

The Constitution of India and Corporate Social Responsibility: Exploring the Symbiotic Relationship

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Abstract

This research article examines the complex and mutually beneficial relationship between the Indian Constitution and corporate social responsibility. Constitution is the foundation of a democratic, equitable, and all-encompassing society. Additionally, CSR has evolved into a key tool for organisations to actively and constructively improve society beyond profit maximisation. Paper explains how these seemingly distinct entities converge and harmonise for communal welfare. With its values of justice, liberty, equality, and fraternity, the Constitution implicitly encourages business to create the nation. This article seeks to identify constitutional provisions that require corporations to align their operations with the sovereign entity's social and budgetary goals. Additionally, it examines landmark legal rulings that strengthened corporate constitutional concepts. The present study also examines the development of CSR in India, from a discretionary act of benevolence to a statutorily imposed set of obligations on corporations under the 2013 Companies Act. Paper highlights the symbiotic relationship between the Indian Constitution and CSR, highlighting the possibility of collaborative efforts to address urgent social, economic, and environmental issues. The above study illuminates the complex and reciprocal interaction at hand, providing valuable insights for policymakers, legal professionals, and businesses seeking to use this harmonious coalition to advance sustainable development in India.

INTRODUCTION

The Constitution of India in all its grandeur and profundity, assumes its rightful place as the supreme and transcendent embodiment of legal principles within the realm of our nation. This profound manuscript delineates the demarcations that discern the quintessential political framework, configuration, methodologies, authorities, and duties of governing entities, all the while elucidating the foundational entitlements and guiding tenets of state policy, alongside the obligations borne by individuals. The constitution in question proudly claims the honour of being the most comprehensive written national constitution on a global scale. The conferral of supremacy upon our mortal selves by the esteemed constituent assembly is a profound manifestation of its inherent power, a testament to the profound depths from which it draws its authority. In the realm of constitutional governance, we find

ourselves confronted with a profound principle: the authority bestowed upon Parliament is inherently bounded by the supreme law that governs our land. In its steadfastness, assumes the role of a formidable barrier, resolute in its resistance against any endeavour undertaken by the legislative branch.

In delving into the intricate tapestry of the symbiotic relationship between the Constitution of India and the concept of Corporate Social Responsibility (hereinafter referred as CSR), one is compelled to embark upon a philosophical journey. Constitution as a foundational document, embodies the collective aspirations and values of a nation, while CSR, as a moral and ethical framework, seeks to harmonise the interests of corporations with the welfare of society within this intricate framework. The essence of this endeavour lies in the harmonious convergence of the company's pursuits and the collective aspirations of the community it serves. The actions undertaken by businesses and industries possess a profound influence, whether it be through direct or indirect means, upon the existence of individuals inhabiting the communal sphere. In contemplation of this matter, it becomes incumbent upon businesses and industries to not only discharge their financial and legal obligations, but also to embrace a commendable measure of societal responsibilities. In this epoch of societal evolution, the significance of businesses embracing social responsibility has reached unprecedented heights. In the epoch of our time, one cannot deny the burgeoning sway that corporations have exerted upon our shared reality. Nevertheless, a conspicuous dearth of lucidity persists with respect to the rationales underlying the imperative for enterprises to partake in conduct that is deemed socially responsible. It is evident that the comprehension of the intrinsic attributes of the corporate framework remains inadequate. In accordance with the provisions delineated in Schedule VII of the Company Act 2013, the esteemed government has deemed it imperative for enterprises boasting a market capitalization surpassing the threshold of 500 crores to establish a committee dedicated to CSR endeavours, thereby enabling their active engagement in the noble pursuit of societal betterment.

Throughout the annals of corporate history, enterprises have partaken in such endeavours, for they have been imbued with the conviction that such actions are indispensable in upholding their intrinsic values and ethical principles. In light of this, it can be surmised that their actions were motivated by a desire to exercise a measure of dominion over the moral and ethical deliberations undertaken by their employees. Whilst it is widely acknowledged that the sustenance of ethical and moral conduct necessitates the establishment of legal frameworks, it remains imperative that individuals uphold these ethical and moral principles irrespective of their legal obligations. In contemplating the matter at hand, one cannot help but acknowledge the prevailing understanding that the preservation of ethical and moral conduct necessitates the imposition of legal obligations. However, it is imperative to recognise that adherence to ethical and moral principles should transcend the mere existence of legal mandates.

Known jurist Salmond posits that the moral obligations of a corporation have ascended to the realm of legal obligations, thereby assuming the guise of legal burdens. In contemplating the matter, it is worth acknowledging that an inherent connection exists between rights and obligations, thus giving rise to a perpetual interplay. Consequently, one must recognise the presence of a constant exchange. In essence, CSR can be perceived as a reciprocal duty that corporations must fulfil in return for the provision of resources, labour, and various services. Through the utilisation of these services, the corporation undergoes a profound metamorphosis, assuming the semblance of personhood within the realm of legal perception. In contemplating the matter, it is worth considering the perspective of the esteemed German jurist Savigny, who opined that corporations ought to be regarded as entities imbued with personhood. According to Savigny's line of reasoning, by virtue of their personhood, corporations should be bestowed with the rights and responsibilities that are bestowed upon individuals by the legal system.

In consequence, the state, in its wisdom, imposes certain requisites upon corporations, simultaneously bestowing upon them certain prerogatives. The

futility of engaging in a debate regarding the morality or immorality of the legislation becomes apparent, for the law, in its essence, has been crafted with two fundamental objectives in mind: to serve as a compass for the ethical conduct of corporations and to enhance the overall welfare of society. The law, in its profound wisdom, has achieved the dual triumph of fulfilling both of these noble aspirations.

The proliferation of the acronym CSR, has permeated the business realm, indicative of the growing inclination towards endeavours that seek to enhance the well-being of society. It can be inferred from this statement that corporations possess an inherent awareness of the obligations they bear towards both society at large and their stakeholders. When a company embarks upon the noble endeavour of implementing a CSR policy, it not only manifests an unwavering commitment to ethical principles but also exemplifies a profound devotion to the well-being of individuals, communities, and the natural world. Furthermore, the company has undertaken a solemn pledge to engage in the vigilant observation and meticulous documentation of its adherence to its professed CSR policy on a quarterly cadence, mirroring the very essence of its disclosure practises pertaining to its fiscal endeavours.

Constitutional Foundations Of Csr

Since the state mandates it, the concept of CSR is rooted in the law. Therefore, corporate entities having legal personality are obligated to comply with it, regardless of whether or not they accept it, because it has the weight of legal legitimacy and is backed up by a sanction.

The idea that it is for the greater good is central to the concept of CSR. This kind of legislation is passed so that the majority of people can benefit from it. The highest priority should be given to Jeremy Bentham's concept of the greatest good in this situation.¹ Individual validity, on the other hand, which Ronald Dworkin stressed so heavily, becomes subordinate.² Constitutional economics is based on

1 James E. Crimmins, "Jeremy Bentham" in Edward N. Zalta & Uri Nodelman et.al.(eds.), The Stanford Encyclopedia of Philosophy (Fall 2023 Edition) available at: <https://plato.stanford.edu/archives/fall2023/entries/bentham/> (last visited on: 30.07.2023)

2 Richard Bellamy, "Ronald Dworkin, Taking Rights Seri-

ously" in Jacob T. Levy (ed.), The Oxford Handbook of Classics in Contemporary Political Theory (Online Ed., Oxford Academic, 10 Dec. 2015), available at: <https://doi.org/10.1093/oxfordhb/9780198717133.013.18> (last visited on: 30.07.2023)

the idea that human social existence, including all of its social, economic, and political aspects, invariably functions inside a framework of explicit or implicit, formally or informally enforced regulations.³ This is the foundation upon which constitutional economics is built. The subject matter has a dual focus in the way that it is structured. This study's primary objective is to investigate the influence that certain aspects of rules have on the processes that take place within the confines imposed by those rules. The primary objective of this research is to investigate the influence that the procedures of rule generation and change have on the properties of the rules.

Another argument is that because the company makes use of the resources and labour of society, it should be held accountable for what it does with those resources and labour because it is a sort of payment for what the company receives from society. This argument is supported by the fact that the corporation uses the resources and labour of society. Even if this is a valid argument, it is in conflict with Wood's stakeholder theory, which maintains that it is unethical to expect firms to adhere to particular norms of social responsibility. Even if this is a sound argument, it is in conflict with Wood's stakeholder theory.

The genesis of the societal restitution principle can be traced back to its nascent form as a voluntary act of reciprocation, wherein individuals sought to restore society's capacity for self-sufficiency. Over time, this principle underwent a transformative evolution, culminating in the establishment of a legal imperative mandating corporate entities to restore to society commensurate recompense for the resources they extract. This is because the idea of giving back to society originated as a return to society's sustainability. This is due to the fact that the concept of giving something back to society

ously" in Jacob T. Levy (ed.), The Oxford Handbook of Classics in Contemporary Political Theory (Online Ed., Oxford Academic, 10 Dec. 2015), available at: <https://doi.org/10.1093/oxfordhb/9780198717133.013.18> (last visited on: 30.07.2023)

3 Viktor J. Vanberg, "Corporate Social Responsibility and the 'Game of Catallaxy': The Perspective of Constitutional Economics." 18(3) Consti. Pol. Eco. 199 (2007) available at: <https://doi.org/10.1007/s10602-007-9022-4> (last visited on: 06.06.2023)



did not emerge until the 1970s.⁴ Both the workers who perform the labour and society as a whole gain from the end products that are created by corporations.⁵ As a consequence, the legislation that has been produced is either a legal obligation or a legal responsibility, but it does not include any rights. Or, maybe, as Austin, Allen, and Hibbert contend, obedience to the law is an absolute duty bestowed upon citizens by the state.⁶ Salmond, on the other hand, rejects the idea of absolute liability. He believes that a person ought to be endowed with a right first, and then a duty that is proportional to that right ought to be imposed. Therefore, from his point of view, the law is unequal when seen in this light.⁷

The principle of modified strict responsibility is known as the absolute liability rule. This rule has no exemptions, and following it holds a person entirely responsible for whatever error they do. This liability can be considered to be an absolute liability because it involves a considerable degree of retraction.⁸

In the cases of *Union Carbide Corporation (II) v. Union of India* (Bhopal Gas Leak)⁹, *Indian Council for Enviro-Legal Action v. Union of India*¹⁰ and *M.C. Mehta v. Union of India*¹¹ the court established the principle of unlimited culpability. In these instances, the court expanded the rule on strict responsibility that had been established by the House of Lords of the United Kingdom in the case of *Rylands v. Fletcher*.¹² The rule of the Supreme Court is significantly more inclusive than the rule of the House of Lords in the United Kingdom. The following argument is presented with a focus on issues pertaining to human rights. By introducing social expectations and the laws that entrench such social expectations, Henkin

is attempting to show that there is a connection between obligation and human rights in this section of his argument.¹³ Following the essence, in case of *Alaknanda Hydropower Co. Ltd. v. Anuj Joshi*¹⁴, court expanded the interpretation contained in act¹⁵ to encompass situations beyond those involving hazardous industries. This judicial decision resulted in a broader application of the aforementioned provision to circumstances that may not necessarily involve such industries.

In addition, according to John Locke's theory of the social contract, anything that is beneficial to society is also beneficial to the social well-being of the individuals who share a community. However, it is worth noting that Dworkin, in what may be perceived as a paradoxical stance, asserts that the legitimacy of the law diminishes when a flawed pragmatic methodology is employed, as it is founded upon the pursuit of societal welfare to the detriment of individual concerns.¹⁶ This is because the law is based on pragmatism.

According to the libertarian position held by Nozick, individual liberty and property rights are founded on market allocations, regardless of the discrepancy that these allocations produce.¹⁷ Karl Olivecrona is of the opinion that the law does not exist in any other sense than the factual one, and that this means that people's perceptions of the law are the only thing that matters.¹⁸ Because of this, even while the law's intention is to protect the general welfare of the population, it may inadvertently restrict certain aspects of individual liberty. Notwithstanding, it is equally veracious that a constraint which transgresses an individual's entitlement may conceivably engender societal

13 Markos Karavis, *Corporate Obligations under International Law*, 88-89 Oxford Monographs in International Law (Oxford, 2013; Online Ed., Oxford Academic, 2014), available at: <https://doi.org/10.1093/acprof:oso/9780199674381.003.0004> (last visited on: 04.06.2023)

14 (2014) 1 SCC 769

15 The National Green Tribunal (NGT) Act, 2010, sec. 17(3)

16 Raymond Wacks, *Understanding Jurisprudence* (6th Ed. Oxford, 2021)

17 Eric Mark, "Robert Nozick's Political Philosophy" in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2022 Edition), available at: <https://plato.stanford.edu/archives/sum2022/entries/nozick-political/> (last visited on: 03.06.2023)

18 Suzanne Benn & Dianne Bolton, *Key Concepts In Corporate Social Responsibility* 203 (Sage Publication, 2011)

4 M. Branco Castelo & L. Lima Rodrigues, "Positioning Stakeholder Theory within the Debate on Corporate Social Responsibility" 12(1) *EJBO* 5 (2007)

5 Suzanne Benn & Dianne Bolton, *Key Concepts In Corporate Social Responsibility* 203 (Sage Publication, 2011)

6 Dr. V. D. Mahajan, *Jurisprudence & Legal Theory* 251-252 (Eastern Book Company, 5th Ed., 2008)

7 *Ibid.*

8 Bharat Parmar & Aayush Goyal, "Absolute Liability: The Rule of Strict Liability in Indian Perspective", available at: <http://docs.manupatra.in/newslines/articles/Upload/2D83321D-590A-4646-83F6-9D8E-84F5AA3C.pdf> (last visited on: 03.06.2023)

9 (1989) 2 SCC 540

10 (1996) 3 SCC 212

11 (1986) 2 SCC 176

12 [L.R.] 3 H.L. 330

discord or discontentment. This is because of the fact that individuals have the right to express themselves freely.

Assessing The Significance Of Csr

Importance of CSR

It is more important than ever for firms to lay a larger emphasis on their social responsibility than they have in the past. In its most basic form, the concept of “social responsibility” refers to the dedication shown by a business to the pursuit of long-term objectives that are both attainable and beneficial to the organization’s workforce as well as to the community as a whole in general.¹⁹

In contemporary times, a multitude of thriving enterprises have been observed employing the concept of social responsibility as a means to contribute to the betterment of society and demonstrate gratitude towards their clientele. The manifestation of this phenomenon can be observed in various manifestations, including but not limited to, the undertaking of projects, the initiation of social movements, or the cultivation of individual agency and empowerment. The manifestations of this phenomenon exhibit a diverse range of forms. There is no question that these corporate alliances, in whatever shape they take, are beneficial to both the company and the community in which it operates. In addition, it has been seen that certain businesses are taking the initiative to pursue humanitarian activities, which can include anything from the construction of roads to the reduction of levels of poverty.²⁰

Positive Aspects

A company’s profitability and value can both increase as a result of adopting a CSR programme. Recycling garbage and using less energy are two ways to cut costs while simultaneously doing good for the environment. Furthermore, it is imperative to acknowledge that CSR plays a pivotal role in

enhancing a company’s level of accountability and transparency, particularly in the perception of investors, the media, shareholders, and the broader society.²¹ This boosts the reputation of the company among investors, such as mutual funds that take CSR into consideration when choosing equities to invest in. Because of this, the value of the company’s stock increases, and the organisation has an easier time gaining access to finance.

Seventy-five percent of consumers, according to an estimate from a survey conducted by Landor Associates and further quoted by the Wharton School at the University of Pennsylvania, believe that firms should be socially responsible.²² Customers are attracted to a company because of its reputation as a good corporate citizen. According to the findings of a study that was carried out at Tilburg University in the Netherlands, customers are willing to pay a premium of ten percent for products that have a positive social impact.²³

This is extremely important since customers take a company’s reputation into consideration when determining whether or not to do business with a company. The commitment of the brand to charitable giving can be seen by actions as uncomplicated as employees volunteering one hour per week at a local charity.²⁴ Customers will view you in a far more favourable light as a consequence of this change.

This information will spread widely if companies commit to following ethical procedures.²⁵ As a

19 Ben & Jerry’s. “Socially Responsible Causes Ben & Jerry’s Has Advocated for”, available at: <https://www.benjerry.com/whats-new/2014/corporate-social-responsibility-history> (last visited on: 05.06.2023)

20 J. Brugmann, & C. K. Prahalad, “Co-Creating Business New Social Compact” 85(2) *Harvard Business Review*, 80-90 (2007)

21 Min-Dong P. Lee, “A Review of the theories of Corporate Social Responsibility: Its evolutionary path and the road ahead” 10(1) *International Journal of Management Review* 53-73 (2008) available at: <https://doi.org/10.1111/j.1468-2370.2007.00226.x> (last visited on: 12.06.2023)

22 Dr. Sunil Karve & Rajendra P. Gawde, et.al, *National Conference on Corporate Social Responsibility Issues and Challenges* (Allied Publisher, Mumbai, 2011)

23 Phillip M. Paiement, *Voluntary Sustainability Standards: Regulating And Coordinating In Transnational Law* (2015) (Published Ph.D. Thesis, Tilburg University) available at: https://pure.uvt.nl/ws/portalfiles/portal/28221686/Paiement_Voluntary_09_10_2015_emb_tot.pdf (last visited on: 12.06.2023)

24 Kasmin Fernandes and Hency Thacker, Top 100 companies in India for CSR and Sustainability in 2021, *The CSR Journal* available at: <https://thecsrjournal.in/top-100-companies-india-csr-sustainability-2021/> (last visited on: 05.06.2023)

25 Timothy Smith, “Institutional and Social Investors Find



consequence of this, brands get higher levels of recognition, which leads to a rise in awareness. Businesses are able to differentiate themselves from their competitors in other industries by adopting a CSR strategy.²⁶ As a company that is fully committed to going above and above in terms of its stewardship of both the community and the environment.

If a company claims to use environmentally friendly practises, those claims should be made public.²⁷ Furthermore, it is incumbent upon the aforementioned entity to duly manifest its diligent endeavours towards engaging with local news entities, with the expectation that said entities shall provide coverage of the subject matter at hand. Customers will become more familiar with the brand activities and will participate in them.

Negative aspects

The fact that small businesses bear a disproportionate amount of the expenditures associated with CSR is the primary downside of this practise.²⁸ Smaller businesses with ten to two hundred employees may not always be able to afford devoting resources to CSR reporting, but larger corporations with more than two hundred employees typically have the financial means to do so. Consumers and members of the local community can be informed about a small company's strategy for CSR through the use of social media. On the other hand, monitoring transactions takes time and requires additional employees, both of which the company might not be able to pay for.

Even for larger companies, the costs associated with CSR compliance might be prohibitive. The practise of CSR has been criticised by a number of

Common Ground", 14(3) *Journal of Investment*, 57-65 (2015)

26 Elizabeth C. Kurucz, Barry A. Colbert, and David Wheeler "The Business Case for Corporate Social Responsibility" in Andrew Crane et.al (eds), *The Oxford Handbook of Corporate Social Responsibility* 83-112 (2008; Online Ed., Oxford Academic, 2009) available at: <https://doi.org/10.1093/oxfordhb/9780199211593.003.0004>, (last visited on: 30.06.2023)

27 Myron Harrison and Christine Coussens, *Global Environmental Health in the 21st Century: From Governmental Regulation to Corporate Social Responsibility*. (The National Academies Press, Washington, 2007) available at: https://www.ncbi.nlm.nih.gov/books/NBK53989/pdf/Bookshelf_NBK53989.pdf (last visited on: 30.06.2023)

28 *Ibid*

people who believe it is pointless.²⁹ CSR adamantly rejects the notion that management of a company owes a fiduciary duty to the owners of that company because management's primary obligation is to increase profits as much as possible. If a management chooses to forego money in favour of social benefits, he or she should be prepared to lose their position and be replaced by someone who places a higher priority on profits.

Greenwashing is a word that describes actions taken by a company that provide the impression of being environmentally responsible but do not really affect the way the company operates.³⁰ A product, for instance, may bear the label "All Natural" despite the fact that it was produced in the traditional manner. Although some dry cleaning businesses have self-designated themselves as "organic," this designation has any legal standing. Although there are clients who cave in to this type of marketing, others view greenwashing by corporations with scepticism.

Participation Of Customer Through Csr

There is the possibility that CSR will be of assistance to businesses in growing the engagement of their customers. Numerous CSR activities involve companies to interact face-to-face with individuals of the community who may or may not be current or potential customers.³¹ They are able to acquire instantaneous feedback on both their goods and their services. Furthermore, it has been observed that customers who perceive that their interests are being effectively addressed and catered to by a particular firm exhibit a higher propensity to actively promote and endorse the brand associated with said company. Consequently, the aforementioned phenomenon serves as a highly effective instrument for promotional purposes.

29 K. O'Sullivan, "Virtue rewarded: companies are suddenly discovering the profit potential of social responsibility." CFO, pp. 47-52 (October 2006)

30 Melinda Majláth, "The effect of greenwashing information on ad evaluation" 6(3) *Eur. J. Sustain. Dev.* 92 (2017)

31 Chastity Heyward, "The Growing Importance of Social Responsibility in Business", Nov. 18, 2020, available at: <https://www.forbes.com/sites/forbesbusinesscouncil/2020/11/18/the-growing-importance-of-social-responsibility-in-business/?sh=29d19f0f2283> (last visited on: 05.06.2023)

CSR has the potential to improve customers' perceptions of a brand

The modern business market is highly competitive, and as a result, it can be difficult for companies to differentiate themselves from the perspectives of their customers. In contrast, enterprises that demonstrate a genuine commitment to fulfilling their social responsibilities are more likely to cultivate a robust marketing framework and successfully attract potential clientele.

CSR has the ability to bring attention to important issues while simultaneously initiating a conversation about its own presence. In the long run, it may also contribute to the establishment of trust.

CSR is Vitrally Important to Branding

The trust of a company's ideal customers is essential to the development of a prosperous brand and the retention of existing customers. Businesses must work to establish and maintain this trust. In my opinion, putting a CSR plan into action can assist a firm in making a favourable reputation while also earning the confidence and loyalty of customers. This is because CSR stands for CSR. The dedication of a company's clientele is absolutely necessary to the achievement of commercial success. Customers want businesses and brands they support to do more than simply look out for their own best interests; they want those businesses and brands to also make a positive contribution to the communities in which they operate.

Based on the empirical data derived from a poll conducted by Nielsen in the year 2015, it is discernible that a majority of consumers, exceeding fifty percent, exhibit a propensity to remunerate a premium for a given product or service, contingent upon the provider's conspicuous commitment to environmental stewardship.³² This leads one to believe that consumers will choose to do business with and lend their support to companies whose primary objective is not to maximise profits.

Company's Commitment to CSR

There is a chance that investors will be more

interested in purchasing stock in companies that practise social responsibility. This is owing to the fact that investors in a company have one major goal, which is to attain a larger rate of return on their investment than they first invested in the company. The reason for this is that investors have one primary purpose. Businesses that are able to effectively manage their finances while at the same time giving back to the communities in which they operate are held to higher standards of accountability and transparency in their dealings with customers and suppliers. Based on the poll conducted and subsequently presented by Aflac in the year 2016, it can be inferred that investors, as a general consensus, do not perceive expenditures on CSR as a futile allocation of funds. Rather, such investments are regarded as indicative of a corporate culture that is less susceptible to incurring substantial losses resulting from costly errors, such as financial fraud. Based on the empirical observations derived from the conducted survey, it can be discerned that a majority, specifically 61 percent, of investors hold the belief that the manifestation of "ethical company behaviour that mitigates investment risk" can reasonably be deduced from a company's steadfast dedication to its CSR endeavours.³³

Cost Savings with CSR

As previously stated, a considerable proportion of consumers exhibit a willingness to incur a greater financial expenditure in exchange for commodities emanating from an enterprise that exhibits a steadfast dedication to the principles of social responsibility. Moreover, it is worth noting that CSR has the potential to play a significant role in the recruitment and retention of employees. The consideration of the substantial financial implications stemming from employee turnover, which may result in the loss of significant sums of money for organisations, is of utmost importance.

To summarise, businesses cannot continue to function only for the purpose of maximising their profits at the expense of the wellbeing of society, the

32 Nielsen Media Research (2015), available at: <https://nielseniq.com/global/en/insights/analysis/2015/the-sustainability-imperative-2/> (last visited on: 06.06.2023)

33 American Family Life Assurance Company, "National Survey on Corporate Social responsibility", available at: <https://www.aflac.com/docs/about-aflac/csr-survey-assets/2016-csr-survey-deck.pdf> (last visited on: 03.06.2023)

economy, consumers, and employees. To attract and retain the most talented workers, businesses need to think about ways to give back to the communities in which they operate. After all, maintaining happy customers and a loyal workforce is essential to the operation of any successful firm.

Need For Social Responsibility

The Companies Act subjects company to various regulations and imposes constraints in order to promote CSR. This law also places constraints on the corporations. It is implied that all CSR activities fall within Article 21 of the Indian Constitution because Schedule VII³⁴ has a list of CSR activities that have to be addressed by firms.

Article 21 of the Constitution outlines the right to life, which includes not only the right to exist but also the right to share one's existence with other people.³⁵ This right includes the right to bear children. The fundamental requisites for sustenance, encompassing nourishment, apparel, and habitation; the safeguarding of physical well-being; entitlement to medical aid; expeditious medical attention within government-operated healthcare facilities; the onus placed upon the state to prevent fatalities arising from deprivation; and the duty of the state to furnish potable water to its populace residing within its jurisdiction. The constitutional courts in many cases has provided its interpretation of and guidance on the meaning of Article 21.³⁶

On numerous occasions, the Supreme Court has opined that endeavours to advance CSR should function as a catalyst for the ancillary branch of the government to safeguard fundamental rights, particularly those enshrined in Article 21 of the Constitution. This is the case because the Supreme Court believes that efforts to promote CSR ought to serve as a motive for the auxiliary arm of the government to promote CSR.

The "*right to life*" encompasses not just the "*right to education*," but also a number of other basic

³⁴ The Company Act, 2013

³⁵ The Constitution of India, art. 21

³⁶ See, *PUCL v. Union of India & Others* (2013) 2 SCC 688, *Kirloskar Brothers Ltd. v. Employees State Insurance Corporation* (1996) 2 SCC 682, *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161, *Paschim Banga Khet Mazdoor Samity & Others v. State of West Bengal & Another* (1996) 4 SCC 37

civil and political liberties. Article 21A makes it very apparent that one of the most essential human rights is the right to receive a good education.³⁷ This includes the right to get a free education up until the age of fourteen, notwithstanding the fact that this may be difficult owing to social or economic considerations. This right exists regardless of the fact that this may be difficult to achieve. Furthermore, it is imperative to acknowledge that the ambit of the entitlement to life has been expansively extended to incorporate elements pertaining to culture, tradition, and heritage.³⁸ It includes the right to shelter³⁹, the right to have a decent accommodation to live in⁴⁰, and the right of those who live in steep locations where access to the way itself is considered as an entrance to life. The law recognises each and every one of these rights. Things that are listed in the seventh schedule fall under the purview of declared rights. Activities that are listed under the heading of CSR, which reads as follows:

"Protection of national treasures, art, and culture, rehabilitation of historic structures and places, and creation of works of art, establishment of public libraries, promotion and Progress in the development of traditional arts and crafts"

The obligation to protect and preserve the bountiful resources that nature provides, as well as the right to life, are both considered to be part of the interpretation of the right to an unpolluted environment. The right ensures that ecological integrity is preserved, in addition to safeguarding wild animals, forests, lakes, historic places, vegetation, ecological balance, and sustainable development. Other things that are protected by the right include ecological balance and there are a number of situations in which a person's legal entitlement to environmental protection may take precedence over the interests of society about the economy of the society as a whole.⁴¹

Employees of a company who have been injured while performing duty assigned have the legal right

³⁷ *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645

³⁸ *Ramsharan Autyanuprasi v. Union of India* 1989 Supp (1) SCC 521

³⁹ *Shiv Sagar Tiwari v. Union of India* (1997) 1 SCC 444

⁴⁰ *Shantistar Builders v. Narayan Khimalal Totame* (1990) 1 SCC 520

⁴¹ *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

to seek suitable compensation from the court of law.⁴² The following, which serves as the foundation for actions related to CSR, is the date that the proclamation of these rights can be traced back to, “Ensuring the long-term viability of the ecosystem and ecological balance, Flora and fauna protection; animal welfare; agroforestry conservation of natural resources and maintenance of a high standard of living of soil, air, and water”.⁴³

The right to a means of subsistence is complicit with the right to life.⁴⁴ For instance, a component of the fundamental right to life and livelihood is the right to engage in agricultural activities. This is based on the assumption that sustaining one’s life without food or water is impossible for anyone over an extended period of time. In this context, efforts should be made through CSR to improve livelihood programmes. By virtue of the aforementioned circumstances, an individual possesses the inherent capacity to procure the entitlement to pursue a stable existence, all the while upholding due regard for the inherent worth and esteem of fellow beings. Pursuant to the provisions delineated within the ambit of Schedule VII of the CSR activities, a comprehensive examination is undertaken with regard to the beneficiary programmes specifically tailored for individuals who have valiantly served in the armed services, encompassing war veterans, widows, and their rightful successors. The encompassment herein pertains to individuals who have served in the armed forces across all branches.

In order to advance the Fund’s functions, provisions have been provided in item VIII for the Fund for Socioeconomic Development to make a contribution to either the Prime Minister’s National Relief Fund or any other fund that operates in a manner analogous to the PMNRF.⁴⁵ To summarise, fundamental rights ought to be written into every law, and the constitutions of the states ought to compel that this obligation be carried out in the appropriate manner. On the other hand, measures related to CSR cannot be voluntary and instead need to be mandated by law.

42 See, The Employee’s Compensation Act, 1923

43 See, The Indian Companies Act 2013, Schedule VII

44 *Delhi Development Horticulture Employees’ Union v. Delhi Admn.* (1992) 4 SCC 99

45 See, The Indian Companies Act 2013, Schedule VII

It is probable that the government may take steps to ensure that businesses that do not contribute would suffer “civil or criminal penalties.” It is entirely dependent on the commercial objective as to whether or not there are severe sanctions in place. In addition, for-profit enterprises that are successful enough to generate a profit should contribute an amount that is proportional to a percentage of their overall net revenue.

When it comes to successfully monitoring, using, and carrying out CSR operations, having a well-thought-out plan is a vital need. In addition, it is of the utmost importance to put a stop to the practise of “scamming” under the pretence of CSR initiatives by ensuring that enterprises are not used as a tool. To summarise, vigorous participation by businesses in CSR activities will serve as an effective supplement to the role performed by the government in the preservation of fundamental rights. This will be the case if CSR activities are carried out by businesses.

Criticism Of Csr: The Purview Of Indian Constitution

According to the CEOs of prominent Indian corporations, there is a need for greater democratisation in the CSR process. It is important to note that CSR is a voluntary undertaking and not subject to statutory mandates for positive action. The law can only enforce minimum standards in this regard.⁴⁶ It is more appropriate for the shareholders of a public company to vote on how the revenues of the company should be distributed towards CSR than for the legislative authority of the government to make this decision.⁴⁷ Since the nature of the

46 Aneel Karnani, “Mandatory CSR in India: A Bad Proposal, Stanford Social Innovation Review Blog”, May, 20, 2013, available at: https://ssir.org/articles/entry/mandatory_csr_in_india_a_bad_proposal (last visited on: 05.06.2023)

47 News Report, “Azim Premji against law on mandatory CSR spending by corporate, *The Economic Times*, March 24, 2011, available at: <https://economictimes.indiatimes.com/news/company/corporate-trends/azim-premji-against-law-on-mandatory-csr-spending-by-corporates/articleshow/7782555.cms> (last visited on: 05.06.2023). See also, IT CEOs back Premji, against mandatory CSR, *Times of India*, Mar, 26, 2011, available at: <https://timesofindia.indiatimes.com/tech-news/IT-CEOs-back-Premji-against-mandatory-CSR/article-show/7792831.cms> (last visited on: 05.06.2023)



Directive Principles of State Policy as required by Article 37⁴⁸ of the Constitution is non-justiciable in nature therefore it cannot be upheld in a court of law resultantly, the state is subject to positive responsibilities as a result of these principles. The majority of the time, the government is the one that imposes taxes, and the money that is obtained as a result of these levies is sent to the state rather than being distributed directly to the local community. The distribution of funds is up to the discretion of the government with consideration to the purpose for which the funds were intended. In countries like India, where monies may not always reach the grassroots level due to issues like corruption, bureaucracy, and population, the simple act of paying taxes cannot guarantee that social welfare would be promoted. On the other hand, in comparison, the effectiveness of the measure described in section 135 is superior to that of a tax. The decision of which social causes a corporation supports and how much of its resources it devotes to those causes is entirely in the corporation's hands. In addition, the impact that results is considerably increased when money are specifically committed towards CSR programmes.

The disclosure of the implementation of the CSR Policy is required under Section 134, which also outlines the penalties for companies that do not comply with the law. Therefore, it is possible to argue that the provision described in section 135 does not constitute a form of taxation, and furthermore, it may be judged more effective than a typical tax system. These two claims are supported by the fact that section 135 outlines the provision in question. One school of thought maintains that relying simply on "voluntary CSR" as a means of ensuring that businesses meet their obligations to the various parties to which they are accountable, whether on a micro or a macro scale, is insufficient. The adoption of a policy known as "mandatory CSR" is required in order to persuade businesses to participate in CSR

activities in a way that is both more organised and more effective.

CONCLUSION

The government has issued a mandate requiring private companies to fulfil the legal obligations that come with their responsibilities. A bonus is awarded to the corporation as a result of this statute in recognition of the corporation's commitment to the concepts of social responsibility, human values, and environmental sustainability. The fact that it is a right enables it the authority to be enforced legally, despite the fact that Salmond's view of rights and obligations is fundamentally flawed as a result of this contradiction.

It is a type of legislation that recognises the significance of social justice while also embracing a liberal point of view. In other words, it is liberal legislation. As a consequence, this is a reasonable law because it takes into account a number of different scenarios. It is said that they behave in this manner in order to ensure long-term viability; yet, they would not be interested in continuing these practises even at this level if they were not controlled. On the other hand, the fact that the company pays taxes in addition to wages and other expenses can free it from the duty to comply with the aforementioned regulations.

In India, CSR has traditionally been viewed as a charitable endeavour, which has led to a scarcity of study and documentation on the specific activities related with CSR efforts and their reporting. The practise of CSR, has primarily been restricted to the arena of philanthropy in India. However, it has transitioned from traditional corporate gifts to educational, research, religious, and cultural activities, and it has also moved towards community development through a variety of projects. Previously, it focused on these areas of giving. Following the implementation of liberalisation, India has been subjected to a considerable impact from globalisation, which has resulted in an increase in the amount of community activity and demands. As a direct consequence of these shifts, the ramifications of these developments are becoming clearer, and as a result, CSR practises are changing to take on a nature that is more strategic, rather

48 The provisions encompassed within this particular article shall not be subject to judicial enforcement. However, it is imperative to acknowledge that the principles enshrined therein are of utmost significance in the administration of the nation. Consequently, it becomes the responsibility of the State to diligently incorporate these principles when formulating legislation.

than simply being an exercise in formality. The public and private sectors in the Indian economy realise the strategic relevance of Tropic CSR. This is proven by the introduction of mandated corporate payments towards social projects and activities by the Government of India. In addition, Tropic CSR is recognised as having a significant impact on the Indian economy.

The law is based on the utilitarian concept, which states that any change that is for the betterment of society as a whole should be considered for enactment as law. In a similar line, the law is fair and helpful to a large number of individuals due to the fact that it serves the majority. Analysing the legal personality of the corporation in addition to its rights and obligations is a crucial step in arriving at a conclusion regarding the validity of the statute. As a direct result of this, determining the constitutionality of the act is significantly facilitated. John Ruggie in one of his writing piece⁴⁹ claimed that the primary focus of the debate ought to expand beyond the simple introduction of individual corporate culpability for wrongdoing.⁵⁰ Ruggie was exploring the “future directions” of the discourse on business and human rights. As the speaker continued to support his argument, he made the point that depending exclusively on a model of individual culpability would be insufficient to address the greater disparities that exist within the context of global governance.⁵¹

On the other hand, the Constitution makes it very clear that certain rights may be restricted by a statute so long as the legislation in question is sanctioned by parliament and meets certain criteria. As a direct result of this, the legislation pertaining to social responsibility functions as a check and balance on the authority that is held by the corporate sector. It is possible that the pursuit of capitalism will lead to the loss of the social good that exists for the benefit

of the citizens of a country, but this is not a certainty. The social good in question is one that exists for the residents’ benefit. In light of this, control is necessary for any kind of operation, even beyond the realm of legal theory and jurisprudence. Control is essential for there to be any kind of activity, thus this is the situation that we find ourselves in today. The idea of CSR has swiftly emerged as one of the most hotly debated topics not just in the academic and business worlds, but also in public discourse. The push towards CSR has also grown into a sizable industry, which offers a wide range of charitable organisations access to profitable market niches as a result of this development.

REFERENCE

- Alaknanda Hydropower Co. Ltd. v. Anuj Joshi* (2014) 1 SCC 769.
- Azim Premji against law on mandatory CSR spending by corporate. (2011, March 24). *Economic Times*. Retrieved June 5, 2023, from <https://economictimes.indiatimes.com/news/company/corporate-trends/azim-premji-against-law-on-mandatory-csr-spending-by-corporates/articleshow/7782555.cms> See also, News Report (2011, March 26). IT CEOs back Premji, against mandatory CSR. *The Times of India*. <https://timesofindia.indiatimes.com/tech-news/IT-CEOs-back-Premji-against-mandatory-CSR/articleshow/7792831.cms> (last visited on: 05.06.2023).
- Bellamy, R. (2017). Ronald Dworkin, Taking rights seriously. In *Oxford University Press eBooks*. <https://doi.org/10.1093/oxfordhb/9780198717133.013.18> (last visited on: 30.07.2023).
- Benn, S., & Bolton, D. (2011). *Key Concepts in Corporate Social Responsibility*. Sage Publication.
- Benn, S., & Bolton, D. (2011). *Key Concepts in Corporate Social Responsibility*. Sage Publication.
- Brugmann, J., & Prahalad, C.K. (2007). Co-Creating Business New Social Compact. *Harvard Business Review*, 85(2), 80-90.
- Castelo, M., Lúcia, B., & Rodrigues, L. L. (2007). Positioning stakeholder theory within the debate on corporate social responsibility [...]. *Electronic Journal of Business Ethics and Organization Studies*, 12(1), 5-15.
- Causes Ben & Jerry’s has advocated for over the years with their corporate social responsibility. (2019, May 31). <https://www.benjerry.com>. <https://www.benjerry.com/whats-new/2014/corporate-social-responsibility-history> (last visited on: 05.06.2023).
- Crimmins, James E. 2021. Jeremy Bentham. In *The Stanford encyclopedia of philosophy*. Edited by Edward N. Zalta. Stanford, CA: Stanford Univ. <https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0319.xml#o->
- 49 John Gerard Ruggie, “Business and Human Rights: The Evolving International Agenda” 101 (4) *AJIL* 819 (2007). JSTOR available at: <http://www.jstor.org/stable/40006320> (last visited on: 05.06.2023)
- 50 *Ibid.* cited in Florian Wettstein, “CSR and the Debate on Business and Human Rights: Bridging the Great Divide.” 22 (4) *Business Ethics Quarterly*, 739 (2012). JSTOR, available at: <http://www.jstor.org/stable/41968807> (last visited on: 05.06.2023)
- 51 *Ibid.*



- bo-9780195396607-0319-bibItem-0004 (last visited on: 30.07.2023).
- Delhi Development Horticulture Employees' Union v. Delhi Admn.* (1992) 4 SCC 99.
- Harrison, M., & Coussens, C. (Eds.). (2007). *Global Environmental Health in the 21st Century: From Governmental Regulation to Corporate Social Responsibility*. The National Academies Press, Washington. https://www.ncbi.nlm.nih.gov/books/NBK53989/pdf/Bookshelf_NBK53989.pdf (last visited on: 30.06.2023).
- Harrison, M., & Coussens, C. (Eds.). (2007). *Global Environmental Health in the 21st Century: From Governmental Regulation to Corporate Social Responsibility*. The National Academies Press, Washington. https://www.ncbi.nlm.nih.gov/books/NBK53989/pdf/Bookshelf_NBK53989.pdf (last visited on: 30.06.2023).
- Heyward, C. (2020, November 18). The growing importance of social responsibility in business. *Forbes*. <https://www.forbes.com/sites/forbesbusinesscouncil/2020/11/18/the-growing-importance-of-social-responsibility-in-business/?sh=1e97089d2283> (last visited on: 05.06.2023).
- Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 212.
- Journal, CSR. (2023, July 17). *Top 100 companies in India for CSR and Sustainability in 2022 - The CSR Journal*. The CSR Journal. <https://thecsrjournal.in/top-100-companies-india-csr-sustainability-2021/> (last visited on: 05.06.2023).
- Karavias, M. (2013). Corporate Obligations under Customary International Law. In *Oxford Monographs in International Law* (pp. 68-115). <https://doi.org/10.1093/acprof:oso/9780199674381.003.0004> (last visited on: 04.06.2023).
- Karnani, A. (2013). Mandatory CSR in India: A Bad Proposal. *Stanford Social Innovation Review*. <https://doi.org/10.48558/8S2W-M041> (last visited on: 05.06.2023).
- Karve, Prof. (Dr.), & P Gowde, R. (Eds.). (2011). *National Conference on Corporate Social Responsibility Issues and Challenges*. Allied Publisher, Mumbai.
- Kurucz, E. C., Colbert, B. A., & Wheeler, D. (2009). The business case for corporate social responsibility. In *Oxford University Press eBooks* (pp. 83-112). <https://doi.org/10.1093/oxfordhb/9780199211593.003.0004> (last visited on: 30.06.2023).
- Lee, M. P. (2007). A review of the theories of corporate social responsibility: Its evolutionary path and the road ahead. *International Journal of Management Reviews*, 10(1), 53-73. <https://doi.org/10.1111/j.1468-2370.2007.00226.x> (last visited on: 12.06.2023).
- M. Paiement, P. (Tilburg University). (2015). *Voluntary Sustainability Standards: Regulating And Coordinating In Transnational Law: Published Ph.D. Dissertation*. Retrieved June 12, 2023, from https://pure.uvt.nl/ws/portalfiles/portal/28221686/Paiement_Voluntary_09_10_2015_emb_tot.pdf (last visited on: 12.06.2023).
- M.C. Mehta v. Union of India* (1986) 2 SCC 176.
- M.C. Mehta v. Union of India*, (2004) 12 SCC 118.
- Mahajan, Dr. (2008). *Jurisprudence & Legal Theory* (5th ed.). Eastern Book Company.
- Majláth, M. (2017). THE EFFECT OF GREENWASHING INFORMATION ON AD EVALUATION. *European Journal of Sustainable Development*, 6(3). <https://doi.org/10.14207/ejsd.2017.v6n3p92> (last visited on: 04.06.2023).
- Mark, E. (2022). Robert Nozick's Political Philosophy. In Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/archives/sum2022/entries/nozick-political/> (last visited on: 03.06.2023).
- National Survey on Corporate Social Responsibility*. (2016). Aflac. Retrieved June 3, 2023, from <https://www.aflac.com/docs/about-aflac/csr-survey-assets/2016-csr-survey-deck.pdf> (last visited on: 03.06.2023).
- NielsenIQ. (2021, May 3). *The sustainability imperative - NIQ*. NIQ. <https://nielseniq.com/global/en/insights/analysis/2015/the-sustainability-imperative-2/> (last visited on: 06.06.2023).
- O Sullivan, K. (2006). Virtue Rewarded: Companies are suddenly discovering the profit potential of social responsibility. *CFO*, 22(11), 47-52.
- Parmar, B., & Goyal, A. (n.d.). Absolute Liability: The Rule of Strict Liability in Indian Perspective. <http://docs.manupatra.in/newsline/articles/Upload/2D83321D-590A-4646-83F6-9D8E84F5AA3C.pdf>. (last visited on: 03.06.2023).
- PUCL v. Union of India & Others* (2013) 2 SCC 688, See also, *Kirloskar Brothers Ltd. v. Employees State Insurance Corporation* (1996) 2 SCC 682, *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161, *Paschim Banga Khet Mazdoor Samity & Others v. State of West Bengal & Another* (1996) 4 SCC 37.
- Ramsharan Autyanuprasi v. Union of India* 1989 Supp (1) SCC 251.
- Ruggie, J. G. (2007). Business and Human Rights: The Evolving International Agenda. *The American Journal of International Law*, 101(4), 819-840. <http://www.jstor.org/stable/40006320> (last visited on: 05.06.2023).
- Rylands v. Fletcher* 1868 [L.R.] 3 H.L. 330.
- Shantistar Builders v. Narayan Khimalal Totame* (1990) 1 SCC 520.
- Shiv Sagar Tiwari v. Union of India* (1997) 1 SCC 444.
- Smith, T. (2015). Institutional and Social Investors Find Common Ground. *Journal of Investment*, 14(3), 57-65.
- The Companies Act, 2013.
- The Constitution of India.
- The Employee's Compensation Act, 1923.
- The National Green Tribunal (NGT) Act, 2010.
- Union Carbide Corporation (II) v. Union of India* (1989) 2 SCC 540.
- Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645.
- Vanberg, V. (2007). Corporate social responsibility and the 'game of catallaxy': the perspective of constitutional economics. *Constitutional Political Economy*, 18(3),

- 199-222. <https://doi.org/10.1007/s10602-007-9022-4> (last visited on: 06.06.2023).
- Wacks, R. (2021). *Understanding Jurisprudence* (6th ed.). Oxford University Press.
- Wettstein, F. (2012). CSR and the Debate on Business and Human Rights: Bridging the Great Divide. *Business Ethics Quarterly*, 22(4), 739–770. <http://www.jstor.org/stable/41968807> (last visited on: 05.06.2023).

