



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Corporate Social Responsibility and Labour Welfare

Nityanshi Rao^a Prमित Dev Pandey^b

^aOP Jindal Global University, Sonipat, India ^bOP Jindal Global University, Sonipat, India

Received 01 June 2022; Accepted 18 June 2022; Published 25 June 2022

Corporate Social Responsibility has become a compulsory act under section 135 of the Companies Act, 2013 but it fails to include any kind of directions related to labour laws and the rights of the work force. This paper aims to analyse the current situation of the CSR laws in India in an attempt to draw attention to the lack of representation of the weak labour class which is an important part of the society but is conveniently ignored in the aforementioned act. CSR should supplement the labour laws present in the country to make the system better as only a formal and legal recognition of the same can bring any relevant change to the current unfortunate state of the labour markets in India.

Keywords: CSR, company, labour, welfare.

INTRODUCTION

“Corporate social responsibility (CSR) is a self-regulating business model that helps a company be socially accountable—to itself, its stakeholders, and the public. By practicing corporate social responsibility, also called corporate citizenship, companies can be conscious of the kind of impact they are having on all aspects of society, including economic, social, and environmental. To engage in CSR means that, in the ordinary course of business, a company is

operating in ways that enhance the society and the environment, instead of contributing negatively to them.”¹ Corporate social responsibility is a relatively broad concept and can be used by different companies and industries in different forms like philanthropic wings, company run charities, volunteering work, etc. the benefit of taking up a CSR model is two-fold, as it not only benefits the community, it also helps the company build a better rapport for business as it boosts the brand image of the company. If used well the CSR model can prove to be useful for the community as well as the company.

Corporate Social Responsibility requires companies to engage with the public, in the process of doing so, the company forms a stronger bond between the consumers and the brand, and also the activities can help improve the relationship between employees and corporations as it connects the corporations to people and the world in which they function which boosts the morale of the employees and wins the loyalty of the consumers. Corporate Social Responsibility programs are often adopted by large corporations that earn huge profits, where the company is in a good enough state to comfortably give back to the society without being affected by such costs as the company is also answerable to its shareholders and for a company to be socially responsible, it also has to be fully accountable to itself as well as its shareholders. Another reason for large corporations to take up corporate social responsibility is their visibility to the public and the government. If a company earns a huge amount of profits every financial year, it captures the attention of various stakeholders, therefore it becomes important

¹ 1. Jason Fernando, 'Corporate Social Responsibility (CSR)' (Investopedia, 7 March 2022) <<https://www.investopedia.com/terms/c/corp-social-responsibility>> accessed 02 December 2020

to work on the company's overall image and is considered to be the only ethical option to set standards of social responsibility for other similar corporations in the industry.

This can be seen through a real life example of Corporate Social Responsibility undertaken by Starbucks in the US. "Starbucks has long been known for its keen sense of corporate social responsibility and commitment to sustainability and community welfare. According to the company, Starbucks has achieved many of its CSR milestones since it opened its doors. According to its 2019 Global Social Impact Report, these milestones include reaching 99% of ethically sourced coffee, creating a global network of farmers, pioneering green building throughout its stores, contributing millions of hours of community service, and creating a groundbreaking college program for its partner/employees. Starbucks' goals for 2020 and beyond include hiring 10,000 refugees, reducing the environmental impact of its cups, and engaging its employees in environmental leadership. Today there are many socially responsible companies whose brands are known for their CSR programs, such as Ben & Jerry's ice cream and Everlane, a clothing retailer."²

METHODOLOGY ADOPTED

Looking at the requirements of the study, we have opted for a descriptive type of research. This research design was adopted to have greater accuracy and an in-depth analysis of the research question. The use of secondary data has been extensive in the study which includes the data would mainly include evidence provided in the secondary sources of information like books, journals, and e-sources to be referred to reach the desired conclusion.

² *Ibid*

DISCUSSION

According to The Companies Act, 2013, Corporate Social Responsibility is now a mandatory act to be followed as per the official notification dated 27th February 2014. According to the Section 135³ of the act, following corporate social responsibility is now a compulsion for all companies- *“Every company having a net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more or a net profit of rupees five crores or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.”*

Any company registered under the Companies Act, 2013 that meets the aforementioned conditions is legally required to form a Corporate Social Responsibility Committee consisting of at least 3 directors, including one independent director. A broad understanding of the Corporate social responsibility laws is as follows:-

- The amount of money spent for the purpose of meeting the corporate social responsibility objectives is to be carefully recorded and shall be compulsorily included in the company's annual statement of profit and loss.
- The laws making CSR compulsory came into force on the 1st of April, 2014, and shall include all subsidiary companies and holdings as well as any other foreign corporate organizations that are involved in doing business in India.
- The CSR laws are broadly laid down in schedule seven of the Companies Act, 2013.

The law is quite exhaustive in nature as the list of compulsory activities to be taken up

³ Companies Act, 2013, s 135

by companies is laid down in the seventh schedule and anything not listed there is completely left to the discretion of the companies. Due to the exhaustive and limited nature of the list, it can be clearly seen that Labor rights are clearly not a part of the compulsions under the laws of corporate social responsibility and are therefore completely left to the company's discretion, and are therefore largely ignored by the corporations.

PROBLEMS IN THE CURRENT LEGISLATION

In today's era of globalization, Corporate Social Responsibility (CSR) has turned into a managerial word that mainly comprises the business strategies which arise from the performance considerations and employee pressure in the company. Even though, it is not new at all the companies have to act in an ethical and responsible manner. However, CSR has now become a "fig leaf used by companies to hide the abusive treatment of the workers."⁴ the companies on paper have enacted a flurry of social and corporate responsibility codes of conduct to pacify the demands of the workers and consumers alike, but the goal of increasing profits have always trumped over such codes.

CSR in India is very fluid. Only the big corporations can take part in the activity and even then, it is used as a place to further the business activity, rather than improving the social standards of the people. It is considered to be on the periphery of any business activity and therefore, not much attention is paid to it. There needs to be a considerable effort to be made, to make the CSR activities mainstream in India and put them on firmer ground. There is a lack

⁴ Lance A. Compa, 'Corporate Social Responsibility and Workers' Rights' (Cornell University, 1 October 2008) <<https://digitalcommons.ilr.cornell.edu/articles/183>> accessed 03 December 2020

of participation by the local community due to their lack of knowledge on the subject, issue of transparency, non-availability of any agency actively monitoring such activities taken by the company, narrow perception towards CSR, and non-availability of clear guidelines on the matter.⁵

The Business Case for CSR⁶ which is considered one of the best in its area points out and stresses the possibility of a positive sum relationship between the financial returns and ethical business. However, in India, this positive sum relationship does not seem to be applied by the companies. "Since 2013, large, profitable companies are required to pay 2 percent of their net profits to improve Indian society"⁷, on which there has been only one governmental legislation which came under the Section 135 in 2014 under the Companies Act 2013, which turns the voluntary nature of the activity by a company into legally obligatory.

A significant problem that arises when we try to define CSR is that it is a concept that can take up different definitions depending upon the person you ask. At one end of the spectrum, it is a voluntary act that embodies good corporate citizenship taken up by the companies by which they carry out their business activities to pursue their broad goals and enhance their stakeholder interest. On the other hand, it is a statutory stipulated act that compels a company to do forced philanthropy and penalizes, if not followed through. In India, the current situation is the latter one. The provision in India which is Section 135 of the Companies Act,

⁵ Dr. Nilesh Berad, 'Corporate Social Responsibility-Issues and Challenges in India' (SSRN E-Journal, 18 July 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3421307> accessed 03 December 2020

⁶ M.E. Porter & M.R. Kramer (2011). 'Creating shared value' (2011) 89 (1) Harvard Business Review, 62-77

⁷ Tima Bansal, 'The unintended consequences of India's CSR law', (Business Today, 13 January 2015) <<https://www.businesstoday.in/opinion/columns/corporate-social-responsibility-tax-in-india-hidden-costs/story/214463.html>> accessed 03 December 2020

states that “it is compulsory for the big corporations to spend at least 2% of their net profits in pursuance of their CSR policies towards the identified activities.”⁸ The language of this provision is interesting in itself, it does not make the spending money by these big corporations mandatory, but rather makes disclosure of the above-mentioned spending mandatory, failure to do so, attracts penal provisions, which makes it a comply-or-explain provision.

Over the course of six years of being in force, this requirement has gathered mixed responses, in which we think that the current legislation on the CSR provisions is not enough to restructure the ways of a company on human rights issues and focuses mainly on the profit aspect that comes into the company.

First, it impels the established big companies to improve their framework to maximize their spending on CSR to touch the target of 2% which ultimately benefits the stakeholders of the company; while on the other hand, small companies do not do amend their practices and delegate the decision to the government, in a manner which is characteristic to the taxation laws in the country.

Second, the cycles for the CSR project is kept at three years which compels the company to plan ahead and divide their work into three year periods, constantly touching the 2% mark, diminishes the scope of a company to manage their spending continuously for those three years, the small companies cannot possibly work to achieve this target.

⁸ Umakanth Varottil, “New CSR Rules : The Risks of Greater Rigidity” (Bloomberg Quint, 1 August 2019) <<https://www.bloomberquint.com/opinion/new-csr-rules-the-risks-of-greater-rigidity>> accessed 02 December 2020

Third, sure the amendments to the CSR policies have brought about significant changes to the current situation, however, “the implementation of the same has been marred with non-disclosure of the relevant documents, and questions on how the remaining funds must be dealt with, have not been addressed by the legislation.”⁹ From the looks of the legislation, it seems to be a rushed one, which doesn’t answer some of the important questions and makes CSR mandatory that bears no exceptions to any defaulters and invokes severe penalties for non-compliance.

Fourth, a move towards a mandatory provision for spending requirements which necessitates payments into the governmental operated funds alters the original philosophy behind CSR and by encouraging mandatory compliance with potential incarceration, does very little to alter the innate corporate behavior of the companies.

Therefore, the current CSR laws in the country are based on a paradox prevailing in India which is that “the corporate world is a surplus society in the world of deficiency”¹⁰ and so the urban corporate has to support rural India for its upliftment and thus has been reduced to such a definition. Instead, as discussed in the earlier part of the paper, the definition of CSR does not limit itself to such a definition provided by the laws in the country. Perhaps one of the most important aspects of CSR is the labor standards and rights, which the current legislation in India fails to recognize.

⁹ *Ibid*

¹⁰ Sitaram Gupta & Rusen Kumar, 'CSR in India: Challenges and Prospects' (India CSR) <<https://indiacr.in/csr-in-india-challenges-and-prospects/>> accessed 02 December 2020

NEED FOR INCLUSION OF LABOUR WELFARE RIGHTS INTO CSR

We feel that the current legislation for the CSR of the companies needs to address the issue of labor welfare rights which is effective in protecting the interests of the stakeholders of the company. Therefore, there is an immediate need to include the stakeholders and the workers' participation in making the code of conduct and other CSR tools instead of making a unilateral decision from the management. In the European countries, there are participants of the workers and other stakeholders in the drafting and implementation of codes of conduct, whereas codes adopted by US companies are often unilateral management decisions, due to which the working conditions in the companies affiliated to the European countries is comparatively better than that of US.

An important recommendation related to CSR is provided by the International Labour Organization, which is the inclusion of protection for Freedom of Association (FoA) and Right to Collective Bargain (CB) in the CSR charter of the companies. As stated by Auret van Heerden, President, and CEO of the Fair Labor Association (a third party monitoring group): “the monitoring of the companies is not regular enough to check whether they are compliant or not. A factory or company can only remain compliant when workers have a voice to speak up when something isn’t right.”¹¹ Therefore, what these rights do is that they help the employees a channel to enforce their employment-related benefits or respond to any new employment issues that may arise.

¹¹ Stephanie Clifford & Steven Greenhouse, 'Fast and Flawed Inspections of Factories Abroad' (The New York Times, 1 September 2013) <<http://www.nytimes.com/2013/09/02/business/global/superficial-visits-and-trickery-undermine-foreign-factory-inspections.html?pagewanted=all&module=Search&mabReward=relbias%3As%2C%22%22%3A%22RI%3A7%22&r=0>> accessed 02 December 2020

However, if we look at some of the examples of the private companies which started to issue guidelines based upon the ILO's recommendations, their general focus was only on the domestic wages and work hours, child labour, and discrimination. Levi Strauss was one the first companies to do so, "it adopted one of the first corporate codes of conduct (CoC) to address supply-chain/business partner labour issues in 1992,"¹² which was followed by Nike in the same year; followed by more than 1000 more corporate giants adopted such rules in their CSR codes.¹³ These codes were widely accepted by many companies. However, what most of these codes of conduct excluded were protection for Freedom of Association (FoA) and Right to Collective Bargain (CB) which were originally included in the CoC of Levi's and Nike. A study done by the Organization for Economic Cooperation Development (OCED) in 2001, found that only 148 included any labour standards, and of those only 29.7% mentioned FOA.¹⁴ A study conducted on 215 CoCs by the International Labour Organization (ILO) found that only 15% referenced FoA and CB in their CoCs.¹⁵ If the public trading companies, there were 43% companies that had a supplier CoCs out of the companies surveyed.¹⁶

Moreover, the private sector is reluctant to change their ways of picking and choosing the standards that they want to be held 'accountable' for, due to which they choose not to be held

¹² Mark Anner, "Corporate Social Responsibility and Freedom of Association Rights: The Precarious Quest for Legitimacy and Control in Global Supply Chains" (SAGE Journal, 13 November 2012) <<https://journals.sagepub.com/doi/abs/10.1177/0032329212460983>> accessed 03 December 2020

¹³ *Ibid*

¹⁴ 'Overview of global developments and Office activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues' (ILO, 26 January 2000) <<https://www.ilo.org/public/english/standards/relm/gb/docs/gb273/sdl-1.htm>> accessed 03 December 2020

¹⁵ Barbara J. Fick, 'Corporate Social Responsibility for Enforcement of Labor Rights: Are There More Effective Alternatives?' (2014) 4 (2) Global Bus. L. Rev. <<https://engagedscholarship.csuohio.edu/gblr/vol4/iss2/1>> accessed 03 December 2020

¹⁶ Ana Certanec, 'The Connection between Corporate Social Responsibility and Corporate Respect for Human Rights' (2019) 10 (2) DANUBE: Law, Economics and Social Issues Review, <<https://doi.org/10.2478/danb-2019-0006>> accessed 03 December 2020

accountable for FoA and CB. Therefore, “the entity which controls the workers is telling the workers which workplace problems they should be concerned about, thereby reinforcing the inequality present in the workplace hierarchy and undermining the inherent dignity of the individual worker.”¹⁷

A COMPARISON WITH FOREIGN JURISDICTIONS

In order to improve the current situation of the Corporate Social Responsibility laws in India, it is important to look at various examples of international laws and policies that have successfully dealt with the issue of corporate social responsibility with respect to human rights. An analysis of these laws not only helps one to understand the standards of CSR that are being adhered to in the rest of the world, but it also provides a better perspective for the Indian legislature to revisit the present laws and bring required changes to place where the current law of the land is seen to be lacking.

United Nations: The United Nations initiative called “the UN Global Compact” is one of the world’s biggest global initiatives related to Corporate Social responsibility, the initiative lays down principles that are designed to properly develop and circulate the concept of CSR by focusing on areas of environmental concerns, anti-corruption, Human rights, and labour rights. “It is intended for business entities willing to commit to aligning their policies and strategies with ten universally accepted principles derived from the Universal Declaration of Human Rights 1948,¹⁸ the UN Convention against Corruption, the Rio Declaration on

¹⁷ Barbara J. Fick (n 15)

¹⁸ Universal Declaration of Human Rights, 1948

Environment and Development 1992 , and the ILO Declaration on Fundamental Principles and Rights at Work.”¹⁹

The principles related to Human Rights state that all business entities shall respect and support the international standards of Human Rights. The UN tries to ensure that business entities respect these standards and the rule of law is duly carried out, the UN also ensures that companies are in no way or form complicit in Human rights abuses. The belief of the organization is that compliance to Human Rights standards has multiple benefits like improvement of consumer perception, upliftment of the economy through upliftment of the people, improved community as well as employee relations, and stronger management of the supply chain. Business entities are required to respect human rights as well as to support and protect these rights by following guidelines and taking positive steps to promote and advance Human Rights.

The International Organization for Standardization (ISO): In the year 2010, ISO published “International Standard on Social Responsibility ISO 26000” which states that organizations should respect and adhere to the International Bill of Human rights and acknowledge its universal applicability. “Chapter 6.3, which is entirely dedicated to human rights, deals with eight issues relating to human rights: due diligence; human rights risk situations; avoidance of complicity; resolving grievances; discrimination and vulnerable groups; civil and political rights; economic, social and cultural rights; and fundamental principles and rights at work.”

¹⁹ Ana Certanec (n 16)

The European Union has also taken these guidelines into account and formulated laws adding Human Rights as a compulsory part of SCR in the European Union Strategy 2011-2014.

France: The French law mandates that business entities disclose the financial statements for the amount spent on CSR each year. Taking the CSR laws further in the direction of progress, following the adoption of the principles of Human Rights into CSR by The European Union, France established a National Action Plan for adopting the Principles laid down by The United Nations and The International Organization for Standardization. The French action plan was drafted on the basis of recommendations issued by the National Consultative Commission on Human Rights (CNCDH), and work conducted by the National CSR Platform, created by the Prime Minister in June 2013 to support dialogue and consultation between different actors in French society (including representatives of businesses, employees, non-profit organizations, NGOs and multi-stakeholder structures) and public authorities.

South Africa: The companies Act Number 71 of 2008 in association with the Bill of Rights, states that even though the practice of Corporate Social Responsibility is voluntary when it comes to business entities in association with Human rights, International standards of human rights established by the United Nations are to be strictly followed by all companies. “since international human rights law places the protection and realization of fundamental human and group interests at its core, its legal threshold requires that all endeavors which can impact on human rights, including abusive corporate conduct, are bound by its rules.”²⁰

²⁰ Chairman Okoloise, :Contextualising the Corporate Human Rights Responsibility in Africa: A Social Expectation or Legal Obligation' (SSRN E-Journal, 11 February 2018) <<https://ssrn.com/abstract=3114049>> accessed 05 December 2020

Denmark: The Danish Financial Statement Act, mandated all large corporations to disclose their policies related to Corporate Social Responsibility in their annual reports, the companies are mainly mandated to report on the policies that they apply, their standards, principles, and guidelines that are followed and the future plan of action to apply such policies. Companies are also obligated to disclose information in case they do not have established policies related to CSR. The Danish Action plan, 2014 provides a detailed plan of action for the application of all guidelines related to Human rights principles provided by the United Nations. The CSR laws are applied to huge companies and also extend to institutional investors, mutual funds, and financial businesses. The Danish government believes that the proper application of CSR laws not only ensures the development of the community and the company, it also helps businesses to compete better on international levels.

CONCLUSION

Inclusion of the proposed rights into the CSR of the companies in India

CSR in India is a relatively new concept that is still in the process of development as time passes. Companies in India actively engage in CSR activities due to the law passed in India. A study conducted in 2008 by “TNS India and Times Foundation, showed that over 90% of all major Indian organizations surveyed were involved in CSR activities,” with the private companies being more active in the CSR activities than the governmental organizations. However, as stated above, CSR in India has a very narrow understanding of the concept; it has become more donor-driven than local in approach to unilateral decision making. Owing to the lack of clear-cut guidelines or policy directives, CSR activities have become initiatives that a

company engages in on basis of its size and profile; the bigger the company is, the bigger its CSR projects are.

Therefore, what India needs is an alternative framework that not only includes the proposed rights in the CSR activities but also provides a guideline for the companies to engage in the CSR activities. There are three options that can be borrowed from foreign companies and countries and be tweaked according to the Indian standards, the International Framework Agreements (IFAs).

International Framework Agreements (IFAs) - this agreement is an instrument negotiated between the company and Global Union Federation (GUF) in order to ensure that the company and its subsidiaries follow the same standards. "All IFAs include a commitment by the signatory MNC to respect the ILO core labor standards which include FOA and CB and containing other provisions related to the working conditions, wages and hours." Mostly, the Europe-based companies follow this type of agreement. An important aspect of this agreement is that it is the result of a bilateral negotiation between the company's directors and the worker representative which strengthens the workers' position in the company and ensures the adherence to the welfare rights of the companies. The wordings of the agreement of IFAs themselves indicate its methods of implementation which are alternatives to judicial enforcement in case any discrepancy arises. For example, the IFA of H&M and Union Network International, provides that the parties will bear joint responsibility for the full implementation in good faith of this agreement, while Ford International Metal Works Federation IFA provides for "compliance...can be raised and discussed between the Company and the Union in the

Regions or at the Ford Global Information Sharing Forum. When issues are identified, the parties will work together to find mutual solutions.

The provisions contained under IFA also deal with other labor laws that would have been applicable to all the employees. In India, most of the labor-related issues are dealt with in separate acts provided by the government; therefore, we can make the hybrid guideline that takes the best provisions mentioned under various IFAs of MNCs which contain the labor welfare provisions, while following the labor laws in India.