
THE IMPACT OF CORPORATE SOCIAL RESPONSIBILITY ON LAW AND JUSTICE: AN ANALYSIS WITH SPECIFIC REFERENCE TO THE LAWS OF INDIA

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The changing needs of the world economy have led to the flourishing of many corporate entities and the rate at which environmental hazards have increased have threatened the entire world environment. A tactic to merge these two along with the other burdens that humans suffer in this world like poverty, hunger and discrimination goes a long way to impact law and justice specifically in a globalising world. The following research has been done in pursuance to find the answer to whether the provision under the Companies Act actually push the corporate sector to undertake Corporate Social Responsibility (CSR) for the sake of actual social welfare? How does the CSR relate to other important provisions of the Constitution and what is its significance?

The initiation of this term began in the year 1953 when “Howard Bowen’s work” was published on “Social Responsibility of the Businessman” which put up the question as to “What responsibilities to society can business be reasonably expected to assume?”¹ Such writings were widened in their ambit when in 1960s, the wide opinion was spread that the companies beyond statutory mandates had a duty towards the society. According to Salmond, **“corporate social responsibility is simply a correlative duty they must fulfil in exchange for the resources, labour and other services. These services they avail makes the corporate entity a person through legal fiction.”**

In March 1965, “the India International Centre and the Gandhian Institute of Studies, Varanasi” hosted the conference of “Social Responsibilities of Business” in which the concept of “Trusteeship” was discussed. The significance of this was that it showed a “means of transforming the capitalist order of society into an egalitarian one”. “It postulates that

¹ Joseph. (2014). Corporate Social Responsibility and the Trust Deficit. *India International Centre Quarterly*, 41(1), 67–80. <https://www.jstor.org/stable/44733574>

businesses should convert themselves into trustees of their wealth, taking only as much as they need”².

COMMITMENTS OF INDIA AND ITS IMPACTS

India had confirmed committing itself to the welfare of every class of the society and holding into the development process when it entered the word “socialist” in the preamble by the 42nd amendment. Although post 1991, the role of the State in the economic sphere has been receding. The acceptance of the social responsibility by corporate has been increasing. The corporate world is increasingly intent to utilise the opportunities. The very fact of the expanding race between different business houses for economic zeniths has also created the platform for the base of the growth of social justice and human rights which are taking the centre stage.

The Indian Government has also been projecting CSR as a way to enhance economic equality in India and thereby carving out a definite and unchallenged role for the corporate and their CSR initiatives. In 2009, the then Corporate Affairs Minister Mr. Salman Khurshid, while releasing the CSR guidelines observed that in spite of increasing growth of the business sector, there was a huge problem of poverty, unemployment, illiteracy and malnutrition. He underscored the fact that the gap between rich and poor continued to increase while the Government was undertaking a number of developmental initiatives, he looked up to the business sector to take the responsibility of ensuring distribution of wealth and well-being of the communities through its socially responsible behaviour³.

Government shows that it explicitly understands CSR as a business strategy to gain competitive advantage. The government through its CSR guidelines is directing the CSR initiatives in Public Sector Undertakings. “CSR extends beyond philanthropic activities and reaches out to the integration of social and business goals. These activities need to be seen as those which would, in the long term, help secure a sustainable competitive advantage. This commitment is beyond statutory requirements.”

Before the Companies Act, 2013; there was no statutory mandate in India for a corporate entity with certain required net profit to set aside a certain part of its money on activities to be

² Ibid

³ Sharma. (2009). Corporate Social Responsibility: An Overview. *American Bar Association*, 43(4), 1515–1533. <https://www.jstor.org/stable/40708084>

undertaken by the company as specified in “schedule VII such as eradication of hunger and poverty, promoting education and gender equality, ensuring environmental sustainability, protection of national heritage, art and culture, measures for the benefit of armed forces and veterans, promotion of rural sports, contribution to PM’s National Relief Fund and contributions to technology incubators located within academic institutions”. The change was brought with “section 135 of the Companies Act, 2013”. All these rights are “judicially recognised” and related to activities stated in the Seventh Schedule⁴.

In the case of “**National Textile Workers Union v. P R Ramakrishnan**”⁵, the Apex Court observed “that a Company is not a property of the shareholders and the role of shareholders is providing capital. A Company is a social institution with its objective to maximize social welfare and common good”.

The “section 135 of the Companies Act, 2013” is enumerated as:

“Every company having net worth of Rs 500 crores or more, or turnover of Rs. 1000 crores or more or a net profit of Rs. 5 crores or more during any financial year is required to constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, of whom at least one should be an independent director.

The Board of every Company has to ensure that the company spends, in every financial year at least 2 per cent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy. It is required that for spending the earmarked CSR amount, the company should give preference to the local area and areas around the place where it operated. If the company fails to spend the requisite amount, the Board has to specify in its report reasons for not spending the amount.”

Observing “Schedule VII of the Companies Act, 2013” that states: “Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:— (i) eradicating extreme hunger and poverty; (ii) promotion of education; (iii) promoting gender equality and empowering women; (iv) reducing child mortality and improving maternal health; (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; (vi) ensuring environmental sustainability; (vii) employment

⁴ Schedule VII, The Companies Act, 2013

⁵ AIR 1983 SC 75

enhancing vocational skills; (viii) social business projects; (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and (x) such other matters as may be prescribed” and closely observing the fundamental right of “Right to life and personal liberty” under Article 21. The social responsibilities mentioned in Schedule VII broadly fall under this Article. Seeing through the cases that have implied these, which are:

In “**Bandhua Mukti Morcha v. Union of India**”⁶, directives for prohibiting child labour were issued and in mines and industrial facilities, further to attend school and to make sure that the children eat a diet steeply in supplements. “This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief”.

In “**Paschim Bengal Khet Mazdoor Samity Vs. State of West Bengal**”⁷, the Court held that the right to life has imposed an obligation on the State “to safeguard the right to life of every person and that preservation of human life is of paramount importance.”

In “**PUCL V. Union of India**”, the Supreme Court⁸ “explicitly established a constitutional human right to food and determined a basic nutritional floor for India’s impoverished millions”.

In “**Sunil Batra v. Delhi Administration**”⁹, the Supreme Court held that “the ‘right to life’ included the right to lead a healthy life to enjoy all faculties of the human body in their prime conditions. It would even include the right to protect a person’s tradition, culture, heritage and

⁶ (1997) 10 SCC 549

⁷ (1996)AIR SC 2426

⁸ (2003)9 Scale P.835

⁹ (1978)4 SCC 409

all that gives meaning to a man's life. In addition, it consists of the Right to live and sleep in peace and the Right to repose and health".

In "**Maneka Gandhi v. Union of India**"¹⁰, the Supreme Court observed that "The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self."

Further, in "**Unni Krishnan v. State of A.P.**"¹¹, "it was held that the 'right to education' is incorporated into the 'right to life.' Art 21A expressly recognises the right to education as a fundamental right".

In "**M.C. Mehta v. Union of India**"¹², it was held that "the right to an unpolluted environment and the responsibility to maintain and protect nature's bounty has been interpreted to include the right to life. The right also protects wild animals, forests, lakes, historic sites, vegetation, ecological balance, and sustainable development. And several times, the legal right to environmental protection may take precedence over the economic concerns of society."

"The right to livelihood is included in the right to life" as stated in "**Delhi Development Horticulture Employees Union Vs. Delhi Administration**"¹³.

As we get to the summary of it, we observe "that the fundamental rights are enshrined in all laws" and the judiciary has reinstated in multiple ways that CSR should serve as a force of government to enforce such rights as of "Article 21" of the Constitution.

The carving of the role of CSR is difficult facing the challenges in the ways of caste and religious strife, the issues of poverty, illiteracy and gender issues. These issues, though require a wider solution with lots of involvement, the impact of the corporate sector in removing any

¹⁰ AIR 1978 SC 597

¹¹ (1993)1 SCC P.732

¹² AIR 2004 SC P.40 16

¹³ AIR 1992 SC P.789

of them would be strong and influential. Therefore, seeing in a much more necessary contribution, the corporate entities must go ahead by following the Companies Act seriously.

“The CSR Rules, 2021 on the other hand, has an **exclusive definition** and the said CSR Activities must not fall within the usual course of business. The CSR Rules, 2021 **excludes** the following activities:

- a) Any activity outside India, except training Indian sports persons representing India, or any state or union territory of India in national or international games.
- b) Activities advocated through sponsorship to derive marketing benefits.
- c) Fulfilment of a statutory obligation or any lawful obligation.
- d) Benefit to employee, defined under section 2(k) of Code of Wages Act, 2019.
- e) Contribution of any amount to any Political Party.

If the company does not follow this, specific reasons for not spending the amount must be stated. It must be an actual liability rather than a contingent liability of the future”.

“CSR has four types of social responsibilities- economic, legal, ethical and philanthropic.”
“Corporate Social Responsibility is a cross-cutting theme which intersects with many of these interests. Research has addressed aspects of environmental sustainability, the social impact of business, and the implications of globalisation for labour and human rights.”

Corporations are important and change-making vehicles for various kinds of enhancement specially in the developing countries where the need is far greater for social and economic enhancement by creation of jobs and advancements in science and technology and enhancement of management skills. Further in the sphere of international human rights, the corporate sector can play an impactful role in promoting these rights and developing standards for people to live life with values by following corporate social responsibility.

THE BRIEF VIEW OF CHANGES WITH GLOBALISATION

CSR has been in lime light because of the increasing trade which is now at a global pace. A

geographical dispersion of production networks¹⁴, developing in 1990s has led to “environment and labour issues”. The transformation in this worldwide production has created problems and advantages for employees, the environment and society¹⁵. The individual governments are finding it difficult to hold on to the activities of these corporations have at “such a global scale, that promoting social and environmental values is unsustainable¹⁶. In response to the need for corporate sustainability, the United Nations Global Compact created principles to promote fundamental responsibility in 4 key areas: human rights, labour, environment, and anti-corruption”¹⁷.

In the era of globalisation, the connection between business corporations and human rights have gone to a new level which has impacted a number of positive and negative developments, it has seen the rise of the influential power of the corporations. “In this globalized market the relationship between ‘business corporations’ and ‘human rights’ has increased in recent years”.¹⁸

“International human rights standards”, as shown by the U.N. are prominent in the achievement of CSR. As the economy has become global and thereby seems spread, there is a vast need for setting up visible international standards. If there will be no benchmark for checking such international standards, the business houses and corporates would only give in to profit maximization rather than any thought for social welfare. Thereby, the mandate of the Companies Act would go a long way in maintaining such balance.

CONCLUSION

The need for CSR cannot be undermined anymore and the commitment of a corporation in pursuing such long- term goals for the community and society at large is the greatest necessity which the corporations need to focus on.

There has been a change and the successful firms are using social responsibility and are giving to the society, in furtherance of their gratitude to their stakeholders and customers. “This might

¹⁴ Locke et al., 2013

¹⁵ Egels-Zandén and Lindholm, 2015

¹⁶ Blowfield and Murray, 2014

¹⁷ UN Global Compact, 2018

¹⁸ Bhandary, L. M. (2019). Corporate Social Responsibility and Human Rights – Role of the International Organisations to Regulate Business Corporations for Violating Human Rights: A Socio-Legal Study. *Journal of Business and Management Sciences*, 7(2), 91-99.

manifest itself in the shape of projects, movements, or personal empowerment. All these the alliances in corporate structure takes, there is no doubt that they benefit both the firm and the community.” The voluntary nature of CSR boosts the corporations to engage themselves in such activities, but they still need to prioritise it.

“CSR in the contemporary scenario has been unduly quantitative rather than qualitative. Quantifiable consequences or graphical description of CSR budgets, expenditure and activities are more visible in the current time rather than qualitative outcomes of interventions.” It has not failed to leave an undying mark on the CSR practices in India leaving it more strategic and systematic and oriented to social welfare.

“Tata has accepted social responsibility as a part of the management of the enterprise itself. The community development and social welfare programme of the premier Tata Companies like Tata Iron and Steel Company depicts planned and impactful CSR practice. The company has affiliated with the worldwide CSR principles and consequently has become a global enterprise. There are few examples of enterprises like Infosys, Mahindra, ITC, Wipro, etc., who exhibit good CSR practices”¹⁹.

Even though the CSR principles now find itself in the Companies Act, 2013. Corporates are still to take it seriously since there is no punitive action involved. Moreover, even if the Companies do take the duty of CSR, it is more about increasing their goodwill amongst the customers rather than any serious sense of responsibility.

Others do it for philanthropy and have confused the actual purpose of social welfare to charity, barring a few. The first amongst the companies that actually have considered themselves socially responsibility and started CSR way before such thing was constituted in the Companies Act, only following the principles of worldwide CSR principles is “the community development and social welfare programme of the premier Tata Companies like Tata Iron and Steel Company depicts planned and impactful CSR practice”. The corporates till the date are doing these activities for gaining customers and building reputation rather for fulfilling any community responsibility.

¹⁹ (Satapathy & Paltasingh, 2019)

“They have to re-evaluate their policies, and have to align CSR with the demands of the global forces. CSR in India must try to remain in sync with current trends, but not at the cost of the ethical and moral ethos as followed by the ideal philanthropic entrepreneurs.”

The fundamental right was the function of the State but when the state through its legislative provisions has mandated CSR, then the corporates must follow it with full heart and actual sense of social responsibility. There is such a need for commitment to actually attain the principles that make human, human; whether be it mentioned in the international human rights or only the right to life of India. Human welfare and social welfare undertaken by powerful, influential and impactful groups can go a long way in bringing a real change and transformation.

The government through its measures assign for penalties for the non-complying corporations. “A good plan is crucial for efficiently monitoring, utilising and carrying out CSR operations. Furthermore, it is critical to avoid corporations being used as a vehicle for ‘scamming’ under the pretext of CSR initiatives”. Impactful involvement of business corporations in such kinds of social responsibilities would go a long way in upholding fundamental rights, thereby upholding justice and welfare.

REFERENCES

- Bhandary, L. M. (2019). Corporate Social Responsibility and Human Rights – Role of the International Organisations to Regulate Business Corporations for Violating Human Rights: A Socio-Legal Study. *Journal of Business and Management Sciences*, 7(2), 91-99
- Sharma. (2009). Corporate Social Responsibility: An Overview. *The International Lawyer*, 43(4), 1515–1533. <https://www.jstor.org/stable/40708084>
- Joseph. (2014). Corporate Social Responsibility and the Trust Deficit. *India International Centre Quarterly*, 41(1), 67–80. <https://www.jstor.org/stable/44733574>
- Satapathy, J., & Paltasingh, T. (2019, October 29). CSR in India: a journey from compassion to commitment. *Asian Journal of Business Ethics*, 8(2), 225–240. <https://doi.org/10.1007/s13520-019-00095-2>
- Baskin, J. (2006, December 1). Corporate Responsibility in Emerging Markets. *Journal of Corporate Citizenship*, 2006(24), 29–47. <https://doi.org/10.9774/gleaf.4700.2006.wi.00006>
- Sharma. (2013, April). Corporate Social Responsibility in India: The Emerging Discourse and Concerns. *Indian Journal of Industrial Relations*, 48(4), 582–596. <https://www.jstor.org/stable/23509816>