



# CORPORATE SOCIAL RESPONSIBILITY IN INDIA: A CONSTITUTIONAL PERSPECTIVE

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*Abstract: Over the past years, corporate social responsibility in India has acquired legal and social significance. Several sustainable outcomes have come from CSR activities in India and elsewhere. Despite that, many view it as an obligation and impediment. While the expectations from businesses and corporations have increased beyond profit margins, many have contested the mandatory effect of CSR on small businesses. **This paper** presents a nuanced debate on CSR from a constitutional and jurisprudential standpoint. Arguing from the utilitarian principle and offers why laws on corporate social responsibility could bear dissatisfaction among corporations but remain essential.*

**Keywords:** CSR, Constitutional perspective of CSR, Legal and Social Benefit of CSR.

## INTRODUCTION

In the early ages, following the Industrial Revolution, corporations donated a portion of their profits to society out of respect for the latter business support. This support extended as resources and labour from the society. Thus, corporations owed a payback almost as a moral obligation for causing inevitable environmental harm. However, as mentioned in Schedule VII, the government has made it mandatory for enterprises with a market capitalisation of more than 500 crores to establish a CSR committee to engage in CSR activities.<sup>2</sup>

Historically, businesses saw such activities as fundamental to their morals and ethics, and they engaged in such activities to influence their moral and ethical behaviour.<sup>3</sup> Although it is well established that ethical and moral behaviour can only be maintained in the long term through legal obligations, regardless of whether or not a legal requirement dictates them.

According to Salmond, a corporation's moral obligations have been raised to legal obligations, also known as legal burdens. Additionally, he stated that every right has a corresponding obligation. Thus, corporate social responsibility is a duty that corporations must fulfill in exchange for the resources, labor, and other services they

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<sup>2</sup> The Companies (Amendment) Act, 2013, The Act of Parliament 1956 (India)

<sup>3</sup> DeTienne, K.B., Ellertson, C.F., Ingerson, MC. et al. Moral Development in Business Ethics: An Examination and Critique. J Bus Ethics 170, 429–448 (2021)

use, which makes the corporation a legal person through legal fiction. As per German Jurist Savigny, corporations are recognised as persons and hence have the rights and obligations bestowed by law.<sup>4</sup>

Thus, the state offers corporations rights while also imposing obligations, to which they must adhere. Here, it is pointless to argue whether the legislation is moral or immoral because the law was enacted for two primary purposes: to guide businesses' ethical behaviour and to advance society's social good.

Gradually, activities that promote social welfare gained popularity, making CSR an overused acronym among corporate circles. This meant that even corporations were tacitly aware of their accountability towards the community and shareholders.<sup>5</sup>

When a firm adopts a CSR policy, it indicates an ethical commitment and a dedication to people, communities and the environment. In addition, the corporation commits to monitoring and reporting on its compliance with its stated CSR policy quarterly, similar to how it reports financial outcomes.

### **LEGAL VALIDITY OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA**

Corporate social responsibility is a legal idea as the state has imposed it. Therefore, corporate entities with legal personality, whether they embrace it, must ideally adhere to it because it has legal legitimacy supported by a penalty.

The primary premise for CSR is that it is for the greater benefit. This type of law is enacted for the benefit of the majority. The greatest good, as defined by Jeremy Bentham, takes precedence here.<sup>6</sup> But, individual validity, as emphasised by Ronald Dworkin, becomes secondary.<sup>7</sup>

Another argument is that because the company utilises society's resources and labour, it should be held accountable for it, as it is in exchange for what it obtains from society. While this is a reasonable argument, Wood's stakeholder theory presents its contradiction, as the latter opposes the ethics of enforcing corporate social responsibility.

Although the concept of giving back to society began as a voluntary return to society's sustainability, it evolved into a legal requirement that corporations return to society for whatever they consume from it.<sup>8</sup> Labourers are compensated for their work, and society benefits from the products produced by corporations.<sup>9</sup> Thus, the

<sup>4</sup> Iwai, Katsuhito. "Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance." *The American Journal of Comparative Law*, vol. 47, no. 4, American Society of Comparative Law, 1999, pp. 583–632, <https://doi.org/10.2307/841070>.

<sup>5</sup> Tripathi, Kanchan. (2016). Corporate Accountability: A Review. *International Journal of Economics and Management Studies*. 3. 101-104. 10.14445/23939125/IJEMS-V3I6P119.

<sup>6</sup> Crimmins, James E., "Jeremy Bentham", *The Stanford Encyclopedia of Philosophy* (Summer 2021 Edition), Edward N. Zalta (ed.)

<sup>7</sup> Ronald DWORKIN, *Taking Rights Seriously*, Ch 4 (1978); Ronald DWORKIN. Response to Overseas Commentators 1. *Intl. J. of Con. Law (I.CON)* 651,660-662 (2003)

<sup>8</sup> Castelo Branco, M. & Lima Rodrigues, L.(2007). Positioning Stakeholder Theory within the Debate on Corporate Social Responsibility *EJBO – Electronic Journal of Business Ethics and Organization Studies*, Vol. 12 (1)

<sup>9</sup> Suzanne Benn & Dianne Bolton, *Key Concepts In Corporate Social Responsibility* 203 (Sage 2011)

resulting law is either a legal compulsion or legal responsibility but without any associated rights. Or maybe the law is an absolute duty conferred by the state, as Austin, Allen, and Hibbert maintain.<sup>10</sup>

However, Salmond abandons the concept of absolute liability, believing that first a right should be granted and then a correlative duty should be imposed. So, according to him, the law is unfair from this perspective.<sup>11</sup>

“The absolute liability rule is modified strict liability. This rule applies without exception and makes a person fully accountable for any mistake. Absolute liability and great retraction constitute this liability as an absolute liability.”<sup>12</sup>

The Supreme Court of India established absolute liability in *M.C. Mehta v UOI*<sup>13</sup> and *Bhopal Gas Leak*<sup>14</sup> cases. In these cases, the SC extended the *Rylands V. Fletcher* rule passed by the House of Lords of the United Kingdom on strict liability.<sup>15</sup>

The SC rule is substantially broader than the UK House of Lords rule. The following argument is made from a human rights perspective. Here, Henkin attempts to demonstrate a link between obligation and human rights by introducing social expectations and the laws that enshrine such social expectations.<sup>16</sup>

Furthermore, according to John Locke’s Social Contract Theory, anything for the good of society is for the social good of the people who live together. But, in contradiction, Dworkin poses that when a pragmatic approach is utilised wrongly,<sup>17</sup> the law loses validity because it is based on achieving the greatest good for society at the expense of individual interests.

Individual liberty and property rights are based on market allocations regardless of the disparity they cause, according to Nozick’s libertarian perspective.<sup>18</sup> According to Karl Olivecrona, the law only exists in a factual sense, i.e., it is simply what people think the law is.<sup>19</sup> As a result, while the law is meant to serve the greater good of the people, some individual liberty may be jeopardised. However, at the same time, it’s also true that a regulation that violates an individual’s rights could cause social discrepancy or dissatisfaction.

## **IS CORPORATE SOCIAL RESPONSIBILITY AGAINST ARTICLE 14?**

Article 14 of the Indian Constitution ensures that every person in India has equality before the law and equal protection of the law. Additionally, Article 14 allows for a rational categorisation of legislation. The Supreme Court has repeatedly held in *Re: Special Courts Bill*<sup>20</sup> that classification is permissible only if:

1. It is predicated on an understandable differential and
2. The differentia bears a reasonable relationship to the statute's stated objective.

<sup>10</sup> D. Mahajan, *Jurisprudence & Legal Theory* 251-252 (5ed. Ebc 1987) (2016).

<sup>11</sup> *Ibid.*

<sup>12</sup> <http://docs.manupatra.in/newslines/articles/Upload/2D83321D-590A-4646-83F6-9D8E84F5AA3C.pdf>

<sup>13</sup> 1987 SCR (1) 819.

<sup>14</sup> AIR (1989)(1)SCC 674: AIR 1992 SC 248

<sup>15</sup> *The Rule in Rylands v. Fletcher. Part I* by Bohlen, Francis H. (1911).

<sup>16</sup> MARKOS KARAVIS, *CORPORATE OBLIGATIONS UNDER INTERNATIONAL LAW* 88-89 (1ed. Oxford 2013).

<sup>17</sup> RAYMOND WACKS, *UNDERSTANDING JURISPRUDENCE* 131-132 (3ed. Oxford).

<sup>18</sup> Mack, Eric, “Robert Nozick’s Political Philosophy”, *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), Edward N. Zalta (ed.)

<sup>19</sup> Suzanne Benn & Dianne Bolton, *Key Concepts In Corporate Social Responsibility* 129 (Sage 2011).

<sup>20</sup> *Re: Special Courts Bill* AIR 1979 SC 478, (1979) 1 SCC 380, 1979 2 SCR 476.

CSR spending is essential for just business-type organisations. CSR does not apply to partnership firms, limited liability partnerships, or any other type of organisation, even if their net worth, profit or turnover exceeds the statutory maximum.<sup>21</sup>

According to Section 135(1) of the Companies Act<sup>22</sup>, if a business reaches one of the net worth, turnover, or net profit levels, it falls under the ambit of section 135. Thus, even if a corporation does not exceed the requirements in future, it is still required to spend on CSR initiatives.

Section 135 of the Companies Act, 2013 explanation specifies that ‘average net profits’ shall be computed under Section 198 of the Companies Act regulations. Section 198 (4) (1) of the Companies Act<sup>23</sup> allows for the set-off of accumulated losses incurred after the implementation date of the said Section (but not for periods before such effective date) against net profits to calculate the ‘average net profits’ required by Section 135.<sup>24</sup> Thus, a corporation that has produced profits over the last three fiscal years but has not yet recovered its carried forward losses from the time before to the effective date of Section 198<sup>25</sup> will be forced to spend on CSR.

A loss-making business has the same requirement to contribute to CSR as a profit-making business, as long as the ‘average net earnings’ test is met.

Finally, Section 135 applies to corporations registered under Section 8 of the Act.<sup>26</sup> The Section mandates corporations to use their profits exclusively to promote their objectives. But, under the Section, the computation of net profit for a foreign company with a subsidiary in India is unclear and ambiguous. Because the classification requirement is not met, and Section 135 regards unequal as equals, Article 14 is violated in certain instances.

### WHY IS CSR IMPORTANT?

Corporations need to enhance their focus on social responsibility now more than ever. Simply put, ‘social responsibility’ refers to a business’s commitment to pursuing attainable and beneficial long-term goals for its employees and the broader community.<sup>27</sup>

Today, we have seen several successful firms use social responsibility to give back to society and express gratitude to their customers. This might manifest itself in the shape of projects, movements, or personal empowerment. Whatever form these corporate alliances take, there is no doubt that they benefit both the firm and the community. Additionally, it has been noticed that select corporations are taking the lead and pursuing humanitarian efforts ranging from road development to poverty alleviation.<sup>28</sup>

### CONCLUSION

The government has made it mandatory for enterprises to uphold corporate social responsibility as a legislative duty. This law rewards corporations for their dedication to sustainability, human values, and social responsibility.

<sup>21</sup> Rule 2(d) of Companies (CSR Policy) rules, 2014.

<sup>22</sup> Section 135(1) of the Companies Act, 2013.

<sup>23</sup> Section 198 (4) (1) of the Companies Act, 2013.

<sup>24</sup> Companies Act, 2013

<sup>25</sup> Ibid

<sup>26</sup> Section 8 of the Companies Act, 2013

<sup>27</sup> Ben & Jerry’s. “Socially Responsible Causes Ben & Jerry’s Has Advocated for.”

<sup>28</sup> Brugmann, J., & Prahalad, C. K. (2007). Co-creating business new social compact. Harvard Business Review, 85(2), 80–90.

Although it goes against Salmond's concept of rights and obligations, it is legally authorized and considered a right.

It is a form of legislation that respects social justice and takes a liberal viewpoint at the same time. This is, therefore, a sound law that takes into account various prospects. The argument is that they do so for sustainability's sake, but they would not be interested in continuing them even at this level without regulation. Alternatively, because the company pays taxes and wages, etc., such laws do not have to be implemented.

The law is based on the utilitarian concept of anything that serves the majority as legislation; likewise, it is a just law that is good for many because it benefits the majority. As a result, it becomes easier to access the statute's legitimacy by evaluating the legal personhood of the company and its rights and obligations.

To summarise, fundamental rights are ideally enshrined in all laws, and states are constitutionally required to give it effect. CSR efforts, on the other hand, cannot be optional and must be mandated.

The government may ensure that noncontributing companies are subjected to 'civil or criminal penalties'. Depending on the corporate objective, there may be punitive penalties. Additionally, any corporations that earn a profit should contribute based on a percentage of their net income.

A good plan is crucial for efficiently monitoring, utilising and carrying out CSR operations. Furthermore, it is critical to avoid corporations being used as a vehicle for 'scamming' under the pretext of CSR initiatives. Finally, strong business involvement in CSR initiatives will work as a firm complement to the government's arm for upholding fundamental rights.

