

Corporate Social Responsibility and Fundamental Rights[×]

By

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1. Corporate social responsibility has been statutorily imposed by the Indian Companies Act, 2013¹ on corporates subject to certain limitation laid down. Corporate social responsibility² is to involve the corporates to participate in social and developmental activities relating to society as a whole. It requires certain corporates³ to spend 2% of their profits to spending on CSR activities and corporate participation in such activities would be a means to achieve sustainable development.
2. The VII Schedule of Sec 134 which gives a list of CSR activities to be undertaken by the corporates, indicates that all the activities are related to Fundamental Rights under Art 21 of the Constitution which provides for right to life or personal liberty, though it is not so specifically stated. This can be a possible conclusion arising out of the reading of judicial decisions

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¹ See for details Sec 134 and Schedule VII.

² Corporate social responsibility is referred to as CSR throughout this paper.

³ See for details see Sec 135 (1) of the Indian Companies Act, 2013.

relating to Art 21 together with CSR activities as enumerated in the VIIth Schedule.

3. Right to life under Art 21 includes the right to live with human dignity and all that goes with it namely⁴:-

a) basic necessities of life, such as nutrition, clothing and shelter....., protection of health,⁵ right to medical aid,⁶ provision for timely medical treatment in Govt., hospitals,⁷ that the State to ensure that nobody dies of starvation⁸ and the right to water imposing a duty on the State to provide clean drinking water to its citizens.⁹ A summary of the above decisions of the court not only explains the ambit of Art 21 but also a clear evidence of what is contained in VIIth Schedule of Sec 134 of the Indian Companies Act, 2013 listed as number one of CSR activities of corporates which states thus:- “To eradicate hunger, poverty and malnutrition, promoting healthcare, including preventive healthcare, sanitation and making available safe drinking water”¹⁰ In other words, CSR activities are to serve as the supporting arm of the Government in giving effect to

⁴ Francis Coralie Vs. Union Territory of Delhi, AIR 1981 SC P.746.

⁵ Bandhan Mukti Morcha Vs. Union of India, AIR 1984 SC P.811.

⁶ Kirloskar Bros Ltd., Vs. ESI Corporation (1996)2 SCC P.682.

⁷ Paschim Banga Khet Mazdoor Samity Vs. State of West Bengal (1996)4 SCC P.37.

⁸ PUCL Vs. Union of India (2003)9 Scale P.835.

⁹ A.P.Pollution Control Board Vs. M.V.Nayudu (2001)2 SCC P.62.

¹⁰ See for details VII Schedule – Note I.

fundamental rights more specifically to Art 21 of the Constitution.

4. 'Right to Education' is recognized in the 'right to life'.¹¹ Art 21A specifically provides for right to education as a fundamental right which consists of the right to free education upto 14 years, inspite of the fact that the right is subject to limits of economic capacity and development of the State¹² and educational facilities¹³ and others. A careful perusal of the decisions of the courts leaves no doubt whatsoever that the VIIth Schedule of CSR activities has a bearing on the 'right to education' as a fundamental right which reads thus: "promoting education, including special education, enhancing vocation skills specifically among the children, women, elderly and the differently abled and livelihood enhancement projects".¹⁴ This also leads to similar conclusion as that of the CSR activities relating to Fundamental Rights.¹⁵

¹¹ Unni Krishnan Vs. State of AP (1993)1 SCC P.732.

¹² Ibid. P.765.

¹³ Supra Note 5.

¹⁴ See VII Schedule Note I.

¹⁵ See Para 3 of this Study

5. The right to life has been expanded to include all that giving meaning to man's life such as tradition, culture, heritage and its protection to the fullest measure,¹⁶ right to shelter,¹⁷ (which includes the necessary infra-structure to live with human dignity), right to reasonable accommodation to live in,¹⁸ and quality of life for residents of hilly areas where the access to the road itself treated as access to life.¹⁹ All these rights judicially declared rights relate to Seventh Schedule of the listed items mentioned as CSR activities of the corporates which reads thus:-

“Protection of national heritage, art, culture including restoration of building and sites of historical importance and works of art, setting up of public libraries, promotion and development of traditional arts and handicrafts”²⁰

6. Right to unpolluted environment and preservation and protection of Nature's gift has been held as inclusive of right to life.²¹ This right includes a variety of rights such as protection of wild life, forests, lakes, ancient monuments, fauna, flora, unpolluted air, protection from noise, air water pollution, maintenance of

¹⁶ Ramsharan Antyanuprasi Vs. Union of India, AIR 1989 SC P.549.

¹⁷ Gauri Shanker Vs. Union of India (1997)1 SCC P.444.

¹⁸ Shantistar Builders Vs. Narayan Khimalal Totame, AIR 1990 SC P.630.

¹⁹ State of UP Vs. Umed Ram, AIR 1986 SC P.847.

²⁰ See List VII Schedule Item V of the Indian Companies Act, 2013.

²¹ M.C.Mehata Vs. Union of India (2006)3 SCCP.399.

ecological balance and sustainable development.²² The right to clean environment may have precedence over economic interests of society.²³ Employees of a State Corporation affected by ill-effects of X-ray radiation were entitled to appropriate relief to be granted by the court.²⁴ These declared rights can be traced as the basis of CSR activities listed²⁵ as follows:-

“Ensuring environmental sustainability ecological balance, protection of flora and fauna; animal welfare, agro-forestry, conservation of natural resources and maintaining the quality of soil, air and water”.²⁶

7. Right to livelihood is included in the right to life,²⁷ and right of an agriculturist to cultivate is a part of fundamental right to livelihood.²⁸ This is based on the concept that no one can live without the means of living. Livelihood enhancement project is visualized in the item (II) of CSR activities. In other words CSR activities should promote livelihood projects and it is through that one can be ensured about the right to lead a life consistent with human dignity. Item VII of CSR activities relate to

²² Ibid.

²³ M.C.Mehta’s case, AIR 2004 SC P.40 16

²⁴ Bharath Electronics Ltd.,(M.K.Sharma) Vs. Bharath Electronics Ltd., AIR 1987 SC P.1086.

²⁵ Schedule VII Scheme Note 20.

²⁶ See item No. IV of Seventh Schedule list of Indian Companies Act, 2013.

²⁷ Delhi Development Horticulture Employees Union Vs. Delhi Administration, AIR 1992 SC P.789.

²⁸ Dalmia Cement Ltd., Union of India (1996)10 SCC P.104.

programmes for the benefit of armed forces veterans, war widows and their dependents. Item VIII provides for contribution to Prime-Minister's National Relief Fund or any other Fund for socio-economic development activities of the Govt., which includes by necessary implication the right to livelihood without which no development could take place, as the CSR activities does not convey any sense when the individual does not survive.

8. In conclusion, the fundamental rights are made specifically enforceable and the States are under constitutional obligation to give effect it. However, CSR activities cannot be optional and be made compulsorily enforceable.²⁹ The Indian Companies Act, 2013 be amended to give effect this.

Further, contribution to CSR activities should be made compulsory as funds are needed for implementing the activities. The Indian Companies Act should be amended to give effect to this suggestion. The provision should be so made that non-contribution or failure to contribute should result in 'civil or penal' consequences depending on the corporate intent.

²⁹ CSR list should contain an additional item to that effect.

Further, all corporates, getting net profit should contribute according to a percentage proportionate to their net profits. Even 0.1% also be made as a contribution. Unless this happens the estimated amount required i.e., Rs.20,000/- crores for CSR activities by the Indian Institute of Corporate Affairs estimate, may not be realized.

Further, an effective mechanism must be provided for monitoring, utilization and proper execution of CSR activities is absolutely necessary in order to prevent the corporates becoming an instrument of 'scam' in the name of CSR activities.

Finally, an effective role of corporates in carrying out CSR activities will be a strong and dependable extension to Government's arm in giving effect to the Fundamental Rights.