

CORPORATE SOCIAL RESPONSIBILITY AND HUMAN RIGHTS

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ABSTRACT

This article looks at the expanding relevance of the practice of Corporate Social Responsibility (CSR). Till lately CSR was largely viewed as a philanthropic activity of companies. This inspite of the fact that researchers like Carroll identified four dimensions of CSR as early as in the 1950s. These were the economic, legal, ethical and philanthropic dimensions respectively in the order of importance given by him. This article looks primarily at human rights which is fundamental to human existence and corporate social responsibility. It looks at the factors that have coalesced to bring the concept of human rights into the fold of CSR. It also high lights how human rights can no longer remain within the purview of the governments alone. The article looks at the United Nations Global Compact (UNGC) which is becoming a reference point for the understanding of this linkage. Beyond the UNGC the “Protect, Respect, Remedy” framework of John Ruggie is also designed to play a key role in this context. The article also looks at the importance of human rights and CSR in the Indian context.

KEYWORDS: Corporate social responsibility, Human rights, International guidelines, Role of Government.

“Human Rights are based on the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family. It can be considered as the foundation of freedom, justice and peace in the world.” The Universal Declaration of human rights in its preamble calls on "every individual and every organ of society" to promote and respect human rights, which, according to Professor Louis Henkin (2006), a leading international law scholar "excludes no one, no company, no market, no cyberspace". The universality of human rights is further emphasised in the words of Irene Khan, Secretary-General of Amnesty International who noted: "Human rights are rooted in law. Respecting and protecting them was never meant to be an optional extra, a matter of choice. It is expected and required. It should be part of the mainstream of any company's strategy, not only seen as part of its corporate social responsibility strategy."(2003). The strong views expressed here perhaps goes beyond the objective of this paper which is establishing the linkages between human rights and corporate social responsibility. Practically speaking it would be necessary to note the views of companies which were working with Mary Robinson, UN high commissioner for human rights (2002) to help mainstream human rights in their operations. They state "human rights are the most legitimate and universal framework for determining the social dimensions of business responsibility and issues of corporate governance”.

It has been well established that it is the obligation of the State to protect human rights. But when it comes to the operations of the huge multinational companies, the State may lack the tools to monitor and influence their activities. It is easy to understand the difficulty of the State to oversee or impose regulations on working conditions of overseas businesses in their supply chain. Quite obviously their jurisdiction remains within the national boundaries. Larger companies have also taken advantage of a more permissive or weakly enforced legal system in host countries. Besides in developing nations no effective public institution is in place which makes firms to take advantage of the asymmetry of power they enjoy (Reggie, 2005).

For more than hundred years the sphere of influence of the corporate sector has been widening, going beyond the economic. Today they are major actors in the political, social and cultural arenas. This explains why the world is beginning to believe that human rights are not an issue to be addressed by governments alone. Campbell (2006) contends that there are two limitations that apply to the duty of the state to protect human rights, i.e., a normative and a factual one. The normative limitation of the state stems from the fact that corporations have their own rights, as creations of the individuals who created them. Corporations themselves are the expression of one of the fundamental human rights, i.e., the “freedom of peaceful assembly and association” (UDHR, Article 20.1). Secondly because of the enormous economic clout that multinational corporations have they pressurise the local governments to create favourable climate and place fewest possible regulatory constraints on the conduct of business. Thus, “various states have made themselves into havens for firms seeking to avoid tax and banking restrictions, corporate disclosure and other regulatory regimes in their home country”(Cragg, 2000). Placing these facts in context researchers such as Lozano and Prandi (2005) have felt that companies should be considered as the most decisive actors determining how human rights are put into practice.

It has also been the view of researchers such as Campbell (2006) that the corporate sector in its “..... single minded pursuit of immediate economic profit is capable of gross human rights violations, against which their victims rarely have any recourse. Sweatshops, child labour and inhumane conditions of work are commonplace. Corporations, like governments before them, are the source of much promise and many threats to human rights on a global scale.”

The civil society, at least in the western world usually reacts quite promptly to these types of practices. It is this pressure and sharp reaction that has generated the debate on the inclusion of human rights in CSR. It is in this context that the Green paper (2005) brought out by the European Union becomes valid. This document says that it is CSR which has a strong human rights dimension particularly in relation to international operations and global supply chains that is very essential in today’s corporate world. Additionally several commentators have said that “the moral face of globalisation” could very well be the concern for human rights shown by the corporate sector.

With so many incorporations to CSR it would be appropriate to find out how the world views CSR. By the 1950s itself Prof Carroll gave the four dimensions of CSR namely the economic, legal, ethical and philanthropic. Thus values such as human rights were emphasised upon almost sixty years ago. Dahlsrud (2006) analysed 37 definitions most widely used from 1999 to 2003. He used content analysis to present these definitions with the dimensions of CSR. He lists

stakeholder management, social responsibility, environmental responsibility and economic responsibility as the most often used dimensions in defining CSR. He also lists the most frequently used definitions of CSR. Some of them can be quoted here to try and place human rights in the context of CSR. World business council for sustainable development in 2000 defined CSR as “the continuing commitment by business to behave ethically and contribute to the economic development while improving the quality of life of the workforce and their families as well as the local community and society at large”. Business for social responsibility (2000) defines CSR as “Business decision making linked to ethical values, compliance with legal requirements and respect for people, communities and the environment”. Most researchers and practitioners who have defined CSR and stressed on its social dimensions either overtly or in a covert sense refer to human rights.

Tracing the relations between CSR and Human rights researchers such as Lozano and Prandi (2005) have identifies trends that have pushed human rights into the sphere of CSR. The most compelling have been the changes that have been propelled by globalisation. Internationalisation of business has put in place practices such as off-shoring which have forced companies to face issues which were never evident before. Dealings of the western world with Asian and African markets, which have increased manifold, have put human right issues in the main business discussions of companies. They have realised that they can no longer be mere economic players in the host countries. The socio-environmental concerns of these and other poorer nations have made companies take human rights very seriously.

For long documents related to the human rights violations both of the United Nations and the voluntary sector have projected the relation between companies and human rights. They state that companies have selectively adopted the lowest standards be it environmental, social or human rights. Despite their tremendous contribution to development of nations, companies have not been able to escape the accusations of poor labour standards, suppression of labour rights or the destruction of ecosystems. Across the globe companies have faced public outcry due to these occurrences. These events have made companies to rethink their strategies. A new frame of reference is being pushed forward by vigilant citizen groups as well as consumer activists who have pushed for incorporating human rights issues into company agendas. All of these factors have coalesced to place human rights into the context of CSR.

During the past few decades a couple of companies have started linking human rights with their CSR strategy. Human rights have in fact found mention in their policy statements as well as criteria for evaluating themselves besides being mentioned extensively in their global reporting documents.

To help all companies across the globe to adopt the right policies, the United Nations proposed the UNGC (United Nations Global Compact) with the primary intension of setting standards that the business world could follow. There are ten principles set as part of the UNGC (annexure #1). They relate to the most important international agreements in the areas of human rights, labour and social standards, environmental standards and anticorruption. These expect companies to support and respect the internationally acclaimed protection of human rights within their sphere of interest and they are expected to ensure that they are not complicit in human rights abuses.

The global compact suggests that companies can follow a series of practical steps in integrating human rights with their CSR strategies (2009). These are-

- The identification of issues relating to human rights that a company can and must confront. These are relative to the sector and the country to which they belong.
- Carry out a policy based on international instruments
- Develop mechanisms for implementing these policies
- Develop training modules for staff on corporate principles on human rights issues
- Develop internal and specialist capacity on human rights
- Devote human resources for the promotion and the surveillance of this issue at the company premises
- Develop mechanisms of internal audit on this issue
- Establish mechanism for independent verification and above all publish Communication of the results.

Since mid 2000, over 8,700 participants and stakeholders from around the world have made a commitment to implement the principles of UNGC and communicate their progress to their own stakeholders on an annual basis. The failure to communicate progress has led some of them to being de-listed – 400 companies have been de-listed till 2009. Over 2,300 non-business stakeholders, including civil society organizations, labour unions, business associations, foundations, communities and academic institutions are currently involved. One of the things that make the Global Compact unique is that more than half of its business participants come from developing and emerging economies.

To further strengthen the human rights and business interphase, a special representative was appointed by the Secretary General of the UN to arrive at guidelines to ascertain the role of the State and Corporate and in the context of human rights. The Human Rights Council endorsed these Guiding Principles in its resolution 17/4 of 16 June 2011. In the introduction to the guiding principle the special representative John Ruggie who calls it the “Protect, Respect and Remedy framework” states that it rests on three pillars.

The first is the State’s duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial. Each pillar is an essential component in an inter-related and dynamic system of preventative and remedial measures. The State’s duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse. (Annexure #2)

These observations seem to clear the controversies related to the role of the state and the role of the companies and have clearly stated that human rights have to be listed as one of the social responsibilities of corporations. More importantly the guidelines state the redressal available to the victims of human rights abuses. Considering the recency of these guidelines it would be important to follow the impact it is likely to have on the human rights agenda of companies.

CSR AND HUMAN RIGHTS IN THE INDIAN CONTEXT

Notwithstanding the changes since 1991, the constitution of India clearly states that we are a Socialist Democratic Republic committed to furthering Social Equity. Human rights cannot be a marginal issue if we look at the various traditions and practices in the country. In the context of companies and the record of upholding the traditions of human rights we have had a very poor record. No researcher can ever forget the happenings at Bhopal which remain the biggest environmental disaster in the world. An Amnesty International report of 2004 alleges that nearly “30% of claims for injuries have been rejected . . . around 16,000 claims [remained] outstanding, and most of the successful applicants . . . received minimal amounts of compensation.” The jail sentences for the seven Indian executives involved—two years being the maximum for criminal negligence in India—seem exceedingly small, and no foreign executive will ever be called to account “.

Similar is the case of Dhabol plant of Enron where peaceful protesters were attacked outside the plant’s gates. These two prominent cases stand out in public memory. The issues related to the child labour in several of Indian industries such the carpet industry highlight the rampant violation of human rights. The other major issues related to human rights in the corporate world as stated by the institute of human rights and business (2012) include

- Combating casualisation of labour and erosion of workers' rights.
- Providing legal redress for business participation in human rights violations.
- Ensuring that companies respect human rights in cyberspace.
- Recognising the importance of women’s rights in business.
- Strengthening community consultation.
- Engaging investors on the need for human rights.
- Linking the fight against corruption to corporate respect for human rights.
- Operating responsibly in high risk environments.
- Addressing the negative impacts of land acquisition and use on communities.

This list can go on but what is essential here is to state that the CSR agenda of corporate India has every cause to include human rights as a business strategy. These issues need to be highlighted and precedence set for the rest of the world to emulate. As the problems of the nation are in many ways unique, solutions that corporate India should seek have to be customised to the conditions present in the sociocultural milieu.

CONCLUSION

Many improvements have been noted in recent times to uphold human rights in companies. Instances such as institutional development like codes of conduct, ethical committees and audits are increasingly used. With the advent of newer guidelines from the United Nations, the demarcation between the roles of the state and the corporate should be clear. There can be no ground for confusion. It also seem that the traditional perception of the role of the State alone in protecting human rights seems obsolete with prominent players such as the corporate sector showing willingness to contribute with effective policies and practices.

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Appendix #1

The 10 Principles of the Global Compact

Human Rights

Principle 1 Businesses should support and respect the protection of international human rights within their sphere of influence;

Principle 2 Make sure they are not complicit in human rights abuses.

Labour

Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4 The elimination of all forms of forced and compulsory labour;

Principle 5 The effective abolition of child labour; and

Principle 6 The elimination of discrimination in respect of employment and occupation.

Environment

Principle 7 Businesses should support a precautionary approach to Environmental challenges;

Principle 8 Undertake initiatives to promote greater environmental responsibility; and

Principles 9 Encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10 Businesses should work against corruption in all its forms.

Appendix #2

"Guiding Principles on Business and Human Rights:

Implementing the United Nations 'Protect, Respect and Remedy' Framework", They were developed by the Special Representative of the Secretary-General(John Ruggie) on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31), which also includes an introduction to the Guiding Principles and an overview of the process that led to their development.

The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

The State duty to protect human rights

A. Foundational principles

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations

B. Operational principles

General State regulatory and policy functions

3. In meeting their duty to protect, States should:

(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;

(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;

(c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

The State -business nexus

4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions. Supporting business respect for human rights in conflict affected areas

7. Because the risk of gross human rights abuses is heightened in conflict affected

areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Ensuring policy coherence

8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts

10. States, when acting as members of multilateral institutions that deal with business-related issues, should:

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;
- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

II. The corporate responsibility to respect human rights

A. Foundational principles

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business

enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute

B. Operational principles

Policy commitment

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Human rights due diligence

17. 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. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;

- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

- (a) Effective integration requires that:
 - (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise
 - (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.
- (b) Appropriate action will vary according to:
 - (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
 - (ii) The extent of its leverage in addressing the adverse impact.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Remediation

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Issues of context

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable

III. Access to remedy

A. Foundational principle

25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

B. Operational principles

State -based judicial mechanisms

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. State -based non-judicial grievance mechanisms.

27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Non-State -based grievance mechanisms

28. States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.