSTRACT

The idea behind stakeholder capitalism is that an organisation should prioritise serving the interests of all parties involved, including partners, consumers, staff, the community, and society at large. The BR Statement of the Purpose of a Corporation, which promotes stakeholder capitalism above and beyond traditional shareholder capitalism, was signed by 183 of the 206 Business Roundtable (BR) corporations in August 2019. Boards of BR companies must to push for a more proactive obligation to stakeholders and think about changing corporate arrangements to foster stakeholder capitalism. Future studies ought to keep looking into this corporate governance possibility.

INTRODUCTION

But the COVID-19 epidemic tested the 2019 promise. The downturn in the economy and the loss of jobs have brought to light shortcomings in the creation and application of stakeholder governance. Examining if the BR firms "walk their talks" is crucial. Second, now is the moment to create and promote the "new normal" of corporate governance as we look for and construct the "new normal" of life beyond COVID-19. As businesses and their boards move towards true stakeholder governance, it is imperative that we support them in recognising and incorporating the opportunities and challenges that lie ahead. Third, a firm must undergo a fundamental shift in order to implement stakeholder capitalism. B companies and public benefit corporations (PBCs) offer a fresh and creative approach to business that can be transparent and accountable

to stakeholders. Businesses should think about implementing these new corporate structures and redefining their objectives to put stakeholders first.

NATIONAL INVESTEE EXAMINATION

Over the last few years, such corporate purpose has been analysed closely¹. The coronavirus pandemic in 2020 increased the level of inspection, and it continues today. It is coming from institutional investors who are integrating the consideration of environmental, social, and governance factors into their investment and voting decisions². Other stakeholders, including customers, workers, and regulators, are also scrutinising. PBC statutes offer a different, for-profit corporation structure that specifically considers corporate social responsibility. The two biggest asset managers in the world, Laurence Fink, CEO of BlackRock, which has \$7.4 trillion in assets under management and 70 offices across 30 countries, and Mortimer Buckley, CEO of Vanguard, which has \$6.2 trillion in assets under management, signed this BR Statement. But State Street Global Advisors, the third-biggest asset manager in the world with \$3.1 trillion in assets under management, isn't a part of the Business Roundtable (BR). Laurence Fink wrote a letter to all CEOs of publicly traded firms worldwide in January 2018, asking them to prioritise inclusive and sustainable economic growth for the vast majority of people and to begin considering their companies' social effect. Profits shouldn't be the only goal. Bill McNabb, the former CEO of Vanguard, said, "I appreciate the BR CEOs' intelligent statement regarding the purpose of a corporation. Boards can concentrate on generating long-term value and better serving all stakeholders, including suppliers, customers, communities, workers, and investors, by adopting a more comprehensive and wide perspective of the company purpose. Fink elucidated the connections between purpose and profit in a letter he sent to these CEOs in January 2019 by promoting actions that will result in long-term, sustainable growth and profitability. A company's purpose is what drives it to pursue profits rather than just being the means to an end in and of itself. A business that is genuinely purpose-driven operates with the strategic discipline and focus that propels long-term profitability and brings management, staff, and communities together. Fink stated in his letter from January 2020 that BlackRock will start to remove investments that carry a high risk associated with sustainability, like those in coal

¹Klemash, S., Smith, J. C., & Doyle, R. (2019, June 13). *Stakeholder capitalism for long-term value creation* (Harvard Law School Forum on Corporate Governance). Retrieved from <https://corpgov.law.harvard.edu/2019/06/13/stakeholder-capitalism-for-long-term-value-creation/>

²Alexander, F., Ensign-Barstow, H., & Palladino, L. (2020, October 26). *From shareholder primacy to stakeholder capitalism* (Harvard Law School Forum on Corporate Governance). Retrieved from <https://corpgov.law.harvard.edu/2020/10/26/from-shareholder-primacy-to-stakeholder-capitalism/>

companies, and that the company would prioritise environmental sustainability when making investment decisions. His goal is to get businesses, not just energy companies, to reconsider their carbon footprints. "Awareness is changing rapidly, and I think we are on the verge of a fundamental reshaping of finance," the author said. Investors need to reevaluate their fundamental beliefs about contemporary finance in light of the climate risk research. A corporation cannot generate long-term profits without embracing purpose and taking into account the requirements of a wide range of stakeholders, as I have stated in previous letters. The engine of long-term profitability is the ultimate goal. We think that directors should be held responsible when a corporation fails to address a significant issue. Asserting that the U.S. must limit global warming below 1.5 degrees Celsius, or slightly less than 3 degrees Fahrenheit, in order to prevent catastrophic climate breakdown, world-renowned climate scientist Michael Mann concurred with Fink's emphasis on climate risk. He stated that this must be done within the next four years. BlackRock dissented or did not cast votes for 4,800 directors at 2,700 distinct firms in 2019. According to Fink, "When companies are not making sufficient progress on sustainability related disclosure and the business practices and plans underlying them, we will be increasingly inclined to vote against management and boards of directors." Businesses need to be purposeful and dedicated to servicing all of its stakeholders, including shareholders, clients, staff, and the communities in which they do business. By doing this, investors, employees, and the general public will all benefit from increased long-term profitability for your business.

As of 2018, 37% of the funds invested in American mutual funds and exchange-traded funds (ETFs) were passively held, according to Moody's Investor Service. According to Moody's forecast, the market share of passive investors will cross a threshold and reach over 50% in 2021. It was written that the spread of technology is similar to the trend in active versus passive investing. For investors, passive investing is thought to be a more cost-effective and efficient kind of technology. Passive investment will gain popularity over time as more people become aware of it. For instance, Berkshire Hathaway CEO Warren Buffett has advised investors to only invest in index funds, such as the Vanguard S&P 500 index fund.

THE CARD OF THE STAKEHOLDER CAPITALIST

The Test of Corporate Purpose (TCP), a group of researchers whose advisory board includes a professor of management from the University of Oxford and senior executives from Morgan Stanley and Liberty Mutual, and KKS Advisors, an environmental consulting firm, conducted

a study funded by the Ford Foundation to evaluate how corporations have responded to the pandemic and the movement against racial injustice. After examining the operations of 800 businesses whose stock is listed in the S&P 500 and the FTSEurofirst 300, the researchers reduced the sample size to 619 businesses for which they could obtain at least three years' worth of information from trade journals, news articles, and other industry sources. They assessed how much businesses were following the guidelines set forth by the nonprofit Sustainability Accounting Standards Board, which advocates for standards related to social and environmental issues. They looked at how the companies fared in June and July 2020 on a number of pandemic-related indicators, including the following: capital allocation (stock buybacks and dividends), governance (board tenure, board recruitment requirements, and independent board chair), lobbying and political spending, taxes and havens, and environmental issues (land-use change like deforestation, carbon footprint, water usage, etc.). All of these indicators are relevant to the pandemic. The study concluded that while the signatories to the BR's Statement of the Purpose of a Corporation failed to set themselves apart in the quest of racial and gender equality, they had performed no better than other businesses in safeguarding jobs, labour rights, and workplace safety during the pandemic. The analysis came to the conclusion that, since the start of the epidemic, the signatories of BR companies have not succeeded in bringing about significant changes in their corporate purpose at a time when enlightened purpose ought to be of the utmost importance. The report's conclusion enhances doubts that corporations can be depended upon to moderate their quest for shareholder profits to pursue stakeholder solutions to challenges like climate change, racial injustice, and economic inequality³. A law review article cited this fact as evidence that the pledge was merely a public relations stunt rather than a significant corporate governance issue. The report also pointed out that very few companies that signed the BR Statement on the Purpose of a Corporation submitted it to their governing boards for approval. For instance, Wells Fargo (which was placed in the lowest quadrant of the report) was singled out by the report for turning down a shareholder proposal to put the BR pledge into action by looking into the possibility of changing the bank's legal structure to become a public benefit corporation, which would have given it the authority to put shareholder interests ahead of other considerations. While some of these companies did lay off people, the study did not evaluate the extent to which signatories to the BR Statement had continued to pay dividends to shareholders while doing so. The CEO of Marriott International, the largest hotel operator in

³ KKS Advisors, & TCP. (2020, October 24). COVID-19 and inequality: A test of corporate purpose. KKS Advisors. Retrieved from <https://www.kksadvisors.com/tcp-test-of-corporate-purpose-september2020>

the world (ranked third), Arne Sorenson, is co-chairman of a BR working team that is examining Covid-19. He declared in March 2020 that 2,700 of Marriott's 4,000 corporate employees would be placed on furlough. Sixty-five of them will be permanently laid go in October 2020. In April 2020, the company would pay \$160 million in dividends to its stockholders.

Positively, the report highlighted BlackRock (2nd quadrant) and its CEO, Laurence Fink, for directing investments towards businesses that mitigate climate change. BlackRock also donated \$50 million for pandemic emergency services, which included supplying hospitals with essential medical equipment. Presently, the BR comprises 206 enterprises. 130 of them, or 63%, were evaluated for this report. Others, like the private partnerships of public accounting firms, lacked the necessary three years of data. The FAANGM stocks in the U.S. market are the four BR businesses in the fourth quadrant, Microsoft in the third quadrant, and the non-BR company, Facebook, which is also a fourth-quadrant company. Approximately 25% of the market capitalisation of the S&P 500 public stocks is now held by these six corporations. They are therefore in the top 1% (6/500) for stockholder success, despite being primarily in the lowest 4th quadrant for stakeholder performance. This presents an intriguing trade-off between values or viewpoints. For instance, the majority of the profits of S&P 500 businesses have gone towards stock buybacks and options, rather than salaries and bonuses, as executive compensation in the United States has changed. The richest 10% of Americans own 84% of all stock shares under this redesigned system, despite the fact that the pandemic-ravaged economy hasn't stopped the U.S. stock market from approaching an all-time high.

ESSENTIAL QUESTION FOR CAPITALISM STAKEHOLDER

The fundamental query for stakeholder capitalism was posed by Andrew Ross Sorkin, the business editor of The New York Times: "What precisely does it mean to be in favour of all stakeholders?" For those who wish to see a more expansive form of shareholder capitalism, there is still an uncomfortable truth to face: it is extremely difficult for a business to care for its other stakeholders if it is not turning a profit for its shareholders. The CEO of Salesforce, a firm in the first quadrant, Marc Benioff, has long advocated for a more inclusive stakeholder approach to governance, but he also recognises that growth and earnings must come first. Following a major restructuring in August 2020, Salesforce, which had announced record revenues, let go of over 1,000 employees. Benioff said, "It's not a stakeholder nonprofit," in response to the question of whether that was disingenuous given that he had frequently

discussed employees as stakeholders. Stakeholder capitalism is what it is. The company's long-term interests, which will best serve the interests of all stakeholders, must come first in my opinion. In his 2020 annual letter to shareholders, Berkshire Hathaway CEO Warren Buffett stated, "In representing your interests, business-savvy directors will seek managers whose goals include delighting their customers, cherishing their associates, and acting as good citizens of both their communities and our country." Buffett acknowledges that shareholders must be served first with a profitable company. A more affirmative obligation to stakeholders and society was promoted in an article published in September 2020. Co-authors of the book were Leo Strine, arguably the most significant judge in corporate America for the previous ten years, and Joey Zwillinger, co-founder and co-CEO of the New Zealand-American footwear firm Allbirds. Strine served as chief justice of the Delaware Supreme Court, which has jurisdiction over more US firms than any other state due to Delaware's high corporate incorporation rate, until retiring in 2019.

BUSINESS STRUCTURES TO SUPPORT PARTY CAPITALISM

A company's board should think about becoming a PBC or applying to become a certified B corporation if it is truly committed to stakeholder capitalism and the BR's commitments. According to the law, a PBC is a for-profit company with the goals of generating a public benefit or benefits and conducting business in a way that promotes stakeholder capitalism and sustainability. The corporation's certificate of incorporation must state the public benefit that it intends to further. A positive effect (or the mitigation of a negative effect) on one or more groups of people, things, communities, or interests (aside from stockholders) is referred to as a public benefit. This includes, but is not limited to, effects that are literary, medical, religious, scientific, technological, artistic, charitable, cultural, economic, educational, environmental, or educational. A PBC's board must oversee or manage the company's operations in a way that strikes a balance between the public benefit stated in the incorporation certificate and the financial interests of the corporation's stakeholders and stockholders who may be significantly impacted by its actions. If a board director makes a choice that a person of ordinary, sound judgement would approve of and it is made with knowledge and objectivity, then the director will be regarded to have fulfilled his or her fiduciary duty to the corporation and its stockholders. A publicly traded company (PBC) must give a statement to its investors outlining how it intends to advance both its own public benefit and the interests of people who will be significantly impacted by its actions. The following details from a stakeholder capitalism perspective must be included in the statement, which must be submitted at least every other

year:

- The goals set forth by the board to further the interests and benefits of the general public.
- The benchmarks that the board has established to gauge how well the company is advancing the interests and benefit of the public.
- Factual data that is objective and based on the standards the board has selected regarding the corporation's performance in achieving those goals.
- An evaluation of how well the company met its goals and advanced the interests and benefit of the general public.

CONCLUSION

The signature of the revised BR Statement on the Purpose of a Corporation in 2019 is a marker of the increased popularity of stakeholder capitalism among the most influential corporations in the world. Whether these businesses are adhering to stakeholder capitalism and offering suggestions to their boards is the primary research topic of this article. According to a comprehensive analysis by KKS Advisors and TCP, BR firms did not perform better than their S&P 500 counterparts in over a dozen areas, such as COVID-19 policies, labour practices, job security, and employee safety. In order to fulfil the promises made to stakeholders in the new BR Statement, critics of stakeholder capitalism have stated that they will be keeping an eye out for businesses that provide the same level of stringent data reporting and transparency on non-financial performance metrics, such as workplace safety, employee diversity, gender pay data, greenhouse gas reduction, and governing boards, as they do with financial performance metrics. Similar to how public corporations are required to have regular external audits of their financial accounts, these critics advocate for regular external audits of non-financial measures. As a result, several businesses have already made the decision to have a third party monitor non-financial data. PBCs and B businesses, such as Patagonia and Allbirds, and Danone NA and Ben & Jerry's, have arisen to put these concepts into practice and provide shareholder opportunities for corporate governance. BR firms ought to think about adopting these new organisational structures, and their boards ought to actively strive towards embracing stakeholder capitalism.