

Status of Corporate Responsibility in India 2019

Welcome – Semeda Steves

Overview: The Status of CR in India 2019 Report

Overview and Key Highlights: Tarini Shipurkar, Dheeraj and Pradeep Narayanan

Q&A: Rijit Sengupta

This is the 4th edition of Status of Corporate Responsibility in India. The report is developed from a case study perspective, looking at ‘practice’ data of companies which illuminates transgressions and violations of various laws and human rights standards.

Highlights from the data include rising levels of contractualisation in the private sector, with the automobile sector having the highest level of contractual workers. There is a lack of data on caste, with only 39 of 300 companies providing data on it. There is not good data on grievances, with complaints not well recorded. There is also underspend in terms of CSR (as defined by the 2013 Companies Act) with only 57% of the prescribed amount being spent.

There are some positive developments, however. Now, according to the new PWD law, public sector undertakings need to make 4% of their positions available to PWDs. Significantly, as shared by Viraf Mehta, we are on the cusp of a mandate from the MCA that would vastly multiply these numbers of businesses reporting on the revised National Guidelines.

One of the reasons why a company does not report, observed Rijit Sengupta, is perhaps because when they are in a certain supply chain they don’t look beyond Tier 1; companies are not always able to look sufficiently inwards and downwards into the value chain.

Clearly, human rights due diligence is a new area of work for many companies; many businesses have not been able to develop an institutional methodology to do their due diligence. As intimated, challenges begin with the core workforce: 1 in every 2 companies of the top 300 are now having a reduced workforce on their rolls. Contract labour is increasing at a faster rate than permanent employment. Companies have started using the word human rights more than many of us now

Launch of ‘Status of Corporate Responsibility Report 2019’

Role of Businesses in Electoral Funding Processes: What the Future Looks Like - Professor Jagdeep Chhokar

It should be recognised that business does have a stake in politics. After all, businesses needs a stable environment to do business in. If they do not know what will happen tomorrow they will find it hard to plan what to do; they should, therefore, be interested in politics and support political activity in the interests of political stability in the country.

In the year 2013, the government introduced the scheme of electoral trust through which companies can donate to whom they like; since a company should not be giving money directly. This led to a situation where the trusts were formed by the companies and the donations were given to the political parties.

Jagdeep said that we started looking at these trusts and have realized that corporates have a big role to play in electoral funding. There was one example of a trust with a mysterious name which had been giving to the BJP and to Corporates. Jagdeep and colleagues found that 3 companies had donated to this one trust. We discovered that there was a company registered in the UK and that this company owned 3 subsidiaries all of which gave to this electoral trust which gave money to Congress and BJP. We looked at this and found that the 3 companies are in violation of FCRA.

There is also a system of electoral bonds which has been introduced which preserves the anonymity of donors – the bank will know but this would otherwise be kept secret. Now a company can give 100% of its profits. Corporates now have an avenue for donating any amount they want to political parties. Now, indeed, even if a company does not give profits it can give to whoever it wants. So the nexus between the corporate world and the political world is very tight. Corporates cultivate relationships they want for personal benefit; not for industry benefit; not for economic benefit; not for the good of the country.

The data of the year 2017-2018 disclosed that a company donated rupees 210 crore to political parties out of which 205 crore was donated to a single party. Earlier the companies were mandated to disclose the name and the amount of money donated to any political party now that mandate has been dissolved. He then said “The companies in India whether socially responsible or not cultivate the parties for their personal benefits”. He raised questions like – “Can SBI refuse to give information to the RBI and further can RBI refuse to give data to the concerned ministry”?

As part of a task force we recommended that any donation must be given by cheque; but this was not agreed to. He then shared that the future of role of business and electoral bonds does not appear to be bright. By the time businesses realize the folly, said Jagdeep, I don't know whether they will exist or even whether we will exist.

Panel 1 – How Responsible are Businesses?

Moderator Remarks - Amita Joseph

Amita said she wanted K.Biju, who has been part of the Plachimada struggle against Coca-Cola, to speak instead of her, recognising the importance of grassroots voices

K. Biju

He shared his experience on fighting case against Coca Cola. A complaint was also drafted as per the SC/ST Act against the corporate; the government was not ready to take any action. With struggle an FIR was later filed and the SP gave a report which was found in favor of Coca Cola. We have also, he said, asked the government to pass a bill granting damages to the people affected by the industry.

Impact of Business Practices on Children's Lives - Dr Vandana Prasad

She discussed the impact of businesses on children's health and presented a framework for understanding these impacts which recognizes children's multiple roles:

- Children as consumers
- Children as labourers
- Children as physically present (eg on a construction site, near a factory – and so potentially impacted)
- Children as beneficiaries

She commented on how, when we informalize labour, social security is the first thing to fail. She added the business is treating labourers in a way which is leading to evasion of all kinds of regulations – citing Coastal Regulation Zones (CRZs) as an example.

Vandana said that it is obvious that companies are exploiting low-income consumers – you can find soft drinks everywhere, for example.

She noted that, within civil society organisations, there is considerable scope for conflict of interest - such as taking funds from companies whose products are harmful to children. She said that it's important NGOs have some non-negotiables in place before partnering with companies.

She further shared that there is a need for:

- a. An ethics committee,
- b. Advocate against CSR,
- c. Need of government to take steps for health and nutrition from their own pockets.

Employability – A Critique of Skill India - Prerit Rana

Prerit has been working in the skilling field since 2009. He offered three insights based on his experience:

- 1) India does not need “Skill India.”
- 2) The share of education in CSR is one-third. Within that, (noting that ‘skilling’ is counted as education under CSR) the share of expenses on skilling is increasing at the cost of school education
- 3) None of this is going to happen

We need to consider: does industry even require skilled manpower or people who will work without raising their voices? In reality, if we look at the garment industry for example, there are two main kinds of jobs: static jobs and progressive jobs. For stitching work, there is no skill acquisition over time from the point of entry. For other jobs, there is a requirement to progressively acquire skills in order to be able to do them.

So for many – including many women – whilst we may skill them, this might not make any difference to their employment. Whereas if we provide them with a day care centre, they will start working.

He then asked what personal factors are required for success in the workplace. These include dedication, discipline, creativity, self-regulation, communication skills and the ability to work in a team. These skills, he says, which can be nurtured through good schooling. So, if you want to make India employable, he says, we need *school India*, not skill India.

Consumer Rights - Professor Sri Ram Khanna

Professor Khanna said he agreed with the remark shared earlier – we don't need CSR in India; rather, we need laws – but even if we have laws, do people obey them? People are not bothered about implementation of laws but they are interested in breaking them.

Unless someone is scared of the consequences, he says, they are not likely to comply. He further said that self-regulation without laws cannot take place: if there are laws, there will be self-regulation. It's not easy, he said, to fight against corporates, so our best bet is to have good laws and public-spirited lawyers.

He then said there is good news, which is the recent amendment in the "Consumer Protection Act" which now imposes fines on advertisements that are misleading in nature and also imposes fines on the celebrities who do such advertisements. He added that consumer rights are going to be respected if the laws are strong. He further said that he believed the great majority of cases between consumers and companies can be adjudicated by an intermediary.

He regretted that today in India people cannot fight for justice as it has become so expensive – 90% of India's population can't afford it. He then shared that money has become very important now even for filing petitions, people who have money can only benefit from the laws those who do not have money cannot file petitions. He said businesses are focusing in money making entirely, he the cited example of Maggi case where the Mumbai High Court and then consequently the Supreme Court upheld that Maggi does not contain any ingredient that is harmful because they pointed out that the laboratory where the testing was done was not well equipped.

He stated that it is a life skill to know about consumer rights and to become a smart consumer.

State and Business Complicity - Henri Tiphagne

He started by mentioning challenges civil society are currently facing but he said that there is still a lot of hope that a lot of work can be done. He said that businesses have also captured academia, as well as having captured the State. To illustrate the latter point, he cited the example of an interaction with a District Collector in Jharkhand in which the Collector used language such as "terrorist" and "urban naxal."

He said the voluntary guidelines and the 2 percentage of CSR does not matter anymore it is thus the continuous fight that is still very important.

Even the NHRC, he says, has been captured by business. He shared the example of Sterlite case, where the NHRC has still not disclosed the findings of their research team who had undertaken a ground-level study into it. This, he said, was the state of affairs of the NHCR: the body that is set up to protect human rights but instead acts to ensure that Vedanta is protected. It was also shared by him that NHRC only stated: a.) Compensation was granted to the victims, b.) an Inquiry Commission was set up, c.) Normalcy has been achieved. However, he said, nobody knows the meaning of "normalcy".

He added that nexus of businesses and the state has reached at a stage where courts are part of the nexus. There is thus a need to break the nexus by bringing issues on the ground to the fore.

Panel III – Reality Check

Moderator Remarks – Tom Thomas

This session, Tom mentioned, is called ‘reality check.’ The talks in the previous session, he said, have given us a good enough slice of reality. At the end of the day we need to be able to connect all of this. We need to ensure that when we talk about corporate responsibility we can put it in the context of the country as a whole, in the context of our democracy.

Due Diligence Status of Asbestos Industry - Pooja Gupta

Pooja Gupta said that whilst asbestos was banned in India in 1956, the country still imports raw asbestos fibre from countries such as Russia, Kazakhstan, China and Brazil. She highlighted that close to 50 per cent of the registered asbestos plants in India do not have even the basic reporting compliances in place.

She remarked that the National Action Plan (on asbestos) is not implemented in many plants and has been challenged by the entire asbestos industry. A few civil society organisations raising their voices against such acts will not cut it, she stressed, there is a need for civil society and other allies to collaborate and plan a large-scale challenge to the asbestos industry. We need greater levels of public awareness.

Citing examples of some of the violations, she spoke about the dangerous waste being dumped in open lands where children then play with this waste. In many cases, she highlighted, workers are unaware they are handling hazardous substances such as asbestos. She remarked that while the Government registry on cancer does not include any cases caused due to asbestos, field interventions and interviews prove otherwise – there is a high occurrence of cancer among workers and others exposed to asbestos. With regard to companies, she highlighted that not only is due-diligence not done, in many cases even compensation is not given to the affected workers at asbestos plants. According to Pooja, funding is an important aspect that shapes even outcomes of research, she highlighted that many recent studies have been partly funded by the asbestos industry therefore the findings [misleadingly] suggest that certain levels of asbestos are not dangerous.

Affirmative Action in Business - Beena Pallical

Speaking on the topic of Affirmative Action in Businesses, Beena highlighted that “there is a lot of public in the private”. The involvement of the public sector in the private sector is huge, the hefty tax exemptions to corporates and the many cases of businesses acquiring the lands of adivasi and Dalit groups being a few examples of this enmeshment. Many of the new schemes that are public sector schemes in fact have a large share of private funding.

She said that while many steps are taken with the thought that businesses will provide employment opportunities to different communities in the surroundings, in reality, no effective progress is made. There is discrimination in the market at every stage, with the stratified nature of the chain making

the role of middle-men pivotal. This makes it tough for those involved in the actual process to gain from the market. This access is particularly difficult for those from marginalised communities. There is a need to ensure that marginalised sections of the community get access to the market and become part of the supply chain which is accounted for.

Referring to discrimination in recruitment, she cited a study by Thorat *et al.* that found that the likelihood of a person from a dominant caste to get a call for an interview was much higher as compared to a Dalit or Muslim applicant with the exact same credentials. She remarked that the corporate use of “merit” restricts access to marginalised groups, but there are many studies which highlight that having a diverse workforce has a greater output.

To sum up, according to the report, citing the absence of representation from Dalit communities on boards of Indian companies, she highlighted that there is a need to push for strong policies and laws that call for a reservation for marginalised groups in the private sector.

Environment and Business - Lara Jesani

Lara highlighted that businesses have a natural interest in the environment as it is needed for their own purposes: land, water, etc. Businesses, she said, run on exploitation of the environment which is why they are very interested in environmental policy. Therefore, right from the start there is an imbalance of interests, which is also why there is a lot of efforts by businesses to influence environmental regulation etc.

Stressing on the rampant dilution of environmental laws, she stated that ever since 2014 there has been a concerted effort by the Government to change laws. In addition to this, close to 230 clearances that were pending for many years, were all cleared.

Environmental laws, she said, are an important part of making companies accountable. Giving examples, she emphasised that there has been a “complete hollowing out of environmental governance”. A few instances she drew attention to were: (i) how most cases in the National Green Tribunal end in the setting up of committees that most often release reports that are pro-State; (ii) the human rights being violated in the first Bullet train project in India, which got a clearance after JICA came to visit; (iii) the development of many new projects, including the building of roads, in eco-sensitive areas across the country; (iv) the dilution and change in laws, in order to favour companies. This hollowing-out, she pointed out, was occurring due to two main reasons. The first is the lack of proper implementation of policies and the second, the dilution of policies that are there. She remarked that Institutions have been compromised and the tools that were earlier used as safeguards are now being diluted. Citing the complicity of business, she said that in after a CII meeting, 60 dilutions were recommended. She concluded that “it is in the interests of the corporate to dilute the laws.”

She also raised the concern that once a law has been diluted it is very difficult to strike down that dilution. Whatever victories we have had in the recent years, she says, are tiny, miniscule and also not taking jurisprudence forward. As a call for action, Lara remarked, “we don’t want CSR, we want our laws back and we want them implemented.”

Business and Inequalities - Amitabh Behar

He pointed out that there has been a power shift to the private sector and, with that shift, there has been a significant increase in inequality. Data from an Oxfam study on Inequality, reveals that the wealth of the top 9 billionaires in India is equivalent to the wealth of the bottom 50 per cent of the population. Referring to another “killer fact”, he revealed that the revenue of Walmart was more than that of Belgium (the EU country with the 6th largest GDP). In fact, Walmart, were it a country, would have the 25th largest GDP in the world. On a similar note, he raised a question regarding the operations of Amazon, as he had recently learnt that Amazon does not pay any tax. Bringing the focus back to some fundamental questions, he stated that the idea of the State has now shifted again. Earlier it was a welfare state, then it was a regulatory State; now it has become a “predatory State” complicit with companies and their ways of working.

Sharing findings from a recent study by Oxfam on tea gardens in Assam, he highlighted that less than one per cent workers have safety equipments and that workers did not have access to any toilets in the tea gardens. He remarked that if a business does not look at the entire supply chain it cannot be a responsible business. We need to move beyond responsible business guidelines, in fact, to mandatory human rights compliance.

He highlighted that in such times, when the idea of democracy itself is being contested, there is a need to weave the varied struggles together – to bring perspectives from Dalit scholars, environmental activists, etc. all together in one concerted effort towards change. Ultimately, we need to look again at the social contract [so at the model of governance we have] and at democracy itself [and our overall economic, social and political arrangements].

Business and Human Rights: Sufficiency versus Material Inequalities - Prabhir Vishnu

In a number of other countries, economically well-off people stand up against sectarian forces. There they may be plutocracy (government by the wealthy) but it holds of sectarianism. That doesn't happen here. Here, there has been an infusion of sectarianism in our plutocracy. Our silence, in the midst of this, is financing a policy climate that legitimates denial of human rights.

Rights were – back in 1940 – to be delivered by the welfare State. There was a view that capitalism required democracy to survive. The human rights movement emerged to save the individual from the State.

We know that human rights is compatible with wealth inequality. We note too the contemporary dominance of sectarian plutocracy, the grafting of sectarianism onto an already authoritarian neoliberalism, does not stop welfare measures.

Our fault lies in our failure to cry foul – our powerlessness in checking neoliberalism's advances.

Discussion points and observations

- Do we need to re-establish the State?
- Or is a transformation of the State needed?
- How can we reclaim lost spaces?
- We should conduct a study on Government's farming out of social responsibility to corporates
- We can have a market (that is fine) but not a market society: we need to reinvisage the State as controlling the market
- In India, we shouldn't be ashamed about talking about socialism again: about a new philosophy in which we limit the amount of income people can get
- We are having doubts about representative democracy
- We need to look at some more fundamental questions of how the economy and society is being organised
- We do need trade unions – civil society needs to work with them and move with them
- Environmental defenders are the most at-risk people in the country
- Judicial corruption is at an all-time high
- We are asking for mandatory compliance – focusing on compliance is very important
- Regarding demonetisation and whether its positive outcomes are appropriately acknowledged: we should make financing of political parties transparent – this will help us achieve what demonetisation is trying to achieve