

Class Presentation: *Anti-Bribery*

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Defining Bribery:

- There is no universal definition of bribery but all definitions have in common that it involves someone in an appointed position acting voluntarily in breach of trust in exchange for a benefit.
- The benefit does not have to involve cash or a payment exchanging hands.
- Benefits can be in any form such as gifts, hospitality, access to assets or a favor made to a person, friend etc.

Laws Applicable: (1 / 2)

India: Prevention of Corruption Act, 1988 (Amendment Act, 2018) states:-

- “Bribe’ includes facilitation payments, directly or through third parties, gift, hospitality and expenses which may or perceive to affect the outcome of business transactions, which are not reasonable and bonafide;
- Criminalises receipt of any ‘undue advantage’ by ‘public servants’ and providing such undue advantage by other persons
- ‘Public Servants’ includes any person in the service or pay of the government, local authority, government company and employees of institutions receiving state financial aid
- Employees of private sector banks are also considered as government employees under this act

Laws Applicable: (2/2)

The US: Foreign Corrupt Practices Act of 1977, (FCPA) is a :-

- United States federal law that prohibits U.S. citizens and entities from bribing foreign government officials to benefit their business interests
- FCPA is applicable worldwide and it extends mainly to the publicly traded companies
- Criminal and civil penalties are applied by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC)

A 'Sorceress' in Brazil, a 'Wink' in India: Walmart Pleads Guilty After a Decade of Bribes

About the Walmart case:

- Retail giant Walmart is alleged to have engaged in corrupt payments to government officials across the globe for more than a decade
- Walmart was accused for paying millions of dollars to middle men to obtain permits from July 2000 to April 2011
- Pleaded guilty after a 7 year long case that accused the world's largest retailer of bribing officials across the globe – (June 2019)
- Walmart had to pay a fine of \$282.7 million in fines to settle the case with the Department of Justice (DOJ) and Securities Exchange Commission (SEC)

A 'Sorceress' in Brazil, a 'Wink' in India: Walmart Pleads Guilty After a Decade of Bribes

- Walmart was accused for using middle men around the globe in order to open new locations and obtain the required licenses
- Middle men who were used to get the required approvals:
 - A local contact from the Brazil to obtain government permits quickly
 - Locals business partners helped in getting the approvals in India
 - In China money was infused to the local landlords and was recorded as expenses for "Government relationship consulting services"
 - In Mexico, cars and computers were distributed to government officials in order to expand their presence

Where did the scam take place (1 / 3)

- Walmart indulged in scams in countries like India, Brazil, China, Mexico
- Walmart subsidiaries violated FCPA acts and bribed officials to get permissions. It totally violated anti bribery laws
- Brazil the epicenter of the scam
- Brazil Subsidiary was Walmart's wholly owned subsidiary that operated Walmart's stores in Brazil.
- Walmart Brazil earned approximately \$3,624,490 in profits from certain Walmart Brazil stores built by a Brazilian construction company (payments were made to a third party)

Where did the scam take place (2/3)

- No due diligence of the construction company before hiring
- Construction Company failed a preliminary round of vendor due diligence
- Allegations were that it has appointed TPI through the Brazil Construction Company to get permissions and illegal payments were done
- No actions taken after employees raised concerns on this issue
- No anti bribery committee to look over the issue

Where did the scam take place (3/3)

Walmart in India :

- Walmart entered the Indian market in partnership with Indian Retailers
- Internal audit review conducted between March 2009 and January 2011 identified certain weaknesses in the internal control
- Issues identified in the three internal audits that were conducted were not addressed

Impact of the Scandal

- It is only a matter of time that India will have a specific legislation (Act) to deal with bribery in the private sector.
- Amendment of 2018 for first time criminalized corporate bribery
- Companies venturing will be forced to follow ethical ways

Punishments

Prevention of Corruption Act, 1988

- Punishable with imprisonment for a term which shall be not less than three year but which may extend to seven years and shall also be liable to fine

Amendment in 2018

- Corporate bribery criminalized :- for the first time the superior functionalities of the commercial organization will be held responsible if there employees / agent is held responsible for bribing for the advancement of company with there approval

Punishments (2/3)

Foreign Corrupt Practices Act (“FCPA”)

- The Foreign Corrupt Practices Act (“FCPA”) was passed in 1977 in an effort to address concerns over the integrity of U.S. markets after hundreds of U.S. companies admitted to paying over \$400 million to foreign government officials.
- Criminal penalties for violations of the anti-bribery provisions of the FCPA include fines of up to \$2,000,000 for corporations and other business entities and up to \$100,000 for officers, directors, stockholders, employees and agents of such entities.
- Individuals held criminally liable can be subject to imprisonment for up to five years. The statutory fines can be significantly increased under the Alternative Fines Act, up to twice the benefit that the defendant sought to obtain by making the corrupt payment. Fines imposed on individuals may not be paid by their employer or principal.

Punishments (3/3)

- **Civil penalties** provide for a fine of up to \$10,000 against any firm, as well as any officer, director, employee or agent of a firm, or stockholder acting on behalf of the firm who violates the anti-bribery provisions. Additional penalties can be imposed in SEC enforcement actions at the court's discretion.
- Additional penalties can be imposed in SEC enforcement actions at the court's discretion. These penalties can range to the greater of
 - (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or a specified dollar limitation.
 - (ii) The specified dollar limitations are based on the egregiousness of the violation, ranging from \$5,000 to \$100,000 for a natural person and \$50,000 to \$500,000 for any other person.

Why did the scam occur?

- Lack of Internal controls
- No Anti-bribery policies in place
- Rapid international expansion > Integrity
- No investigations after employees raised concerns
- Lack of process level responsibilities

If appointed as the new C Suite: how to change things and why? (1/2)

Some changes in the attitude:

- Sit back and look at the heritage and vision of the Company first
- Taking responsibility for what has gone wrong
- Be proactive
- Attitude matters a lot not only for the leadership but also the employees

How to change things and why? (2/2)

- Practice rigorous authenticity
- Surrender to the outcome and the crisis (press the reset button)
- Do some uncomfortable work and being accountable
- Apologize and thus respond to the criticisms
- Organization optimism

Changes in the internal & external spheres: (1/3)

- The crisis was due to a breach in the Compliance of the Company. Thus the Compliance of the Company needs to be put into place. The norms should be made more stringent.
- Abiding by the FCPA guidelines.
- Investigation on the whistle blowing raised by the employees. (They did not listen to the employees)
- Proper Delegation of Authority in place.(Change in the approval systems)

Changes in the internal & external spheres: (2/3)

- An organization's life is more dependent on the decisions it takes than the conditions. Thus, cutting ties with the one's related to the crisis at every employee level. Get the contracts in a legal way than taking up any unfair means.
- In order to regain the reputation of the Company and the confidence of the stakeholders and all the employees:
 1. Take Authority
 2. Be transparent and do not repeat the past mistakes
 3. Acknowledge what the company has perceived to have done wrong

Changes in the internal & external spheres: (3/3)

4. Apologize and set the action plans and make things right

5. Being patient as reputation is not built overnight and thus, rebuilding it takes a longer time.

- Implementation of the current internal control in the Company which were in place but were never implemented.
- Creating of an anonymous Ombud's mechanism.
- Monitor every aspect of the projects taken up by the Company.
- **Ensure that the business further do not violate any laws.**

Example of an Ethical Company :

TATA STEEL

- This is the ninth year in a row Tata Steel have been recognized by the Ethisphere Institute, a global leader in defining and advancing the standards of ethical business practices, as one of the world's most ethical companies.
- **About Tata Steel**
 - **Founded** 26 August 1907; 112 years ago
 - **Founder** [Jamshetji Tata](#)
 - **Headquarters** [Kolkata](#), [West Bengal](#), [India](#)
 - **Key people** [Natarajan Chandrasekaran](#)
(Chairman)
[T.V. Narendran](#)
(CEO & Managing Director, Tata Steel Ltd.)

Example of an Ethical Company : TATA STEEL

- Tata Steel recognized among India's Best Workplaces: Large Organization, 2020
- Tata Steel Kalinga nagar bags the National Energy Conservation Award 2019
- Tata Steel's mines and collieries win National Safety Awards for excellence in safety practices
- Tata Steel wins IFSEC India Disaster Management Excellence Award

Controversies:

- Job cuts at Teesside in UK
- Environment protection at Dhamra Port

References:

- <https://www.nytimes.com/2019/06/20/business/walmart-bribery-settlement.html>
- <https://fcpablog.com/2019/06/20/walmart-pays-282-million-for-fcpa-resolution/>
- <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>
- <https://www.livemint.com/companies/news/walmart-to-pay-283-mn-fine-in-us-over-bribery-charges-in-india-other-countries-1561086810397.html>

Thank You
