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CRITICAL ANALYSIS OF COPORATE SOCIAL RESPONSIBILITY AND HUMAN RIGHTS IN INDIA

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ABSTRACT

This paper aims to study of CSR and human rights and prominently focuses on Indian legislation and laws and also prominent international legislations pertaing to CSR and human rights such as the UN framework of human rights (Ruggie framework) which explains the function of the state to protect and also give remedy in case of human rights violation. And also other international norms regarding to CSR and human rights such as OHCHR guidelines and also the duties of a state in safeguarding the human rights. The paper analyses CSR guidelines for India and suggests improvements in the legal and regulatory framework to ensure a requirement for businesses to respect and contribute to human rights. This study is eventually trying to move towards a more holistic way of CSR looking from the perspective of Human Rights realization in the context of India.

In the Indian context, the research critically analyzes current CSR legislation, specifically under Section 135 of the Companies Act, 2013, and assesses how far these provisions cater to or incorporate human rights issues. The analysis identifies a gap between voluntary CSR initiatives and a more rights-based approach to corporate responsibility. Consequently, the paper advocates for a robust legal and regulatory framework in India to make sure that human rights are not merely respected but positively promoted through CSR. Overall, the objective is to recommend a more integrated and human rights-oriented model of CSR suited to India's socio-economic context.

Keywords: Corporate Social Responsibility; Human rights; Regulation; United Nations.

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INTRODUCTION

Corporate social responsibility, or CSR, is the process through which companies follow the law, morality, society, and environment. Corporate social responsibility (CSR) is a type of business self-regulation that has developed as public awareness of ethical and environmental issues has increased. CSR and human rights have been two prominent action of the human rights and business debate for a long time[1]. Corporates play a significant role in our daily lives, from purchasing goods, supply chain and services that we avail corporate is at every step in our life today. The power of this corporate and the private sector has risen so much that it shapes the nation's economy and also has a great influence in our life's and the environment around us. With great power comes great responsibilities corporates have responsibility to contribute to social welfare and development.[2] Human rights and CSR are two industry linked concepts which are all the more real in a globalized world, there lessening the moral obligations of companies. Based on the inherent dignity of all humankind, human rights are a set of inalienable protections expressed within several international standards including the Universal Declaration of Human Rights. This has created higher expectations of corporations, as their reach spreads around the globe — and especially in developing regions where respect for these rights may be lacking. CSR has moved from this century old philanthropic and ad-hoc approach to a strategic imperative wherein the companies are liable for their impact on human rights in their operations and supply chains. This trend reiterates the need to incorporate human-rights elements in CSR formats so that business could work for contributing positively towards societal welfare and at the same time manage possible concept where companies it is Beyond compliance with the law, being socially responsible means going beyond the call of duty and investing "more" in stakeholder relations, the environment, and human capital. One CSR is characterized by the following: • It is voluntary; businesses choose to act in socially responsible behaviour by going above and beyond what is required by law.

• The fact that CSR activities are systematic and not sporadic;

• The fact that it is a vital part of business management;

[1] L. Jones, Corporate Social Responsibility (CSR) – Prioritising Positive Societal Impact, Digital for Good | RESET.ORG (Aug. 28, 2024), https://en.reset.org/corporate-social-responsibility-csr-societal-responsibility-companies

[2] CSR and the Debate on Business and Human Rights: Bridging the Great Divide, 22 J. Bus. Ethics 41968807 (Oct. 2012).

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• The linkage to the concept of sustainable development;

• The assessment of how corporate activities impact society[3]

LITERATURE REVIEW

Human rights have not played an extremely important part in CSR in the past. In a similar vein, CSR has not had much of an impact on the current "business and human rights debate." This paper shows some apparent synergies and complementarities between the two discourses and identifies some of the causes behind their somewhat strange gap. It contends that a more thorough integration of the two issues would enable the development of a comprehensive and rigorous understanding of corporate human rights duties. Such a vision involves an expanded focus on proactive corporation engagement in the preservation and realisation of human rights, rather than ending with corporate duties "merely" to respect human rights. Stated differently, the incorporation of the There are two discussions that offer the framework for developing constructive human rights duties for businesses.[4]

The boundaries between government and business have faded over time, with development taking place when governments refrain from interference. Economic growth is the key to effective development, and poverty reduction depends on wealth generation. Over the past half-century, business has emphasized stakeholder management, with corporations emerging as influential players. The doctrine of social responsibility emphasizes quality over quantity of life, and successful economic regeneration is crucial for reversing deep-rooted problems in deprived areas. CSR activities have a multi-faceted effect, with the demands for accountability, openness, and responsibility growing. CSR has now become part of corporate culture, with CEOs referring to the term to describe their firm's social issues. CSR has become a gauge of a company's reach into society, and it is now moving towards Corporate Strategic Responsibility, where a company invests in its CSR initiatives. Human rights as an integral part of CSR came to the forefront during the 1990s, with Harvard Professor John Ruggie's Guiding Principles, also known as the Ruggie Framework, promoting the place of corporate responsibility to respect human rights. It is a three-pillar structure that includes the State's responsibility to

[3] ILO Italian, ILO, ITC-ILO & Multinational Enterprises Programme of the ILO, International Instruments and Corporate Social Responsibility, Int'l Lab. Org. (2012), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_emp/%40emp_ent/%40multi/documents/instructionalmaterial/wcms_227866.pdf

[4] *Supra 2*

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protect against human rights abuse and the shared responsibility to remediate.. In India, there has been debate over compulsory CSR initiatives, with the Draft Companies Bill 2011 providing for a CSR Committee for companies with a net worth of Rs. 500 crore or more.[5]

RUGGIE PRINCIPLE AND FRAMEWORK

In 2005, Professor John Ruggie was appointed as Special Representative of the United Nations Secretary-General on the matter of 'transnational corporations and other business enterprises and human rights. His framework involved identifying and clarifying standards for businesses responsibility in terms of human rights.

Ruggie submitted a Framework on Business and Human Rights in 2008. Three pillars underpin it:

- The duty of the state to protect against human rights violations by other entities, including corporate
- Responsibility to respect human rights
- Increased access to judicial and non-judicial remedies for victims CSR activities have a significant impact.

CSR activities have a multi-faceted effect, with the demands for accountability, openness, and responsibility growing. CSR has now become part of corporate culture, with CEOs referring to the term to describe their firm's social issues. The Framework identifies five approaches that States may undertake to incentivize and ensure corporate respect for human rights and prevent corporate abuses of such rights[6]. Responsible corporate behaviour regarding human rights: This requires that a corporation not infringe on the rights of others and, where harm is caused, to cease or put an end to any existing harm. Respect is a business' obligation to each and every trade or partnership.

Remedy: The Framework prescribes that every state should guarantee effective access to justice for all those whose rights have been infringed. Persons claiming violations of human rights should have access to effective complaints mechanisms and redress processes against

[5] Supra 4

[6] R. Hansen, UNEP Finance Initiative - Human Rights Guidance Tool for the Financial Sector, https://www.unepfi.org/humanrightstoolkit/framework.php (n.d.).

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both the state and non-state actors. The Framework does not provide for the obligation to compensate victims of abuses that are not directly caused by the company, which may have business ties with an organization that engages indirectly in the violations.

The framework of Ruggie had a very general application, it can be applied to any kind of business. The framework focuses on two important aspects "Responsibility" and "Respect". Responsibility is defined as something associated with the business activities like business activity carried out and business-related third-party relationships. Respecting, promoting and not infringing human rights also contribution made in terms of development or protection of human rights. At first glance, this negative duty to "do no harm" seems like a more straightforward approach than more comprehensive ideas of corporate social responsibility (CSR), which allow businesses to deliver a wide range of public goods, from profit-making public services to charitable giving and philanthropy. Though the Framework is predicated on the rights-based idea that a negative obligation is the starting point, a "baseline expectation," in which "a company cannot compensate for human rights harm by performing good deeds," there is nothing stopping businesses from doing more to "support and promote human rights[7]." The framework and the GP Although the term "corporate accountability" has been replaced by the Framework and GP using corporate responsibility, it is useful to recognise that this floor of responsibility affords with just one aspect of the global standard of conduct for all companies operating anywhere — whatever his or her states' ability or willingness to fulfill their own human rights obligations. Principles 11 to 24 directly discuss the principles of obligation to respect and make it obligatory for enterprises to trigger these. GP principle 15 applies to commercial organisations and requires these standard bearers to put in place policies and procedures that are appropriate for the size of their operations, sector and human rights risks. A commitment to protecting human rights should be evident in the policies and procedures, and these should include:

A. A policy commitment to meet their responsibility to respect human rights; and A person.
B. A human rights due diligence process that detects, avoids, minimizes, and takes into account their effects on human rights[8]

[7] Mark B. Taylor, The Ruggie Framework: Polycentric Regulation and the Implications for Corporate Social Responsibility, 5 Nordic J. Applied Ethics 9 (2011).
[8] Principle 17 of GP – In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence

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C. Mechanisms to facilitate the redress of any unfavourable effects on human rights that they generate or contribute to[9]

DUTY OF STATES TO PROTECT THE HUMAN RIGHTS

Some principles lay the foundation which states how states should protect human rights

- Protection of human rights violation: the first principle is to prevent any kind of human rights violation in their given territory even by any business enterprises. In case of any violation the state should take effective steps to address the violation by investigating, punishing and redressing the issue with the appropriate legislations and laws and also take measures to prevent such issues[10]
- Obligation of international law: the states have the duty to require them to respect, protect, and fulfil the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuses by third parties, also ratify the international conventions and declarations.[11]

These guidelines highlight how states can take the initiative to protect human rights and make sure business conduct themselves in a way that upholds these rights

MECHANISIMS FOR ADRESSING HUAMN RIGHTS ISSUES (OHCHR GUIDELINES)

1. Judicial remedy: this mechanism can provide both civil and criminal remedy to the violation of human rights by seeking justice by approaching the court with the appropriate legislations
2. Administrative mechanisms: various admin bodies can deal with human rights abuse. Bodies like labour tribunal and human rights institutions or commission can deal with these issues.

[9] Principle 22 of GP – Despite having in place human rights policies and conducting due diligence, it is possible that companies may be accused of causing or contributing to human rights abuses.
[10] United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.
[11] Supra 4

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3. National contact points: In accordance with the Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises, National Contact Points are a resource available to those looking for redress for human rights violations involving businesses.
4. ombudsperson Offices: These offices can act as intermediaries to help individuals navigate the process of seeking remedies for human rights violations.
5. Government-run Complaints Offices: Such offices can provide a platform for individuals to lodge complaints and seek redress for human rights abuse .
6. Public Awareness and Understanding: States are encouraged to facilitate public awareness and understanding of these mechanisms, ensuring that individuals know how to access them and what support (financial or expert) is available[12].

OTHER INTERNATIONAL NORMS BASED ON HUMAN RIGHTS

Many other international laws shape human rights protection in an international perspective such as the International Labour Organisation (ILO) which states labour standards which is an important aspect in CSR and human rights. Most of the CSR initiatives such as codes of conduct are derived from the ILO labour standards.[13] Many other international norms like UDHR[14], The Johannesburg declaration on sustainable development [15](which stated the duty of private sector on development and protection of society and explains its accountability in this same aspect) etc. explain various aspects of human rights and CSR.

INDIAN PERSPECTIVE ON CSR AND HUMAN RIGHTS

The very basic book of law the Indian Constitution guarantees various human rights under part three and four of the Indian constitution. Part three of the Indian constitution is about the "Fundamental Rights[16]" which is guaranteed to every citizen and in case of violation the injured

[12] Supra 4
[13] Supra3
[14] D. Padilla-Vasquez, The Universal Declaration of Human Rights Is Turning 75: Here's What You Need to Know, U.N. Found. (Dec. 11, 2023), https://unfoundation.org/blog/post/the-universal-declaration-of-human-rights-is-turning-75-heres-what-you-need-to-know.
[15] Division for Sustainable Development, WSSD Political Declaration, U.N., https://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm (n.d.).
[16] India Const. arts. 12–35. These include the Right to Equality, Right to Freedom, Right Against Exploitation, Right to Freedom of Religion, Cultural & Educational Rights, Saving of Certain Laws and Right to Constitutional Remedies.

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person can seek judicial remedy which is guaranteed under article 32 [17]and 226[18]. Part four talks about the "Directive Principles of State Policy"[19] which are human right principles and also the promotion of a welfare state. This is the first pillar of the Ruggie's framework which us about the duty of the state to protect human rights violations. India in this regard has constituted most of the human rights in constitution which is the supreme authority. For instance, in Vishakha v. State of Rajasthan[20], a landmark case concerning sexual harassment of women in the workplace, the Supreme Court broadened the scope of Article 21 to include non-state actors. Looking into business and human right violation one of the incident that shook India was the Bhopal gas tragedy. It showed how inadequate and limited our laws and statues we had to hold an MNC liable for the violative actions and also set precedents for the amending laws related to human rights violations[21].

GUIDELINES REGARDING CSR AND HUMAN RIGHTS IN INDIA

Corporate Social Responsibility Voluntary Guidelines 2011[22] – This is an improvement on the earlier guidelines viz, 2009 Guidelines[23]. The Guidelines are intended for use by any business regardless of size, sector or location that must provide fundamental aspects – the 'spirit' - of an enterprise. We have developed nine (9) Principles with the Core Elements that serve as guidelines for you to follow. Guideline 5: Business Responsibility to Respect and Promote Human Rights The key elements of the principle are that the businesses must understand the rights content in the Constitution of India, as well as national laws and policies relating to human rights and the International Bill of Human Rights. They must reflect on the intrinsic value of human rights, which are inherent, universal, indivisible and interdependent.

[17] India Const. art. 32.
[18] India Const. art. 226
[19] Directive Principles of State Policy - Article 36 to 51 of the Constitution. These include 'right to social security, right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment, right to equal pay for equal work, right to existence worthy of human dignity, right to rest and leisure, right to freely participate in the cultural life of the community, right to free & compulsory education, promotion of welfare of people, equal justice & free legal aid and the principles of policy to be followed by the State
[20] A.I.R. 1997 S.C. 3011.
[21] Supra
[22] D. Padilla-Vasquez, The Universal Declaration of Human Rights Is Turning 75: Here's What You Need to Know, U.N. Found. (Dec. 11, 2023), https://unfoundation.org/blog/post/the-universal-declaration-of-human-rights-is-turning-75-heres-what-you-need-to-know.
[23] Guidelines Drafting Committee (GDC), [Title of the Guidelines], under the leadership of Sh. Bharat Wakhlu, Tata Servs. (Year).

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Businesses should also integrate respect for human rights in their management systems, including a process to assess and manage human rights impacts of operations, and provide "effective" grievance mechanisms that are understood by all individuals impacted by the business.

While the previous trend was voluntary, this one aims to ensure that businesses respect human rights and recognize them from all relevant stakeholders and groups connected with or impacted by it at home or abroad as well; for instance communities, consumers or vulnerable and marginalized groups. Enterprises shall, being aware of all human rights in the value chain, act within their scope, to promote essential awareness and enable realization of tenets as those enshrined in the Bill. No business should be complicit in human rights abuses committed by a third party. The principle even refers to the Ruggie Framework[24]. In addition to the above, businesses are encouraged to go even further than what is recommended in the guidelines. Further, businesses are expected to not only adhere to the Guidelines for areas tangential to them or stakeholders around them but also promote and motivate their services providers, distributors, partners etc (higher in the value chain) into complying with the Guidelines[25]

CURRENT SCENARIO

Various national and international laws and norms mandate CSR. The business has the resource but not an effective implementation of the same, they are not aware of the ground reality of the country. As per companies act of 2013[26] which mandates a company should spend more than 2% of its net worth on CSR activities. Most of the companies hide its accounts not willing to spend much on the CSR activities which is lack of transparency.

SUGGESTIONS

1. Companies colluding with NGO's or social organisations to identify the people who are really in need of assistance or help.
2. Strict liability or punishment in case of violation of CSR provisions.
3. Increase the transparency and accountability of the company accounts

[24] The principle recognizes that human rights are the codification and agreement of what it means to treat others with dignity and respect
[25] Supra 3
[26] The Companies Act, 2013, § 135, No. 18, Acts of Parliament, 2013 (India)

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4. Government can offer some tax benefits in case proper CSR compliance which might encourage companies.

CONCLUSION

This discussion reflects that the convergence of Corporate Social Responsibility (CSR) and human rights in India is emerging as an important sector to engage businesses towards sustainable and responsible business. With India's economy rising, corporate companies have a huge contribution in impacting human rights positively and negatively. Although CSR initiatives have indeed made lives better and improved communities, a recognition also growingly acknowledging the importance of businesses to respecting human rights and for understanding how to do it is evident. The National Human Rights Commission has also come out with guidelines on CSR and human rights that companies can use to work upon. But implementation and effective monitoring still matter if we want CSR initiatives to really advance human rights and the interests of vulnerable populations. At the end of the day, inclusion of HRH with CSR strategies is not only going to move towards a more equitable society but will certainly add much goodwill and enhance India's global status as a responsible and an ethical place to do business.