

THE CHANGING HUMAN RIGHTS DIMENSION OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA

Written by *Dr. Ruchi Lal*

Assistant Professor-II, Amity Law School, Amity University, Noida, U.P.

ABSTRACT

Human Rights are universally understood as " those inalienable rights of human beings which inherent in them just because they are human beings". Though the principal responsibility for the respect, protection and fulfilment of international human rights standards lies with the individual sovereign states and international community at large, however, at the same time there is a mounting recognition that corporations also owe some level of responsibility towards protection of human rights.

In 2013, India adopted a new Companies Act that redefines corporate governance rules in India. Among its many provisions, the Act includes a mandate that medium-size and large companies must contribute 2 percent of their profits toward corporate social responsibility. This paper argues that these funds can be effectively utilised by the corporate sector in addressing human rights issues relating to education, health, environment and livelihoods through their corporate social responsibility interventions across the country.

Keywords: Corporate social responsibility, Companies Act, 2013 and human rights

INTRODUCTION

Social obligation is much bigger than supporting worthy causes. It includes anything that impacts people and the quality of their lives.

- William Ford Jr., Chairman, Ford Motor Co.

Today, due compliance with international human rights norms have become the essence of good corporate citizenship and an imperative for any technological revolution having impact upon business practices to be sustainable in long term. In fact, the extent of protection and promotion of human rights norms has become a key performance indicator for corporations all over the world. Any adoption or alteration in the business practices must be human rights sensitive. Successfully facing the corporate human rights challenge will be crucial to business success nationally and internationally in the years to come.

The core idea behind according recognition to human rights is simple yet powerful: that each individual has a right to live with dignity. These are “inalienable rights of human beings which inherent in them just because they are human beings”¹ Each individual is entitled to enjoy human rights without any discrimination on the basis of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. These rights are all interrelated, interdependent and indivisible.²

The notion of providing international protection to all persons, and identifying and acknowledging it as a mechanism for preventing and providing a remedy in cases of human rights abuses was developed with the establishment of the United Nations(UN). The UN Charter asserts unequivocally that the principal purpose of the UN is "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."³ Under Articles 55 and 56 of the Charter, member states pledge themselves to take action in cooperation with the UN to achieve this purpose. Article

¹ *What are human rights?* available at: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> , last seen on December 22, 2016.

² Malcom N Shaw, *International Law* 261 (Cambridge University Press, Cambridge, 2003).

³ Article 1(3) of the UN Charter.

13(1) of the Charter also confers powers on the General Assembly to initiate studies and make recommendations to assist in the realisation of human rights.⁴ Some of the key international human rights instruments reaffirming the proclamation of the UN Charter include the Universal Declaration of Human Rights, 1948; International Covenant on Civil and political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; Convention against Torture, 1984; Convention on Rights of the Child, 1989; International Convention on Elimination of All Forms of Racial Discrimination, 1965; Convention on the Elimination of All Forms of Discrimination against Women 1879; and International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, 1990.

Though the principal responsibility for the respect, protection and fulfilment of international human rights standards lies with the individual sovereign states and international community at large, however, at the same time there is a mounting recognition that corporations also owe some level of responsibility towards protection of human rights. This is where corporate social responsibility (CSR) assumes importance.

In common parlance, CSR is the voluntary compliance of social and environmental responsibility of companies towards the society. It is generally understood as being a mechanism via which a company attains a equilibrium of fiscal, environmental and social imperatives, while at the same time attending to the expectations of shareholders and other stakeholders. A company's CSR can cover a wide variety of activities ranging from giving away a portion of a company's proceeds to charity, to implementing "greener" business operations and primarily working towards protection and promotion of human rights.

International human rights instruments, in general, do not impose any express legal obligations on business enterprises towards protection of human rights. . Nevertheless, the actions of companies can have direct implications on enjoyment of human rights. On a positive side, enterprises can affect the human rights of their personnel, customers, workers in their supply chains or commune around their operations. Negatively, the activities of the companies may

⁴ Ragini Trakroo Zutshi, Jayshree Satpute, Md. Saood Tahir (eds.), *Refugee and the Law* 43 (Socio Legal Information Centre, Delhi, 2011).

instigate violence, have in place poor working conditions, and contribute towards destruction of ecosystems amongst causing other serious human rights violations.

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

In the year 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights presented to it by the UN Special Representative on business and human rights, Professor John Ruggie. One of Professor Ruggie's main tasks was to "identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights"⁵ Accordingly, in June 2008 Professor Ruggie presented the UN "Protect, Respect and Remedy" Framework to the Human Rights Council. While they do not by themselves constitute a legally binding document, the Guiding Principles elaborate on the implications of existing standards and practices for States and businesses, and include points covered variously in international and domestic law.

The Guiding Principles comprises of 31 principles, which together delineates steps for States to foster business respect for human rights; provide a blueprint for companies to manage the risk of having an adverse impact on human rights; and offer a set of benchmarks for stakeholders to assess business respect for human rights.

In recent years, these Guiding Principles have achieved widespread endorsement not only from corporate sector but from civil society as well. A number of other international and regional organizations have reflected them in their own standards, and more are expected to do so in the months and years to come. Many businesses around the world are already looking at how they can implement the Guiding Principles in their operations.

⁵ The UN Commission on Human Rights adopted resolution E/CN.4/RES/2005/69 requesting "Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises"

CORPORATE SOCIAL RESPONSIBILITY IN INDIA: LEGAL FRAMEWORK

Corporate sector in India has had a long tradition of undertaking activities for the welfare of the society and also acting for the protection and promotion of human rights. Nonetheless, it was only in the last two decades that the issue of CRS has assumed prominence at the policy level.⁶ Officially the CSR efforts commenced in India with the notification of the Corporate Social Responsibility Voluntary Guidelines by the Ministry of Corporate Affairs in 2009 which (MCA, 2009) that eventually led to the enactment of Section 135 of the Companies Act 2013.⁷ The section states that every company having: “net worth of Rs 500 crore or more, or turnover of Rs 1000 crore or more, or net profit of Rs 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.” The committee would comprise of three or more directors, out of which at least one director shall be an independent director. The mandate of the said CSR committee shall be: -

- to formulate and recommend to the Board, a Corporate Social Responsibility Policy, which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- to recommend the amount of expenditure to be incurred on the activities referred to above;
- to monitor the Corporate Social Responsibility Policy of the company from time to time.

The Board of every company referred to above shall after taking into account the recommendations made by CSR Committee:

- approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company’s website,
- ensure that the activities as are included in CSR Policy of the company are undertaken by the company, and –

⁶ Jayati Sarkar and Subrata Sarkar Corporate, “*Social Responsibility in India - An Effort to Bridge the Welfare Gap*”, Indira Gandhi Institute of Development Research, Mumbai August 2015, available at: <http://www.igidr.ac.in/pdf/publication/WP-2015-023.pdf>, last seen on December 21st, 2016.

⁷ Ibid.

- ensure that the company spends, in every financial year, at least two per cent of the average net profits

If the Company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.

THE COMPANIES ACT, 2013 AND HUMAN RIGHTS

Schedule VII of the Companies Act, 2013 enumerates several human rights protection and promotion activities that be undertaken by the companies under its CRS initiatives. An analysis of the principal human rights recognised under the international human rights law, Indian Constitutional Law and its recognition in Schedule VII of the Companies Act, 2013 is given below:

Right to Education: International human rights norms assert that there vests in every individual right to education and that, at a bare minimum, access to primary or elementary education should be free to all children without any discrimination whatsoever.⁸ Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights provides:

Primary education must be free and compulsory to all;

Definite measure must be taken by the states for the realization of free secondary education for everyone;

Higher education must be made available to all who have relevant qualification; and

Technical and secondary vocational education must be made available to all individuals without any discrimination.

Article 28 of the Convention on the Rights of the Child (CRC) provides that education is recognised as the right of every child. As per this provision:

⁸ Article 26 of UDHR; Article 13 of ICESCR; Articles 23, 28 and 29 of CRC; Articles 10 and 14 of CEDAW; Article 5 of the CERD apart from others.

Primary education must be free and compulsory for everyone;

Secondary education must be made accessible to every child, and in this regard appropriate measures must be taken, including free education and financial support, wherever necessary;

Higher education must be made available to all those are eligible;

Appropriate steps must be taken for ensuring regular attendance at schools and also to decrease the dropout rates;

Steps must be undertaken to make certain that school discipline is managed in consonance with human dignity of a child; and

Contracting States must promote and encourage international cooperation in matters relating to education.

India, in order to fulfil its international obligation to universalize primary education undertaken under UDHR, ICESCR and the Convention on the Rights of the Child, enacted Constitution (Eighty-sixth Amendment) Act, 2002 which added Article 21 A to Constitution, a justiciable fundamental right, in these terms: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

The amendment also altered Article 45 of the Constitution to the effect that: “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

A corresponding duty was levied by the amendment upon the parents/guardians under Article 51 A (k): “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

Thus the 86th Amendment Act, 2002 provided for the following:

It made right to free and compulsory education a fundamental right for children between the age group of 6 to 14 years.

It made early childhood care and education for all children below 6 years a DPSP.

It made the fundamental duty of the parents or guardian to provide opportunities of education to children between the age of six and fourteen years.

In pursuant to the 86th Amendment Act, 2002, the Right of Children to Free and Compulsory Education Act, 2009 was enacted so as to facilitate the implementation of the fundamental right to free and compulsory primary education for all children.

thus right to education has been recognised ad a human right both under national and international legal framework, and in this regard Schedule VII of the Companies Act, 2013 requires companies, under its CSR initiatives to undertake activities towards promotion of human right to education.

RIGHT TO FOOD

The human right to adequate food has its foundation in Article 25 of the UDHR which was reaffirmed and reinforced in Article 11 of ICESCR. Article 25(1) of the UDHR provides that:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

This has been reaffirmed by Article 11 of ICESCR:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

In India, right to food has not been recognised as a fundamental right, however having regard to Article 21 of the Constitution, guaranteeing right to life and personal liberty and Article 47 “Duty of the state to raise the level of nutrition and the standard of living [...]” together with endeavour of the Supreme Court and various Acts, have cumulatively strengthened the right to

food in India. Also towards this end, Schedule VII of the Companies Act, 2013 requires companies to take efforts for eradicating hunger, poverty and malnutrition under their CSR obligations.

Regarding right to food, one has to look for relevance in Article 21 of the Constitution, entitled “Protection of life and personal liberty” and Article 47 “Duty of the state to raise the level of nutrition and the standard of living [...]” as well as in judicial interventions of the Supreme Court and various Acts, which have cumulatively strengthened the right to food in India. Knowing the constitutional and legislative framework in India regarding the right to food is crucial for identifying right to food violations and supporting victims in realizing their right to food.

THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

The right to the highest attainable standard of physical and mental health often referred to as ‘right to health’ is recognised as a human right in international human rights law regime. Article 25(1) UDHR states that “everyone has a right to a standard of living adequate for the health of himself and his family, including food, clothing, housing, and medical care and necessary social services.”

The Article 12 (1) of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and further goes on to provide in Article 12 (2) measures that should be taken by the to attain full realisation:

The right to maternal, child and reproductive health;

The right to healthy natural and work environments;

The right to prevention, treatment and control of diseases;

The right to health facilities, goods and services.

The human right to health is also recognized in Convention on Elimination Racial Discrimination, Convention on Elimination of Discrimination against Women, and CRC as well as in other regional instruments as well.

In India, there is no specific provision in the Constitution guaranteeing the right to health. However, the following constitutional directives impose an obligation upon the State to create conditions that are conducive for good health and well-being of all persons.

Article 39 (e) and (f) mandates the State to secure “health and strength of the workers, men and women.” It also provides that “children be given the opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

Article 42 requires the State to make provisions for “securing just and humane conditions of work and maternity relief.”

Article 47 imposes a duty on the State “to raise the level of nutrition and the standard of living and to improve public health.”

Apart from the above directives, the Supreme Court has recognized right to health as an integral part of right to life which is fundamental for all human beings under Article 21 of the Constitution. With regard to protection and promotion of human right to health, Companies Act, 2013 provides that CSR activities of the company to include efforts directed towards promoting health care, sanitation and making available safe drinking water to all persons.

RIGHT TO SOCIAL SECURITY

The right to social security and public assistance is recognised in Article 25 of UDHR (already mentioned above). Article 9 of the ICESCR requires state parties to “recognise the right of everyone to social security, including social insurance.” In addition, Article 11(1) of the ICESCR requires the states to guarantee an adequate standard of living to everyone.⁹

⁹ Article 11(1) of the ICESCR provides that: “The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family.”

Even though there is no specific provision in the Constitution providing for social security, but by and large the essence of the constitution guarantees right to social security to the disadvantaged sections of the society. The Constitution requires that the state should strive to promote the welfare of the people by securing justice – social, economic and political. Under Article 39 (a), (b) and (e), the state is constitutionally bound to provide adequate means of livelihood, ensure that the health and strength of workers and the tender age of children is not abused, and ensure that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. The state is enjoined to make effective provisions for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement and other cases of undeserved want (Article 41). The state is required to make provisions for securing just and humane conditions of work and maternity relief (Article 42), to endeavour to create conditions of secure work, provision of a living wage and to create conditions of work ensuring a decent standard of life and full enjoyment of leisure (Article 43).¹⁰

Right to social security has also been recognised by the Supreme Court to be included within the purview of Article 21 of the Constitution.¹¹ With regard to promoting right to social security, Schedule VII of the Companies Act, 2013 obligates companies to undertake CSR endeavours directed towards setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens.

RIGHT TO WORK

There is no express provision in the Constitution which makes right to work an enforceable right as it has been placed in Part IV of the Constitution dealing with DPSP. Following provisions of DPSP recognises right to work-

¹⁰ Ajay Pandey, “Some Aspects of India's Obligations Emanating From the Right to Social Security as a Human Right” in Abdulrahim P. Vijapur(ed), *Implementing Human Rights in the Third World: Essays on Human Rights of Dalits and Minorities* 303-307 (Manak Publications, New Delhi, 2008).

¹¹ **Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose**, AIR (1992)573 :(1991) SCR Supl. (2) 267 and **Regional Director, ESI Corporation v. Francis De Costa**, AIR 1995 SC 1811.

Article 39(a) and (d) requires the State to direct its policy towards securing adequate means of livelihood, and equal pay for equal work for both men and women.

Article 42 enjoins the State to make 'provisions for:

- Just and humane conditions of work; and
- For maternity relief

Article 43 makes provision for living wages and decent standard of living for all workers.

There are various laws which have been enacted by the Parliament to give effect to the above directives. Some of them are Minimum Wages Act, 1948; Payment of Wages Act, 1936; Employees State Insurance Act, 1948; Maternity Benefit Act, 1961 and Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

The evolution of human rights jurisprudence in India has sought to uphold three important aspects of human existence, namely, human integrity, freedom and equality which are an integral element of the Constitution.¹² In such a situation the Indian Supreme Court has resorted to Article 39(a) to interpret Article 21 to include therein the "right to livelihood." The principal cases where the apex court has recognised the word 'life' in Article 21 to include right to work or right to be assured of adequate means of livelihood are *Olega Tellis v. Bombay Municipal Corpn.*¹³, *Bandhua Mukti Morcha v. Union of India*,¹⁴ *Delhi Transport Corporation D.T.C v. Mazdoor Congress and Others*¹⁵ amongst others (to be discussed in chapter 5).

Thus, right to work as such, till now has not been expressly recognised as fundamental right, though it has acquired jurisprudential recognition on the basis of liberal and innovative interpretation of the various provisions of the Constitution. In this regard Schedule VII provides that companies should invest in employment enhancing vocation skills activities especially

¹² Articles 14, 16, 19(1) (g), and 21 of the Constitution of India.

¹³ AIR 1986 SC 180.

¹⁴ (1984) 3 SCC 161.

¹⁵ AIR 1991 SC 101 .

among children, women, elderly, and the differently abled and undertake livelihood enhancement projects.

CONCLUSION

Inequality is accelerating toward dangerous levels. Aside from the harmful economic consequences at both individual and systemic levels, inequality poses serious threats to social cohesion by engendering conflict.¹⁶ Corporate profits have soared to historic levels and it has now become imperative to pass on a part of these profits towards the development of society. This can be effectively done by companies by taking concrete steps towards protection and promotion of human rights. In this regard it is suggested that corporate sector should:

- Be more proactive towards handling human rights issues.
- Provide basic employment conditions to their employees.
- Take efforts to protect basic human rights of women employees.
- Rural poverty should be addressed by the corporate sector.
- Use best available techniques for preventing environmental pollution and making human right to clean and healthy environment a reality for all persons.

¹⁶ Sandeep Gopalan and Akshaya Kamalnath, “Mandatory Corporate Social Responsibility As A Vehicle For Reducing Inequality: An Indian Solution For Piketty And The Millennials”, 10(1) *Northwestern Journal Of Law and Social Policy* 120 (2015).