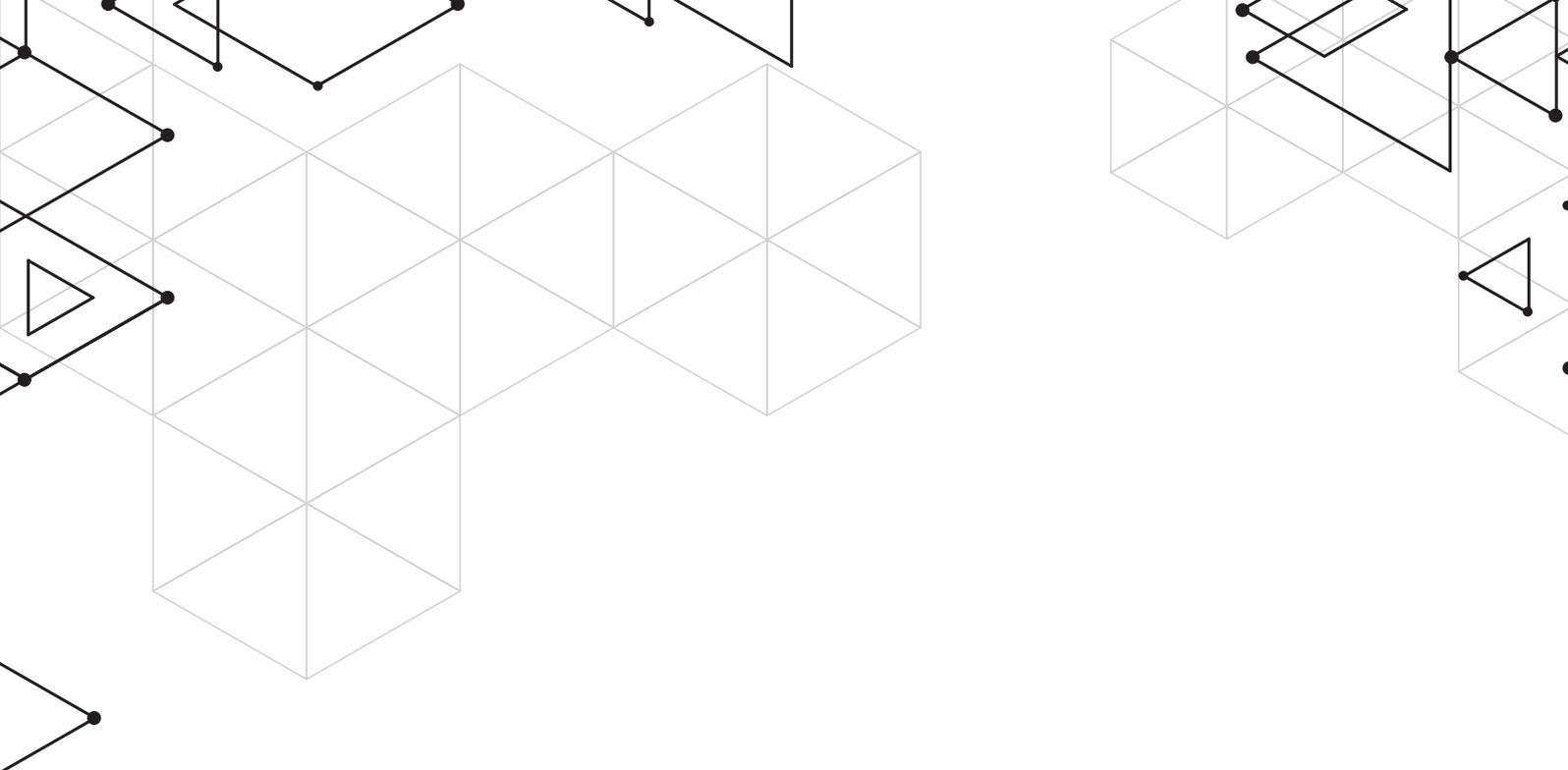


CSR in India, 2016



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Guideline for citation: *CSR in India, 2016*; Praxis; 2016



CSR in India, 2016

Preface

In recent times, there are a multitude of annual Corporate Social Responsibility (CSR) reports that are being published by a number of organisations. Various companies have also instituted awards for CSR. Invariably, these tend to focus on initiatives of companies on wider social and environment development, beyond the scope of their core business. In these scenarios, a number of companies, that are otherwise not responsible in their core operations, seem to be taking the limelight by being able to invest a minor part of their profit on charity.

Companies have to be responsible in their core business. Full Stop. The National Voluntary Guidelines on Social, Economic and Environmental Responsibilities of Business, 2011 remain an umbrella document for businesses to measure their commitments. CSR in India, 2016, is a report, which looks at CSR, much beyond what other CSR reports have been looking at. It focuses on the core business of the companies, that is, how profits are made, rather than what they are doing with two per cent of their profit.

The report is based on information available in the public domain, largely put across by companies themselves through their business responsibility reports, annual reports and annual CSR reports.

The report has become possible because of honorary and outstanding efforts of the Corporate Responsibility Watch member-organisations and individuals. We would like to place on record our appreciation for Change Alliance, Business and Community Foundation, Praxis Institute for Participatory Practices, and Partners In Change for making this report possible.

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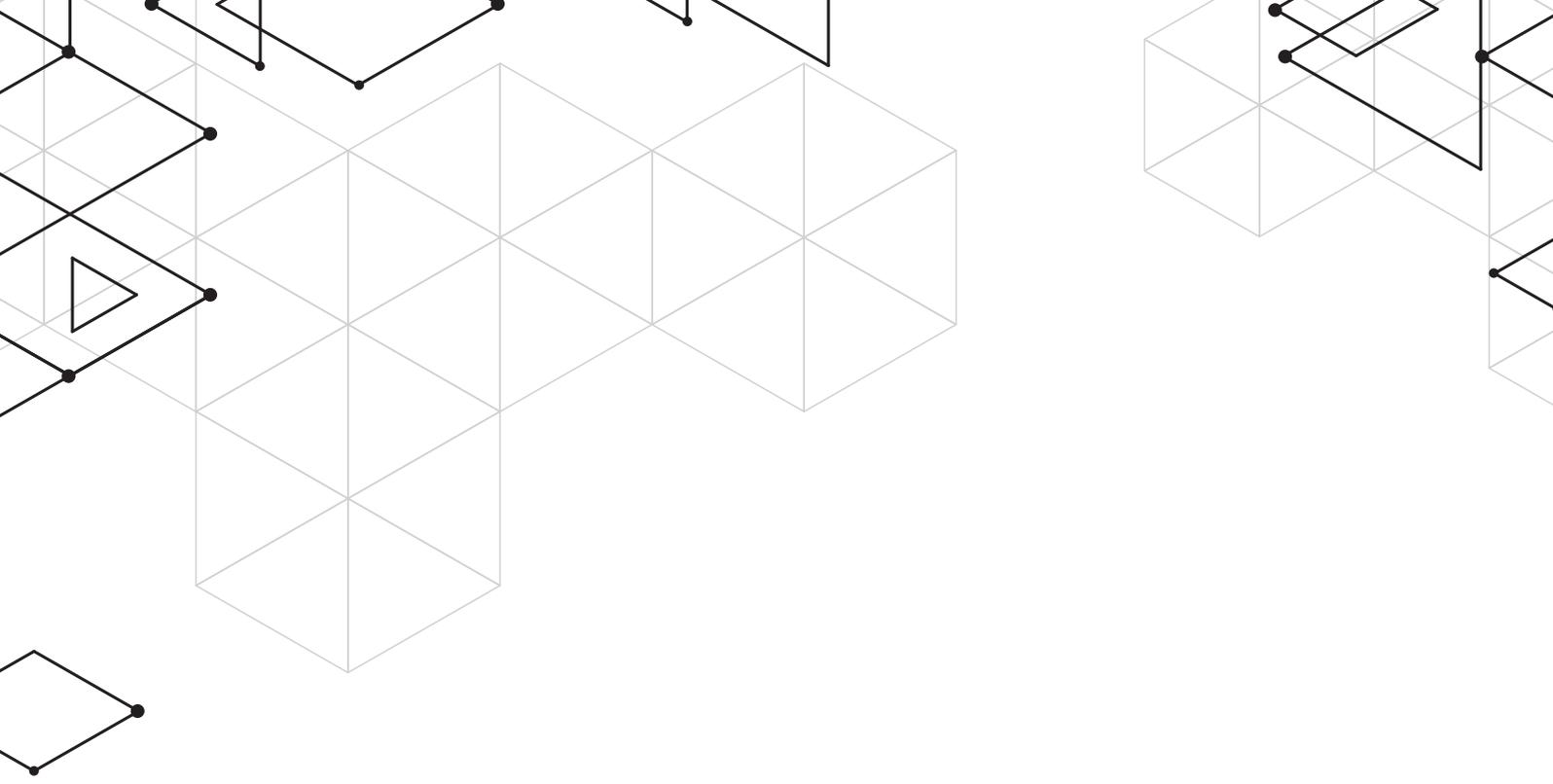
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PART 1:

The Big Picture

Chapter 1:

Corporate Social Responsibility: a charitable proposition?

- Dheeraj¹, Amita V. Joseph², Shireen Kurian¹, Sowmyaa Bharadwaj¹ and Pradeep Narayanan¹

The owner of an erstwhile airline company donated approximately three kilograms of gold to one of the richest temples in the country and this was reported with much fanfare in the media. It was at a time when the airline company was not 'responsible' in its own core business: it was failing to pay salaries to its employees. But it was said that by making the donation, the owner was trying to unburden himself of this guilt. A simple question to then ask is whether charity can wash off all guilt? Is it not true that today, a number of companies are claiming to contribute to community development via Corporate Social Responsibility (CSR), while in their core business they are probably not willing to spend on practices that protect important stakeholders - such as workers and communities? Is this not a form of unburdening and antithetical to the idea of a corporate's social responsibility?

This brings us to another core question then, on what exactly is understood by the term Corporate Social Responsibility. In principle, it implies doing business in a socially responsible way. It is definitely not about 'helping' communities. Communities want recognition as business stakeholders for they are linked to the core business in many ways as workers, supply chain members, project affected communities and consumers. Respecting the rights and dignity of workers or communities therefore needs to be a core business principle. And there is probably no business for the business to do anything (like community development projects) other than the business - the bottom line being that they do their business in a socially responsible way.

Here, in this introductory chapter, we offer a critical appraisal of the state of CSR in India.

Companies Act versus NVGs: is charity prevailing over responsibility?

The formulation of the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVG) in 2011-12 was an important effort towards unpacking business responsibility. It is an umbrella document on business and human rights - an Indian narrative and an outcome of a national level multi-stakeholder consultation process, in which businesses, Government and civil society participated. For the first time, a mainstreamed narrative of business responsibility was created wherein Corporate Social Responsibility was beginning to be defined as social responsibility in the core business rather than an add-on to the core business. However, the then emerging discourse was short-lived. In 2013, the Companies Act stipulated that companies with at least Rs. 5 crore net profit, or Rs. 1,000 crore turnover or Rs. 500 crore net worth would have to spend 2 per cent of their three-year average annual net profit on CSR activities in each financial year. This Act and its provision of 2% of profit for CSR hijacked the debate; and again the discussion shifted to "erroneous" CSR, that is, irrespective of a

company's responsible or irresponsible acts as part of its core business, it should invest 2% of its profit on a socially or environmentally responsible project.

In the last two years, it has been seen that a number of companies, despite different allegations of non-responsible business practices, have been winning a number of CSR awards. As Arun Maira, who used to be with the Planning Commission, has said while commenting on the 2 per cent regime "2% of profits on CSR will be only 0.2% of a company's revenues. Spending 0.2% of revenues on CSR is the arrangement of the deckchairs on the Titanic. 100% of the revenue is the impact of the course of the Titanic on the environment and the communities through which it traverses. Socially responsible corporations in the 21st century must account to society for the impact of their operations and products on the health of citizens and on the condition of societies and communities. Spending 0.2% of revenues (or 2% of profits) on CSR is no longer an acceptable way to win societal trust."³

¹ Praxis- Institute for Participatory Practices

² Business and Community Foundation

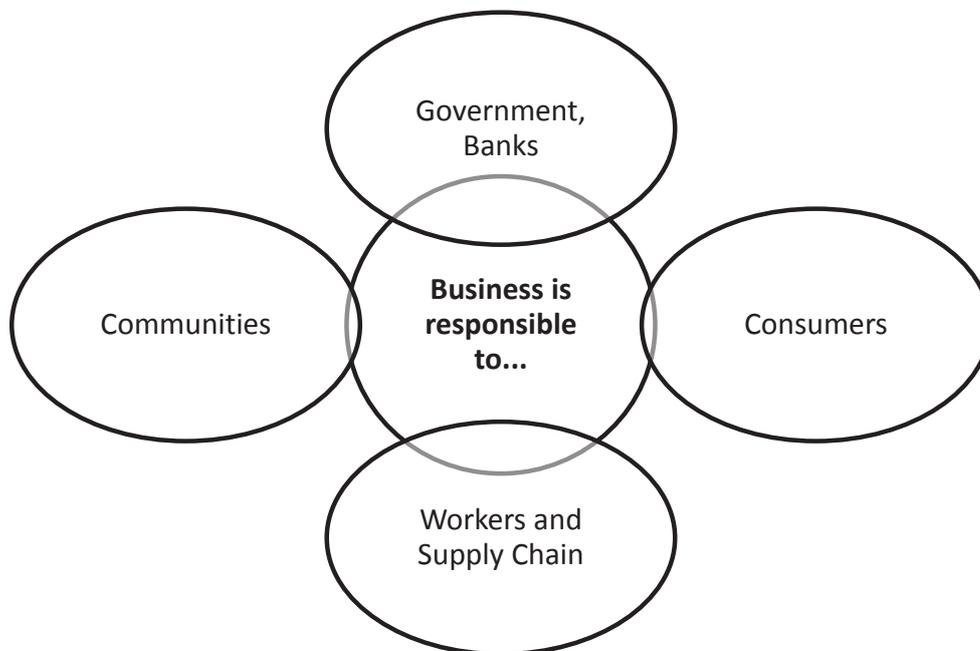
³ Source: <http://www.epw.in/journal/2013/38/commentary/indias-2-csr-law.html#sthash.xzHrU5E8.dpuf>

Is the policy imperative of increasing business competitiveness at loggerheads with the adherence to environmental, social and governance (ESG⁴) norms? The entire discourse on the economic policy environment today is dominated by the need to have an annual growth rate of 9 to 10 per cent and then sustain that activity⁵, lower barriers to doing business⁶ and promote overall labour market flexibility. To resolve the issue of unemployment, what is needed is job creation and in order to facilitate job creation, there needs to be investor friendliness, which in turn is believed to require labour flexibility. This has paved the way for new policy prescriptions in the last year that seemingly favour investors and businesses. The Government's current focus is on strengthening the business environment through its 'Make in India' campaign. Make in India is an initiative to boost manufacturing in the country by attracting overseas companies to set up businesses here and for domestic businesses to increase production within the country, by relaxing regulatory policies to facilitate investments and enhance the ease of doing business. In a parallel move to improve its ranking on the 'Ease of Doing Business' index, the government has plans to make significant improvements in the

regulatory environment through deregulation, de-licensing, reduction in number of documents and simplification of procedures for investments. These steps are being adopted to create an enabling environment for industries, encourage investors, boost economic growth and create jobs. This not only promotes a competitive private sector but also competition among states to attract corporates that would contribute to their economy. While Make in India is probably the need of the hour, it is also pertinent to raise the question of whether it is ensuring inclusion and ensuring economic and social security of the key stakeholders of businesses - especially workers and poorer communities. The underlying essence of Make in India is that it should benefit everyone, including workers. It is important to push for such policies, which keep other stakeholders such as workers and communities, along with investors, at the centre.

The years 2013 - 2015 were a significant time for the economy - while the Ease of Doing Business Rankings received a boost, it was also the time that the country got an amended Companies Act in the year 2013. This was after its formulation in 1956, as an act that followed the Nehruvian model

Figure 1.1: Authentic CSR: a framework of accountability



⁴ United Nations Principles for Responsible Investment

⁵ Finance Minister of India, Mr. Arun Jaitley as quoted in <http://in.reuters.com/article/india-economy-jaitley-idINKBN0LY2L820150302>

⁶ Prime Minister Narendra Modi at the launch of Make In India Campaign

of industrialisation in which the public sector plays a significant role. Along with many features that were amended in 2013, the 2 per cent regime was enforced with the amendment. A little earlier, SEBI also mandated top 100 companies to submit Business Responsibility Reports, which details their activities against 9 principles of National Voluntary Guidelines. The SEBI guidelines made reporting mandatory although guidelines remained voluntary.

The section below scans the various business actions through publicly available information, especially from the Annual Reports and Business Responsibility Reports, prepared by the top 100 companies listed in BSE. One has to acknowledge that there is marginalisation in the business

Class Struggle: The Story Continues

There is no doubt that the core for the success or failure of business is the worker. According to Peter Drucker, “The most valuable asset of a 21st century institution, whether business or non-business, will be its knowledge workers and their productivity.” However, are they in the policy radar of businesses in India? Is there not class at work - permanent versus contract, front line versus executive, workers versus management? Irrespective of these divides, the safety and security of workers need to be seen as an important part of business. To quote a report⁷ from mid 2016, on the coal mining industry, it indicates that at just two key mining public sector utilities — Coal India Limited and Neyveli Lignite Corporation, there occurs a “serious accident” every three days with a fatality every seven days. When one compares this to data from the previous year, where there was a death every ten days, it highlights the stark increase in fatalities, giving it the unfortunate distinction of being the most dangerous profession in India. The process of compensation as one can imagine, is also

long and arduous, with high opportunity cost, and is not even applicable to contract workers who might perish in the course of employment. To add to this grim situation, senior officials at Coal India concede that these statistics are far lower than the actual deaths that take place deep inside the mines. At this time of technological development and innovations, why is that worker safety is not at the centre of business interests? Are companies actually making profits at the expense of workers safety?

What is required are platforms and provisions that can reflect the interest of workers and one of the key institutions are trade unions - as the right to form an association is enshrined in the constitution. The data from Business Responsibility Reports of the top-100 companies of 2014-2015 shows the following picture on the extent of trade unionisation among PSUs and private entities:

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⁷ Source: <http://indianexpress.com/article/india/india-news-india/mines-safety-in-india-coal-mine-worker-death-2964759/>

Chart 1.1: Percentage of top-100 Companies reporting on presence of Unions in Public Sector (n=29)

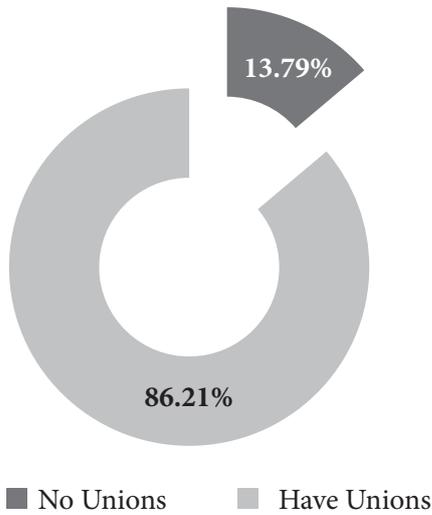
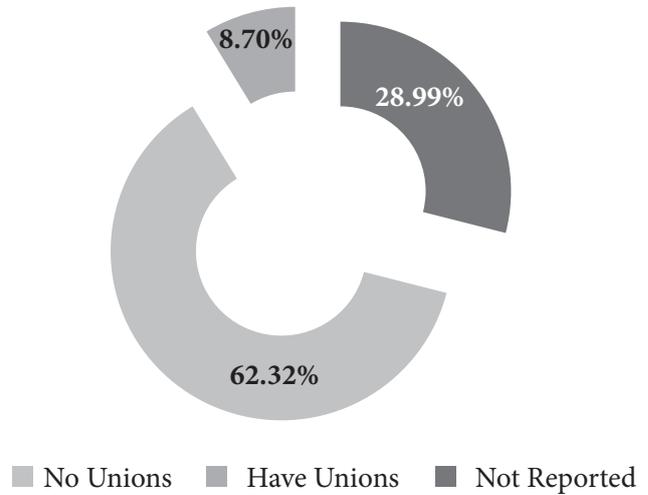


Chart 1.2: Percentage of top-100 Companies reporting on presence of Unions in Private Sector (n=69)



The two charts below reveal the distribution of permanent employees at PSUs and private entities that are part of the unions:

Chart 1.3: Percentage of Permanent Employees Unionised in Public Sector, from top-100 companies (n=25)

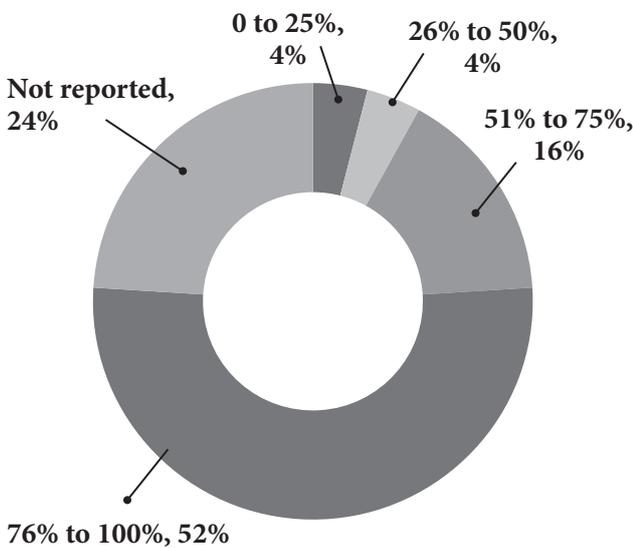
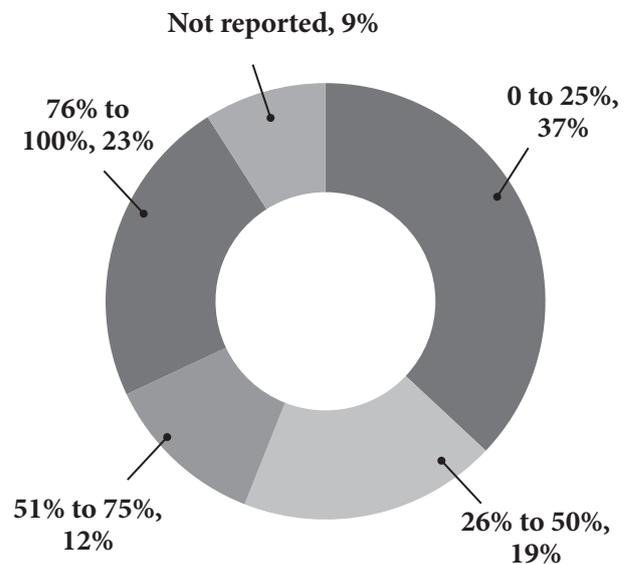


Chart 1.4: Percentage of Permanent Employees Unionised in Private Sector from top-100 Companies (n=43)



As per the Business Responsibility Reports submitted by the top-100 listed companies, only 68 have unions and only 32 have above 50 per cent unionised employees. Low unionisation even among permanent employees among top-100 companies points to a dismal scenario with respect to their commitment to the principle of collective bargaining.

Ironically, while this is the scenario among top-100 companies, there is a proposal to further dilute the Trade Union Act of 1926, wherein the documents

required for registration of a trade union are being doubled and the number of office bearers who could have potentially been from outside the industry (like lawyers and activists) is being reduced from one-third or half the number of officers to only two officers. Further, the number of reasons that can be used to cancel the registration of an existing union is being increased from three to five. The trade unions, that serve as a safety valve, claim that the amendments have been suggested without consulting them while the Ministry of Labour and Employment

denies the allegations. The result is that forming a trade union now, has more conditions in place than starting a business. Are the policy makers of the belief that the trade unions are irritants? What other platforms do the workers have? Have there been any debates on that?

What is important is the fact that contractual workers are already out of bounds of trade union. Their numbers are increasing. Coal India for example has 69,267 contractual workers of a total strength of 3,46,638 whereas Jindal Steel and Power Ltd has permanent strength of 7,129 and contractual of 15,235, which was only 740 two years ago. The increasing trend of the contractual labour workforce points to the growing preference of businesses but also sounds an alarm bell. This is because the distinction between the permanent and contractual is not merely about job status but about other entitlements including health benefits, trade unions etc. A recent report⁸ highlighted the case of Surrender, a contract worker who operated a forklift machine in a Tier-2 auto-component manufacturing unit Gurgaon. Having received no

training, he caused a serious injury to his leg. He was a contract worker, not on the company rolls, so the consequences of his accident were even severe. Not only did he suffer a grievous injury, in the absence of the employer helping him, he had to sell his family land to cover his treatment cost.

While cases like these will be on the increase, with the Government encouraging companies to have more contract workers (*see Chapter 2: Where are the jobs?*), when seen in light of other policy changes, one needs to question the bundle of recent labour reforms. As per the new Industrial Disputes Act (IDA) in Rajasthan, firms with 300 workers or less (it was earlier 100), need no Government nod to lay off workers or close down, thereby putting 50 to 60 per cent of these entities into this category. Changes to the Contract Labour Act, raising the employment under any contractor from 20 to 50 workers would allow the employers to avoid abiding by almost all the labour laws applicable for contracted workers in private sector as well as in public sector undertakings.

Child Labour: Not really going away

Children in India form a considerable proportion of the workforce. The Census found successive increases in the number of child labourers from 11.28 million in 1991 to 12.66 million in 2001 to 21.39 million in 2011. The issue of child labour is complex because of its social and economic ramifications and the definition of 'child', 'labour' and 'forced'. These become more complex when viewed from the perspective of autonomy of a child. However, in no way should the government promote or legitimise child labour. The Parliament has passed an amendment to the child labour law whereby exception has been made for children to be engaged in family based enterprises. With family enterprises and industries opting for the piece-rate system, the involvement of women and children is likely to increase. Women and children often get invisibilised and their labour is often unpaid for. The likelihood now is that they will be pushed towards more exploitation than they already face. This amendment to the child labour law cannot be read in isolation but along with the proposed Small

Factories Bill 2014 that recommends exempting factories employing up to 40 workers from following 14 labour laws including child labour law. Many of these small factories could also be family enterprises. Further, the Small Factories Act is another example of ways in which the laws put the workers outside the purview of laws meant to benefit them. This would impact practices in the supply chain, which would go unchecked.

The companies cleverly make a clear distinction about their own employees and employees in the supply chain. They seem to have systems to detect child labour in their own workspace, defined very narrowly. These systems exclude a lot of activities that contribute to 'form' the product or services that are branded as the company's; especially those in the supply chain. The companies do not take 'responsibility' for any violations of ESG principles in the supply chain. Unfortunately this is true even for top-100 companies, which should have been the business leaders in demonstrating their willingness

⁸ What can safeguard Workers? - Accidents in the automobile industry in Gurgaon by Safe in India, and Agrasar http://media.wix.com/ugd/06047e_313fc232e17641ae8268ad1107c36a1d.pdf

to go beyond their workspace. The India Responsible Business Index (IRBI)⁹ shows that out of the top-100 companies 31% did not have any policy recognition for prohibition of child labour extending to their supply chain. A bulk of these companies is from the FMCG/health care and textiles sector. The ILO estimates that 170 million are engaged in child labour, with many making textiles and garments to satisfy the demand of consumers in Europe, the US,

and beyond. In Tamil Nadu alone, there are 1,600 mills, with a workforce of more than 400,000 workers and 60 per cent of the total labour force consists of girls and young women¹⁰. Given that a bulk of such work is carried out by entities in the supply chain of the parents company, they too are comfortable not extending their provisions of no child labour and of overall rights of employees, to their supply chain.

Diversity in the workforce: intent missing?

A key element related to workers is that of diversity in the workspace. If the workspace does not have diversity, it is a symptom of either discrimination in the recruitment system or absence of willingness to break the social barriers that influence employment. As of now, the Government recognises that owing to the presence of social inequalities, there is a need for reservation for SC/ST communities. However, this reservation is applicable only for PSUs. Similarly, there is a reservation of 3 per cent for persons with

disability, as per the Equal Opportunities, Protection of Rights and Full Participation act, 1953. The Company Act 2013 also now mandates a woman director on company boards. Further, the National Voluntary Guidelines also reiterate the constitutional provision for non-discrimination in recruitment and employment across industries. Despite this, the situation continues to be rather dismal for women. The table below shows women employees across the top-100 companies in 2014-15:

Table 1.1: Distribution of the top-100 companies in 2014-15, as per the percentage of women employees

S.No	Proportion of women employees ¹¹	Number of Companies (n=98)
1	0 to 10%	60
2	11% to 20%	17
3	21% to 30%	16
4	More than 30%	2
4	Not reported/ Not Available	3

It is interesting how the Corporates have also struggled to get women on their Boards, as was made mandatory by the 2013 Act. The initial deadline was 1 October 2014, but it was extended to 1 April 2015. After making it mandatory in 2013, two deadlines and a threat of fines later, there were still 247 out of the 1,451 NSE-listed companies that did not comply with the law on April 1, 2015¹². In fact, over 300 directorship positions, or a third of what women should occupy, went to women only in March 2015¹³. It is also pertinent to note that a number of companies actually appointed the female relatives of existing Board members to the Board. This indicates a failure to identify female talent; or rather an

inability to retain them in the workforce and plain reluctance to promote them¹⁴.

In terms of equal opportunity provisions, Charts 5 and 6 below indicate that 80 of the top 100 companies in 2015, have disclosed policies in their websites that recognise the importance of equal opportunity in recruitment, though a far smaller share (10) have recognised the importance of diversity on the board and the great majority (89) have no recognition of it. This is as per data disclosed in the public domain through BRRs and Policy documents.

⁹ Source: http://www.corporatewatch.in/images/Making_Growth_Inclusive.pdf

¹⁰ Source: <http://www.indianet.nl/pdf/FlawedFabrics.pdf>; <https://labs.theguardian.com/unicef-child-labour/>

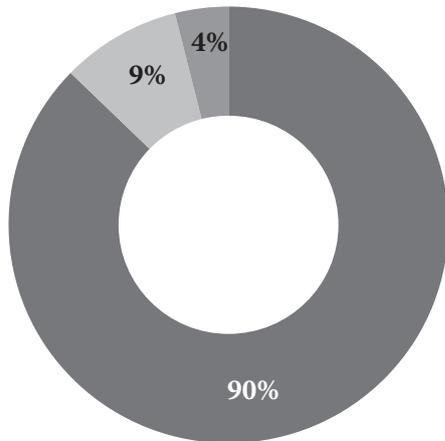
¹¹ Source: Making Growth Inclusive http://www.corporatewatch.in/images/Making_Growth_Inclusive.pdf

¹² Source: <http://www.livemint.com/Companies/FJACH3O4hfWp47trh4CgN/Last-minute-dash-for-women-directors-as-India-enforces-deadl.html>

¹³ Source: <http://timesofindia.indiatimes.com/business/india-business/Women-still-small-part-of-cos-boards/articleshow/50690432.cms>

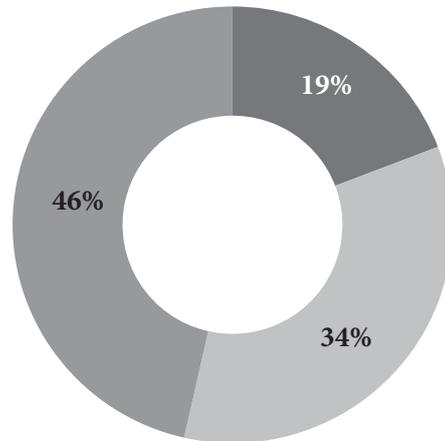
¹⁴ Source: <http://www.livemint.com/Companies/9tIeuFcZJUAPPfjxcTHpvj/Indian-companies-struggle-to-place-women-on-boards.html>

Chart 1.5: Percentage of top-100 companies that have committed to Diversity on their board of directors (n=99)



- No recognition
- Mere Recognition
- Recognition and system

Chart 1.6: Percentage of top-100 companies that have committed to Equal opportunities in recruitment (n=99)



- No recognition
- Mere Recognition
- Recognition and system

In the case of women, because of the anti sexual harassment (ASH) law, most companies have a policy on their website. It is encouraging to see that companies are even reporting against this ASH law on an annual basis. The table alongside shows that 45 companies have reported at least 1 case, 2 did not report at all and 51 of the top 100 companies have reported nil cases. The question here is whether in

the case of companies with nil cases, it is because there is no sexual harassment taking place or if the environment to report the sexual harassment is in itself unsafe? The fact that 45 companies among top 100 have reported cases of sexual harassment in the workspace is an important dimension for the policies to focus on.

Table 1.2: Status of top-100 companies vis-à-vis reporting on sexual harassment at the workplace in 2014-15.

Status of companies vis-à-vis Sexual Harassment complaints related data in 2014-15 ¹⁵	Number of Companies (n-98)
Companies not reporting any data	2
Companies reporting zero sexual harassment cases	51
Companies reporting one sexual harassment case	15
Companies reporting more than one sexual harassment case	30

¹⁵ Source: Making Growth Inclusive http://www.corporatewatch.in/images/Making_Growth_Inclusive.pdf

Diversity is rarely interpreted as inclusion of persons with disability and often stops short at reporting on gender as seen in the table below:

Table 1.3: Distribution of employees with disabilities in proportion to total employees in top 100 companies in 2014-15

S.No.	Proportion of employees ¹⁶	Number of Companies (n=98)
1	Nil employees with disability	11
1	0 to 1%	48
2	>1% to 2%	14
3	>2% to 2.5%	7
4	> 2.5%	0
4	Not reported/ Not Available	18

11 of the top 100 companies have reported that they do not have a single employee with any disability and 48 companies have less than 0.5 per cent employees with disability. While PSUs have 3 per cent reservation for PWDs, they have been unable to fill this quota.

The chart alongside and table below provide an overview of diversity data in the top 100 companies. While the chart details the level of disclosure of diversity of social categories in their board and on the workforce, the table below, details the vulnerable groups identified at the time of recruitment and career advancement.

Chart 1.7: Number of companies that disclosed disaggregated data on diversity of social categories in their Board and workforce (n=99)



Table 1.4: Identification of specific groups vulnerable to discrimination¹⁷ at recruitment and career advancement, in policies of top 100 companies

Stage in career ¹⁸	Number of companies that have identified the respective categories as vulnerable groups in their policy on non-Discrimination (n=99)					
	Disabled	Women	Sexual minorities	SC	ST	Religious minorities
Initial Recruitment	58	63	36	62	26	62
Career advancement	28	34	19	26	12	30

¹⁶ ibid

¹⁷ Featured companies used different terminology to refer to the various social categories mentioned here. For example, the term SC is used in this table, but in framing policies, certain companies referred instead to not discriminating on the grounds of caste.

¹⁸ Source: Making Growth Inclusive http://www.corporatewatch.in/images/Making_Growth_Inclusive.pdf

Consumers: *Vigilantes?* Not yet!

“The trust of our consumers and the safety and quality of our products is our foremost priority everywhere in the world”, stated CEO of Nestle in 2015¹⁹. The case of Nestle’s Maggi Noodles caught the public’s imagination that year. There were three key accusations levelled against the company: the presence of lead over permissible limits, misleading labelling reading “no added MSG” and release of non-standardised food products in the market without risk assessment. In response to the first, Nestle stated that there was a higher presence of lead than mandated but blamed the testing protocol,

which separately tested the noodles and tastemaker, thus resulting in the alarming level of lead, little realising that the two are separately consumed raw by thousands of consumers. In response to the second accusation, they stated that “industry practice” was followed in India and agreed that it was misleading so it needed to be removed. What was appalling about Nestle’s response is the arrogance and general disregard for consumers. Their response, *inter alia* means, that the regulatory systems need to be more stringent because companies will not proactively disclose such matters.

Principle 9 of the NVGs takes a closer look at consumer issues and their status is detailed in the tables below:

Table 1.5: Status of the policy implementation mechanism processes on Principle 9 of NVGs as per BRR 2012-13 and 2013-14

Questions ²⁰	Yes (n=100)	
	2012-13	2013-14
Do you have a policy/policies for Consumer related principle?	76	83
Has the policy being formulated in consultation with the relevant stakeholders?	71	74
Does the policy conform to any national /international standards?	59	67
Has the policy being approved by the Board?	59	69
Has it been signed by MD/owner/ CEO/appropriate Board Director?	61	69
Does the company have a specified committee of the Board/ Director/Official to oversee the implementation of the policy?	68	77
Has the policy been formally communicated to all relevant internal and external stakeholders?	64	64
Does the company have in-house structure to implement the policy/policies?	71	80
Does the Company have a grievance redressal mechanism related to the policy/policies to address stakeholders’ grievances related to the policy/policies?	63	77
Has the company carried out independent audit/evaluation of the working of this policy by an internal or external agency?	46	52

Table 1.6: Status of disclosure vis-à-vis consumer complaints, as per business responsibility reports of 2013-14

Status ²¹	Number of companies
Companies reporting zero complaints	8
Companies having 100% complaint resolution	7
Companies reporting received or/and pending complaints data	40
Companies not reporting any data	43

A sector that showed a high number of complaints is that of life insurance policies. Policy-holders

have filed consumer complaints against banks and insurance agents for mis-selling of policies following

¹⁹ Source: <http://www.thehindubusinessline.com/companies/quality-of-product-our-foremost-priority-nestle-global-ceo/article7285752.ece>

²⁰ Source: Making Growth Inclusive http://www.corporatewatch.in/images/Making_Growth_Inclusive.pdf

²¹ *ibid*

up from which, Reserve Bank of India (RBI) and Insurance Regulatory and Development Authority of India has come out with stringent measures to curb the same. Referring to the code - the Charter of Customer Rights brought out by RBI in 2015, RBI Governor Raghuram Rajan stated, "We now will examine how banks are faring, and whether further

regulations are needed to strengthen consumer protection. In particular, we will focus this year on the issue of mis-selling, especially of insurance products." There was also an assertion on the need for appointing an ombudsman and strengthening the complaint redressal mechanism.²²

Banks as instruments for promoting business responsibility?

The vulnerability of the banking sector and the exposure of malpractices of non-banking finance institutions borrowing on behalf of key companies has been in the news more recently, thanks to several agencies. According to BRRs filed, top 100 companies owe a total amount of 23,48,912 cr in debt. A case in point for instance is Adani Enterprises Ltd., the flagship entity of the Adani Group. The State Bank of India (SBI) in November 2014 publicly announced its decision to lend up to \$1 billion to Adani Mining, the Australian subsidiary of Adani Enterprises, despite unfavourable credentials. As on 30 September 2014, the long-term debt of the company stood at Rs 55,364.94 crore. The short-term debt stood at Rs 17,267.43 crore. Hence, the total debt of the company stood at Rs 72,632.37 crore. This, remarkably, is equivalent to the entire debt of farmers in India. With its low interest coverage ratio, Adani Enterprises was an over-leveraged candidate and would find it difficult to keep paying the interest on its debt²³. Should a public bank like SBI make such a public announcement of the loan during a bilateral visit?

Adani Enterprises is not alone in this situation of indebtedness. As per secondary data of the top-100 companies, for which data for 2014-15 was reviewed, only 20 companies reported having no debt. Set against the context of these Non-Performing assets (NPAs) and for the purpose of granting more autonomy to Public Sector Banks the central government channelised a seven point agenda packaged as the Indradhanush Scheme in 2015. Regarded as the panacea for the public sector banks, what is problematic about this is two-fold. On one hand, RBI's role has been diminished to drafting the scheme whereas a new Bank Boards Bureau was set up to oversee the functioning and roll out of the

scheme thus causing an overlap of jurisdiction of the authorities. On the other hand, there is an issue with the capitalisation process itself. The government injected a total of Rs. 25,000 crore of capital into debt-laden state banks in this fiscal year (2016-17); an additional Rs. 20,000 crore would be injected by the end of 2016, and over the next four years, the government plans to inject Rs. 70,000 crore. All these are budgetary allocation and therefore the tax payer's money is being infused into banks to clear their balance sheets off the bad debts²⁴. Critics feel that Indradhanush skirts the core problem and does not come anywhere near an elegant solution²⁵. Meanwhile no action has been taken against the willful defaulters and corporate entities such as Kingfisher and Lloyds Steel who had borrowed heavily from these banks and have no means or intention to pay them back.

When this is juxtaposed against the situation of spiralling high suicide rate among farmers, the situation is even starker. There have been alarmingly high suicide rates among farmers in India, more recently in light of the fact that they are unable to pay back loans that they have taken. The accumulating interest over the years because of successive failed crops has meant that they resort to suicide as the only exit from the debt cycle. The entire debt the Adani Group owed to banks is Rs 72,000 crore which is equivalent to the amount that the farmers need to pay as crop loans²⁶. While the shame and social stigma associated with farmers not paying back their loans pushes them to suicide, ironically, PSU banks being owed about Rs 5 lakh crore by corporate houses, leads to the Government rolling out its bailout package in the form of the Indradhanush Scheme.

²² Source: <http://economictimes.indiatimes.com/wealth/insure/are-you-buying-insurance-blindly-find-out/articleshow/52699478.cms>

²³ Source: <http://www.firstpost.com/business/economy/sbis-1-billion-loan-to-adani-makes-no-sense-heres-why-1996593.html>

²⁴ Source: <http://www.financialexpress.com/budget-2016/budget-2016-indradhanush-retained-for-revival-of-psbs/217849/>

²⁵ Source: http://www.business-standard.com/article/opinion/debashis-basu-3-problems-with-7-point-indradhanush-115082300753_1.html

²⁶ Source: <http://www.thehindu.com/news/national/adanis-debt-equals-to-entire-farm-debt/article8560896.ece>

Who is bearing the cost of irresponsible business?

The year 2014-15 saw protests by tribals in Kalahandi and Rayagada districts of Odisha against mining activities around Niyamgiri as they were leading to pollution and affecting livelihoods of tribals. In the case of the Rampal based Coal Power Plant, a diplomatic project of India and Bangladesh and Export-Import Bank of India, saw cross-border protests from Bangladeshis as it will cause irreparable damage to the livelihoods of two million inhabitants and even a request for UNESCO to step in and prevent the world's largest mangrove forest from being damaged²⁷. And after 15 years of an ongoing case against it, Hindustan Unilever Limited, in 2015, finally agreed to provision 'undisclosed' ex-gratia to survivors of mercury contamination from one of its unit in Kodaikanal. As per the activists, the frequent dumping of the mercury waste has led to contamination of soil. The HUL case highlights how it has breached its own standards of comprehensive policy on safety and health and also polluted the ecology of the immediate surrounding by contaminating the soil with toxic waste.

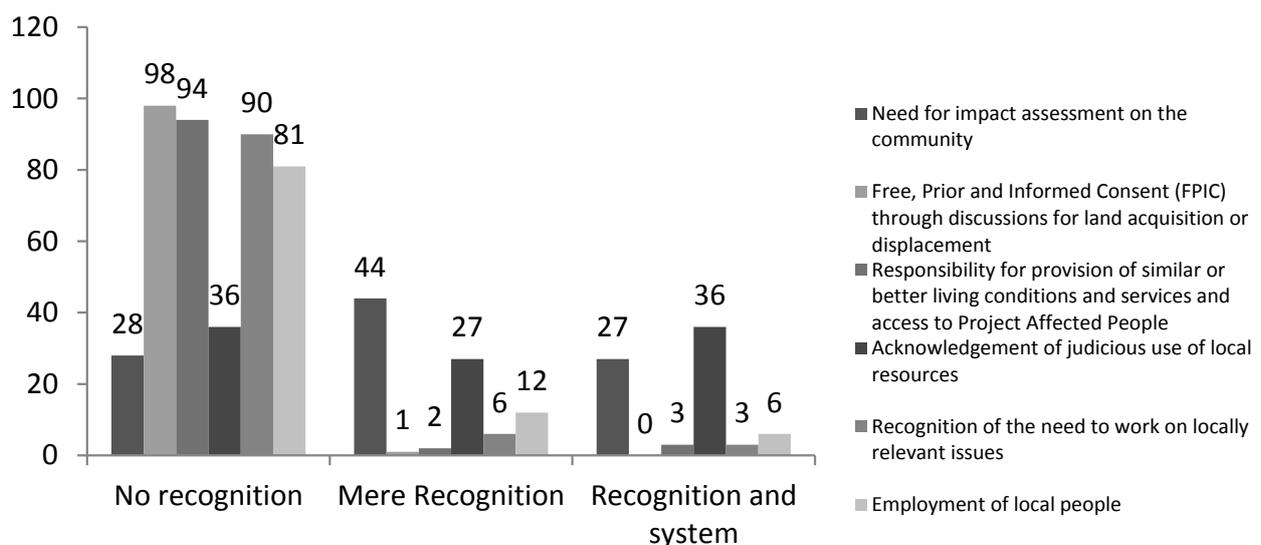
These cases highlight the significance of the three NVG principles that directly talk about members of the local community as business stakeholders and call for companies to be responsive to the

"interests of all stakeholders, especially those who are disadvantaged, vulnerable and marginalised"; "respect and promote human rights" and; "support inclusive growth and equitable development".

The principles require companies to recognise the issues of the local community within its core business and encourage companies to be responsible for, accountable to and aware of their needs and aspirations. Thus, local people affected by business are not to be seen merely as recipients of 2% CSR investments, but as stakeholders with an active and non-negotiable interest in core business operations.

The chart below details the level of recognition of the need to assess business impact on communities and means to minimise the negative impacts. Alarming, only one company recognised the principle of Free, Prior and Informed Consent, but did not report having a system to enforce it. The need for conducting an impact assessment on the community has been more widely recognised with 27 companies also having a system in place. 18 companies have stated a commitment to provide employment to local people. However, it is a matter of concern that only nine have policies to communicate project impacts with community members who would be affected by it.

Chart 1.8: Recognition of the need to assess business impact on communities and means to minimise the negative impacts (n=99)



²⁷ Source: https://www.washingtonpost.com/news/energy-environment/wp/2016/07/18/a-new-power-plant-could-devastate-the-worlds-largest-mangrove-forest/?utm_term=.a6a80f5d7a8f

Taking this a step further when an exploration of the recognition and knowledge systems that promote companies to be sensitive to local concerns, culture and environment; and engage with communities was done, the table below details the findings:

Table 1.8: Recognition and knowledge systems that promote companies to be sensitive to local concerns, culture and environment; and engage with communities

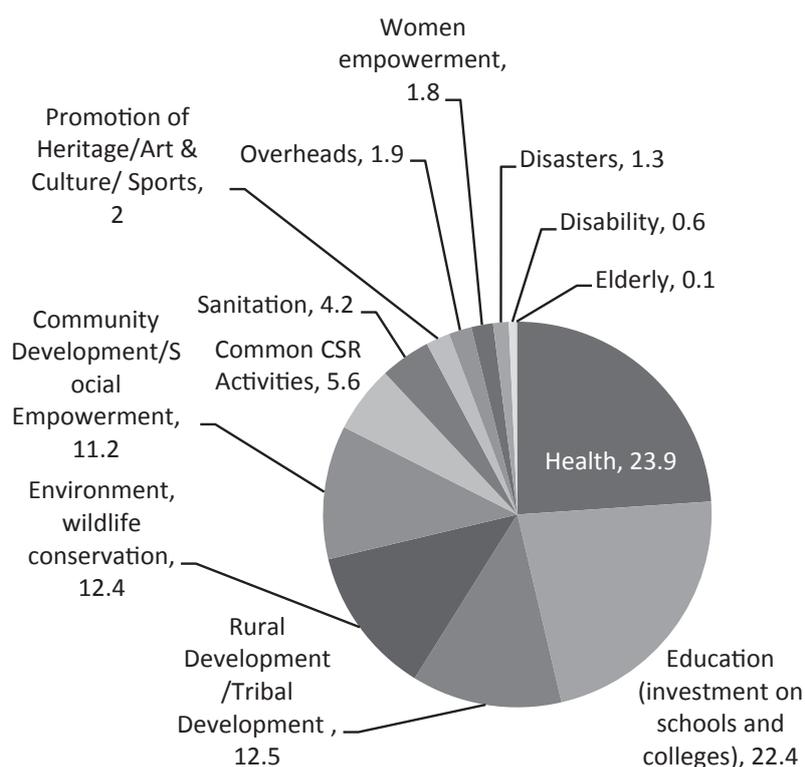
Policy Recognition of key aspects ²⁸	Number of companies (n=99)
Public hearing and communication of project impacts with community	9
Transparent communication about the compensation to be paid in case of land acquisition or displacement	2
Respect for local culture and local systems	14
Intention to invest to strengthen and promote local knowledge/heritage, and protect the Intellectual property rights of the community	7
Publishing of impact assessment reports in public domain	2
Presence of system for	
Stakeholder consultation for formulating policy on Resettlement and Rehabilitation (project affected communities including marginalised groups)	2

CSR: Some band-aid solutions after causing some harm

Whilst community development in one form or another may be a shared aspiration of many corporates' corporate social responsibility (CSR) policies, it is in many ways a hugely contested

terrain and one that requires a firm commitment to social equity as well as an appreciation of the complexities of social exclusion in India. An analysis of self-disclosed information on company websites

Chart 1.9: Sector-wise break-up of CSR spending for the year 2014-15 (for 90 companies, in %)



and other uploaded reports, shows that in total, 94 companies have endorsed CSR within their policies. Significantly, 75 of these companies, in their policies, have incorporated detailed systems of implementation and monitoring of CSR as well. This reflects a positive move by companies to facilitate the building of robust systems for community development. A closer look at CSR spend of 90 companies in 2015, shows that the total amount to be spent on CSR for 2014-15 was Rs. 6,490 crores but total unspent amount was Rs. 1,665 crores.

The 100 companies carry out their CSR work either through an in-house team, through their own foundation, through a partner NGO, through Government agencies or through other organisations like school, universities or hospitals. Health and

education, two sectors, which are already invested in by the Government, have the highest CSR spend. Newer spending trends in 2015 compared to previous years, are in sanitation and environment and wildlife conservation and expenditure on disability, the elderly, support for armed forces veterans/families and women's empowerment continue to stay low. Ramraj Pai, President, CRISIL Foundation, said, "Compliance towards CSR in fiscal 2015 seems to be inversely proportional to size of the company – those with high turnover were short on the 2% mandatory spending"²⁹. It is noteworthy that out of 98 companies, only 15 companies spent more than the requisite 2% on CSR activities. 14 companies spent exactly 2% and 60 spent less than 2% (7 did not spend anything, as they reported a loss)³⁰.

Is there a nexus between policy makers and corporates?

The interests of businesses often have prevailed upon those of communities because of the way the latter gets excluded through what can be reasonably termed as a nexus. Businesses have ways and means to influence the state and the politico-bureaucratic system. Firstly, the common, though illegal, practice of corporate funding of elections makes political parties cautious in their opinions and stands vis-à-vis their corporate funders. Secondly, the plethora of business associations that have emerged since the 1990s and have found formal space in high level panels, official delegations and even Parliament have made a mockery of the principle of conflict of interest. Thirdly, businesses have effective control over think tanks and influence the academic discourse on a continuous basis to mainstream and maintain the primacy of economic growth as the driver of development, marginalising the instruments of equity and redistribution. As a result certain corporates develop and maintain the 'informal' relationship, (rather nexus), with politicians and bureaucrats for their benefit, while simultaneously playing the victim narrative in the public domain citing corruption in governance. This has cemented the role of the businesses in polity. The 1990s also saw the beginning of the state retreat from health, education and public services, so much so that the current struggle of human rights

is often between people and corporates, with the State seemingly sitting on the corporates side of the fence. This is because its regular economic narrative is about the ease of doing business. While there are efforts to deregulate and delicense the setting up and operating of businesses, the proposed labour laws have doubled the conditions required to start a trade union. Business investments have been so prioritised that even the need for social impact assessments is being done away with through an ordinance. Enabling a climate of investment for "Make in India" may not be wrong, but what is being likened to cruelty is the attack on the support system, which exists for already marginalised sections such as workers and farmers.

The effort of Corporate Responsibility Watch is to challenge the popular narrative of business-led growth and development. The core dilemma is that everyone seems to have accepted that growth is business-led and not worker or community-led. Business is now reduced to one stakeholder - the business leaders; it is not seen as a multi-stakeholder enterprise – owned by workers, community, consumers and businessmen. It is in this scenario that the importance of access to information on business policies and practices is undeniable. In a democracy like ours, powerful interest groups

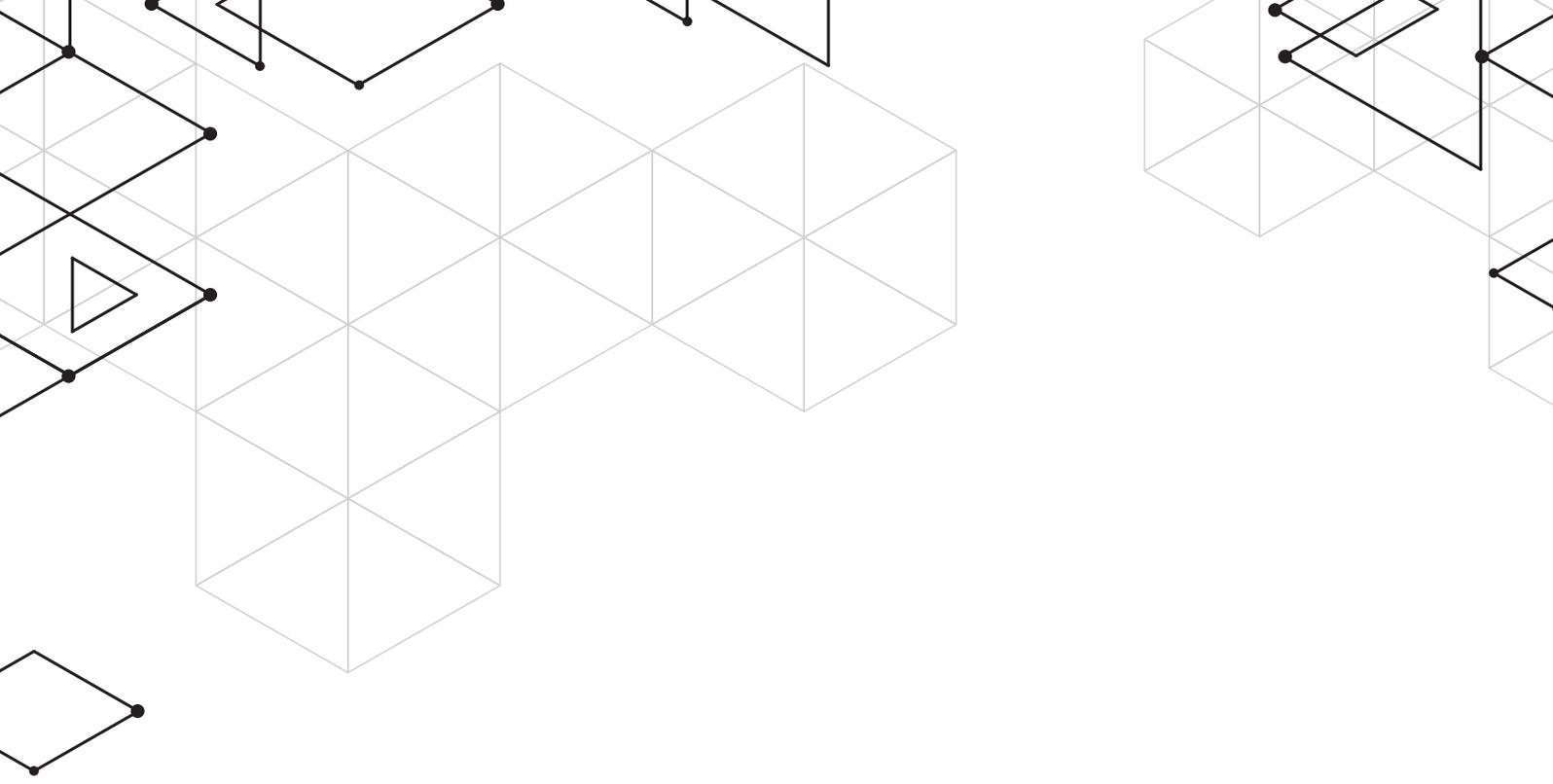
²⁸ Source: Making Growth Inclusive http://www.corporatewatch.in/images/Making_Growth_Inclusive.pdf

²⁹ Source: http://timesofindia.indiatimes.com/defaultinterstitial_as.cms

³⁰ Source: IRBI: http://www.responsiblebiz.org/irbf_index

strive to plug the information channels. If there is an effort to push for availability of information with respect to business policies and their impact in the public domain, there is a creation of a more level-playing field, wherein the communities can negotiate with businesses with greater strength. The entire disclosure revolution through a regulated non-voluntary system, as in the case of Business Responsibility Reporting, is an important way of

making businesses rightfully accountable to the most significant business stakeholder, that is, the disadvantaged communities, for it is the cost that they are bearing which results in the so-called “greater common good”. Communities have a stake in every business; they want to be recognised as rights-holders; and not as recipients of charity, donation or help.



PART 2:

Labour: The Struggle for Dignity

Chapter 2: Where are the jobs?

- Amita V. Joseph³¹

Years ago, a young S.K. Roongta, an engineer from BITS Pilani joined SAIL as a marketing executive. He rose to become the chairman of SAIL. Such examples were found even in co-operatives such as GCMMF Ltd. with R.S.Sodhi, an IRMA graduate on his first job rising to become its Managing Director! That was a time when a permanent job meant that a family came out of poverty with access to education, a regular assured salary, health benefits, housing.....and the employee gave his or her best. This was not just folklore but the stuff dreams were made of in the not so distant past...

India's growth story in the last decade has been plagued by the grim reality of "jobless growth". The 66th round of the NSSO data on employment released five years ago showed that between 2004 and 2010, only 1 million jobs were added per year. Although 55 million joined the workforce at this stage, a staggering almost equal number of 50 million failed to find employment. Furthermore the quality of employment left much to be desired. Low-end jobs in construction, in supply chains or on road laying were not an answer, surely. With reference to the sectoral contribution to GDP at 15 per cent and 12 per cent of workers employed India's manufacturing ranks, the lowest among developing economies. Is it that the nature of Indian manufacture itself is not employment friendly?

More worrying is the stress within the labour system such as the increased use of non permanent labour and the large disparity in their remuneration as compared to the permanent workforce leading to conflicts as seen in the automobile sector the most notable being the 2012 "Maruti" factory unrest in Haryana amongst others such as Honda . The workers at Maruti were demanding higher wages, benefits and better working conditions when violence erupted killing an HR head and injuring many workers, who are still fighting in the courts for justice. Maruti had said after this incident that it would not hire contractual hands for production but has continued to do so albeit under a different

name called "Company temps". While it is reported in the press that they seem to get some benefits such as free meals, insurance and PF the disparity in wages continue with temps earning about a third of the wage of permanent workers. However it must be noted that temporary workers are not covered under labour laws. The number of contract workers it is said in reports³² has actually increased in Companies such as Maruti, which has a 47 per cent market share in 2015 surpassing the performance of its parent company in Japan! This could be true of other companies as well. It remains to be seen whether the Delhi Government's recent move to increase minimum wages will have impact in the neighbouring states.

The non-payment of statutory wages and benefits, poor working conditions, accidents, lack of governance and oversight of the contract labour eco-systems, plague the supply chain system. Skill gaps only accentuate the problem and are due to poor quality of training, infrastructure and facilities. Hence is it surprising that discontentment is seen across sectors and not confined to manufacturing such as automobiles, garments or the tea industry in Munnar, West Bengal etc. Providing equitable compensation and benefits to labour that are not permanent has often resulted in higher productivity, better industrial relations and better quality output. Human resources seem to be some of the most devalued of them all due to the supply outweighing demand and the ability of a contractor to find someone desperate enough to do the job for less than even the minimum wage.

There is ample evidence from within India that the obsession with reforming labour law will not create a healthy private or public sector. It is pertinent to note here that most labour laws only cover 10 per cent of the total employment in the manufacturing sector. No regulation for decent conditions of work or social security for workers exists as yet in the unorganised sector. Almost ninety per cent of the workforce is left unprotected against any emergencies and the

³¹ Business Community Foundation

³² Amrit Raj in The Mint

arbitrary actions of the employers³³. To add to the distress there is a trend towards substitution of contractual, temporary and casual workers in the place of permanent workers and the flight of capital to exploit low wages in the absence of functional unions where workers can take grievances or make

collective demands. Sub contracting is the name of the game where layers of contractors dominate the supply chains in many tiers with not just a rampant increase in contract labour but complex structures where it is not even possible to identify the primary employer and their liability.

Table 2.1: Recognition and related knowledge systems that support the creation of an enabling environment for better working conditions

Recognition of key aspects	Number of companies
Contractual employees to be provided with social benefits	20
Recognition of collective bargaining principle	40
Presence of system on:	
Assessments on health and safety conditions	38
Assessments on situation of workers rights and labour issues	9
Enumerating employees who are members of employees association	66
Complaints received for child labour, forced labour and involuntary labour	85

Table 2.2: Number of companies disclosing data on safety trainings

	Permanent employees	Permanent women employees	Contractual employees	Employees with disabilities
Safety training provided to employees	66	50	44	32

A 2015 report, “*What can safeguard workers*”, by Agrasar and SafeInIndia by former IIM graduates, presents a grim picture of shop floor injuries in the auto industry, which has an estimated workforce of 80,000 workers in the supply chains. The absence of safety training and the lack of occupational health facilities in the ancillary units lead to worker accidents in the auto sector every year. The 20 detailed case studies reveal that little or no training is provided, there is no system of machine safety, there is a lack of automatic control systems and an absence of safety equipment with no ESI access for young contract worker age group starting at 18 years. The use of contract workers provides a means of getting around stringent labour regulations, as contract workers do not come under the purview of labour laws. Wages paid are often much lower as compared to the permanent workforce nor do they get benefits of the provisions of acts such as Provident Fund, Maternity benefits, Employee State Insurance Act or Workman’s Compensation, etc. There is an urgent need to bring in the excluded segments of the unorganised sector into the

regulatory framework if more jobs are to be created in order to get more people out of poverty. There needs to be a minimum set of conditions of work for all workers, a minimum threshold of social security, an effective grievance redressal mechanism in place alongside workers unions and the right of association freedoms guaranteed under our constitution. There is an urgent need to ensure job security, health and social protection for all workers no matter where they work.

An analysis of the top 100 listed Companies from 2012-13 to 2014-15 as per their own reports in the SEBI mandated exercise show a total work force of about 2.5 million only. Contract workers are a fourth of that figure at about 0.6 million with women employees at a negligible 0.4 million, except in specific sectors such as banking and garments. Employment of people with disabilities or transgender is even more dismal. The trend in contractual employment is significant and striking with one fifth of the top companies showing not only an increase of more

³³ Kapoor, Radhika; Assessing the Labour Market Regulation Debate; Economic and Political Weekly; Vol. 49, Issue No. 46, 15 Nov, 2014

than 50% contractual employment, and almost 50% reporting a decrease in total employment. The 97 companies report a large number of subsidiaries totalling about 2341. This is important because one is unclear whether subsidiaries are following the National Voluntary Guidelines or not in their business practices. In fact, of the 97 companies, 40% have reported that their subsidiaries are not involved in their business responsibility activities.

Worker unrest and violence are symptoms of a deep discontentment in the current business and employment practices of the private and public sectors, which unless addressed can spiral out of control. Everyone agrees that there are structural

fixes needed to be addressed for job creation in the economy because young India is aspirational for a better tomorrow, looking for work in an inclusive environment where labour laws are implemented and monitored in letter and spirit and where there is dignity and respect. At the crux of the responsibility debate is the 'Do no harm' principle neither against the planet nor people. Of what good are profits or 2% CSR if it accrues from short changing the very workforce that creates the goods and services that sustain not just the company but the economy itself? Will campaigns such as "*Make in India*" ever take off unless a threshold of decent conditions of work and wages is assured and maintained across all sectors?

Chapter 3:

Affirmative Action in Indian businesses: a reflection

- Archana Shukla Mukherjee³⁴

Background

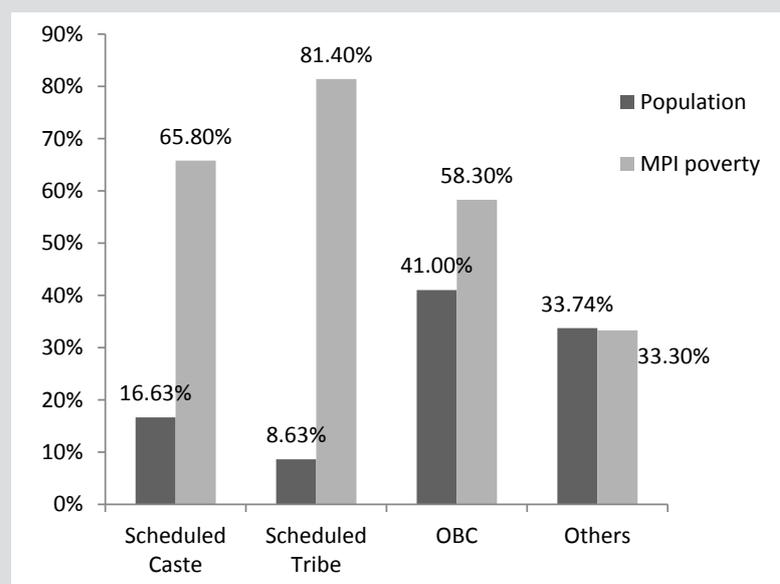
In India, prior to independence, many leaders and intellectuals, prominent among them Dr. B R Ambedkar and Mahatma Gandhi, championed the cause of the marginalised and worked for advancing their interests. Post-independence, the affirmative action programmes in India were targeted towards Scheduled Castes (SCs) and Scheduled Tribes (STs), those at the bottom of the caste hierarchy and the tribal communities.

In the Indian context, reservations have been the mainstay of the Affirmative Action (AA) agenda, which is driven by the Constitution and the Government. The Indian government has, as part

of the AA policy, reserved 15 per cent and 7.5 per cent posts in government agencies, government enterprises and educational institutions for SCs and STs respectively (in later years, 27.5 per cent for Other Backward Classes (OBCs) as well). It has been a successful, albeit contentious tool to undo the subjugation, discrimination and agony suffered by the members of what the Indian constitution defines as Scheduled Castes and Scheduled Tribes who constitute one fourth of the population. As per the Indian constitution, reservations for SC/ ST proportionate to population were made mandatory in all government enterprises and government-run educational institutions.

The **Scheduled Castes** (SCs) and the **Scheduled Tribes** (STs) are two groups of historically disadvantaged people that are given express recognition in the Constitution of India. During the period of British rule in the Indian subcontinent, they were known as the depressed classes. The Scheduled Castes and Scheduled Tribes make up approximately 16.6 per cent and 8.6 per cent respectively of the population of India, according to the 2011 census. The proportion of Scheduled Castes and Scheduled Tribes in the country's population has steadily risen since independence in 1947. *The Constitution (Scheduled Castes) Order, 1950* lists 1,108 castes across 25 states in its First Schedule, while the *Constitution (Scheduled Tribes) Order, 1950* lists 744 tribes across 22 states in its First Schedule.

- As seen alongside, total Multiple Poverty Index (MPI) of India (421 Million) is larger than the combined MPI of 26 African countries (410 Million)
- In India 440 Million are living in Poverty. 44.8 per cent of STs and 34.8 per cent of SCs in rural India and 27.3 per cent of STs and 21.8 per cent of SCs in urban India live below the poverty line.
- 42 per cent of Indians live in a state of chronic Poverty.
- One million people are displaced every year, of these 40 per cent are STs and 40 per cent comprise Dalits and the rural poor.



³⁴ Change Alliance

Towards responsible business in India

The National Voluntary Guidelines on Social Environmental and Economic Responsibilities of Business (NVGs) contain nine principles of which principle 4, 5 and 8 are related to AA. These are:

- Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalised
- Principle 5: Businesses should respect and promote human rights
- Principle 8: Businesses should support inclusive growth and equitable development

These NVGs were established in 2011 by the Ministry of Corporate Affairs and is currently under revision. The revised NVGs will be released by this year (2016). SEBI (Securities and Exchange Board of India) adopted the NVGs in August 2012 as a business reporting framework - the Annual Business Responsibility Report (ABRR) for the top-100 listed companies on the two Indian exchanges from 2013 onwards and the number increased from 100 to 500 top listed companies of India from 2016 onwards. The ABRR is a reporting format that requires principle-wise (NVGs) disclosure by businesses. This reporting framework helps Indian companies implement the NVGs and communicate the same to its stakeholders. It is designed on an 'Apply or Explain' methodology and aims at assisting companies to re-examine their processes and

align them with the ethos of the NVGs. The 100 companies that report are currently the top listed companies based on market capitalization at BSE (Bombay Stock Exchange) and NSE (National Stock Exchange). 98 companies have filed their Business Responsibility Reports (BRRs) on the websites of the National and Bombay Stock Exchanges. For Public sector Enterprises (PSEs), the Department of Public Enterprises (DPE) Guidelines on CSR and Human Resources Management for Central Public Sector Enterprises (CPSEs) were released in 2010.

The most significant step by Government of India is the enactment of Companies Act 2013 (Companies Act), which has introduced several new provisions that change the face of Indian corporate business. One such new provision is Corporate Social Responsibility (CSR). Ministry of Corporate Affairs has recently notified Section 135 and Schedule VII of the Companies Act as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, (CSR Rules) which has come into effect from 1 April 2014. The criteria of profit, turnover and worth has put approximately 16,000 companies under its ambit where companies have to spend 2% of their net profit and CSR has remained an internal boardroom discussion, where board of directors are by and large responsible for delivering its CSR programmes.

Affirmative action and the corporate sector

The corporate sector's contribution to affirmative action in India during the pre-liberalisation era was limited to the mandatory reservation policies for public sector units (PSUs) and perhaps a handful of companies, which proclaimed their commitment to a diverse workforce and the upliftment of the marginalised. But with India's meteoric rise as an economic powerhouse after the 1991 economic reforms, the private sector burgeoned and changed the socio-economic fabric of the subcontinent, leading to greater disparities, and adverse effects on the socio-cultural fabric of the country. The disparity is seen in the income levels and the opportunities available to different sections of society.

In 2006, Prime Minister Manmohan Singh

made an appeal to the business sector to include AA policies in order to promote diversity in the workforce. The call did not go unnoticed and many companies and industry organisations committed to pursue the ideals of AA. The heads of nodal agencies representing Indian industry including the Confederation of Indian Industry (CII), the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chambers of Commerce and Industry of India (ASSOCHAM) outlined the basic criteria to be followed for affirmative action to be undertaken by companies via policy implementation and positive discrimination in the hiring of candidates. CII also developed a Code of Conduct on Affirmative Action, which, to date, has over 700 member companies as signatories.

As per the code of conduct affirmative action refers to the deliberate efforts to provide full and equal opportunities in employment, education, employability, and entrepreneurship to Scheduled Caste (SC) and Scheduled Tribe (ST) communities. It could be a policy or a programme that seeks to redress past discrimination through active measures to ensure equal opportunity, as in education and employment.

Additionally, the corporate sector can no longer function strictly as an economic entity, driven solely by profit. It is answerable not only to its shareholders but the society as a whole. For this very reason, CSR is not just a buzzword, primarily aimed at scoring PR brownie points; it is slowly becoming a full-fledged strategy that governs, or should govern, a company's interactions with all of its stakeholders, barring none.

At present, the obligations of states with regard to implementing labour rights are increasingly being complemented by instruments that call upon the corporate sector to be responsible and accountable for its impact on larger society, including those whom it employs or whose employment it influences through the sub-contracting chain. One of these instruments is the 2011 UN Guiding Principles on Human Rights and Business for implementing the UN "Protect, Respect and Remedy" Framework. For the first time a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity was in place.

The Sustainable Development Goals (SDGs) clearly envisage a role for the private sector and mounting international pressure for a clear accountability framework to assess private sector performance of SDGs is ensuring that the two worlds of business and human rights unite. Additionally, Principle 6 of the UN Global Compact requires supporting companies to seek 'the elimination of discrimination in respect to employment and occupation'. Another framework is the Global Sullivan Principles, which state that companies will 'work with governments and communities in which we do business to improve the quality of life in those communities, their educational, cultural, economic and social well-being and seek to provide training and opportunities for workers from disadvantaged backgrounds'.

There are similar commitments in the OECD Guidance for companies and the United Nations Norms on the Responsibilities of Transnational Corporations and other Business Undertakings with regard to human rights. Companies are now expected to display a higher degree of corporate governance.

In 2012, Change Alliance did a study with Partners in Change³⁵ on the Status of Affirmative Action (SC and ST) in top BSE listed companies of India. For the study, the top 145 companies ranked by the Bombay Stock Exchange as on 31 March 2011 were considered and an attempt was made to engage them in a meaningful conversation. Many of them were signatories to the Code of Conduct of AA in CII, FICCI and ASSOCHAM. While the public sector companies seemed committed to the ideals, at least in letter, since reservation is compulsory for them at least at the workplace level, very few private sector companies displayed an inclination towards adopting and implementing effective Affirmative Action policies and to making the information available in the public domain. Only one business group (Tata Group) had an embedded Affirmative Action policy. Others chose to adopt voluntary codes of conduct devised by the various industry associations.

The reticence in having an open conversation on the subject is evident from the fact that only 39% of the companies contacted participated in the study. This figure includes those who did not have such policies and initiatives in place (10%). The rest either declined to participate or did not respond to our communication. Many companies proclaimed that none of their business activities is affected by caste, creed, religion or gender issues. Only a few companies (Crompton Greaves, TCS, Tata Steel, Tata Motors, Godrej Consumer Private Limited) were able to respond to all four sections of the business areas covered in the study (workplace, supply chain, marketplace, community) while almost all of them did not, as no actions had been taken in one or more of these mentioned domains. The boxes below illuminate some of the issues at hand.

³⁵ Archana Shukla Mukherjee and Sunanda Poduwal. Status of Affirmative Action in Top BSE Listed companies of India, 2012, Partners in Change and Change Alliance.

CASE 1. Crompton Greaves

While other companies cited numerous challenges ranging from potential employee unrest to lack of talent pool among the SC/ST communities, Crompton Greaves stood out because of an aura of resilience. To our questions on the challenges they face in planning and implementing AA policies, the company simply said “None. Effort and will required”. According to them, companies should first try and test AA and then talk about the issues and problems - but not before that.

They were the only company having initiatives on AA in all the spheres of influence vis. workplace, supply chain, community initiatives and also at marketplace.

CASE 2. Pharmaceutical company

An HR manager with a top listed Pharmaceutical company mentioned his privileged upbringing and how he never asked or bothered about which caste or creed an individual belonged to. The company adopted the same approach too. “We go by merit and do not discriminate. Keeping our shareholders and employees happy and doing business in the most ethical manner is what drives our business,” he concluded.

This response raises many vital unanswered questions like how do they know that they do not discriminate, what are the mechanisms to measure it? To what extent is diversity in the workplace monitored in such a way as to reveal hidden, subconscious or institutional discrimination?

As a means of beginning the process of operationalising a more effective affirmative action approach within the business community, an attempt has been made to summarise the key observations³⁶ from each of the six aspects of AA covered. These points paint the way for pro-active and concrete steps to be taken in the near future:

1. **Workplace:** Increase awareness of business leaders and board members, who can take concrete action as to the business case for AA. The AA initiatives of the companies should also be incentivised by regulatory bodies, including the respective ministries of the companies (sector wise) and SEBI.
2. **Supply-chain:** Establish concrete processes to identify and promote SC/ST entrepreneurs for inclusive supply-chain management.
3. **Marketplace:** Begin awareness raising of the benefits of addressing AA in the marketplace, which in turn can increase the number and capacity of consumers from SC/ST communities.
4. **Community Initiatives:** Analyse the demographic profile of the community and ascertain the percentage of SC/ST. It is possible

to assess their needs to assist these communities without revealing caste-based criteria.

5. **Sectoral level:** Collaborate (on sectoral basis) to identify ways and best practices that individual business sectors can best address AA.
6. **Public Policy:** Expand the government’s role in legislating policies to promote equality of opportunity and also promoting transparent disclosure mechanism (at all the four pillars of workplace, supply chain, market place and community level) in the public domain about AA in the private and public sectors.

The above-mentioned government and regulatory frameworks are changing the way the corporate sector interacts with its various stakeholders. Issues such as disclosure, inclusion and human rights which earlier did not find a place in the Indian corporate lexicon, are slowly becoming inseparable from business activities. In addition to the above is a positive trend in the development of instruments and tools applicable to companies to understand and manage their human rights impact, and these include several specific to the issue of caste-based

³⁶ Mukherjee Shukla Archana, Sunanda Poduwal and Viraf Mehta. Status of Affirmative Action in Top BSE Listed companies of India, 2012, Partners in Change and Change Alliance.

discrimination. However, the corporates have a long way to go in complying with their responsibilities to ensure human rights of marginalised groups.

The misconception of businesses that safeguarding the rights of marginalised communities is the responsibility of only the State is negatively impacting on the community as well as unbalancing the sustainability of the businesses. There is strong evidence to support that embracing human rights of these marginalised communities is good for businesses, and ignoring them would only add to material and financial risks. There are examples of

mining companies in Odisha, where there were cases of lockouts and protests by the community every other day, but through CSR initiatives they have not only gained profits but also a positive reputation.

The government, corporate sector, industry federations and civil society organisations will need to work together towards advancing the interests of the marginalised. There needs to be an understanding that the steps that follow, would, in the long run, create a more inclusive society and reinforce equitable growth.

Chapter 4:

Disability beyond photo opportunities: why CSR needs to be more than charity

- Javed Abidi⁴²

Policies are informed by data – hard, cold numbers. But often, it is important to pause and look for the human implication of those numbers. For instance, of the 2.9 million people with disabilities in India, 990,000 children aged 6 to 14 years (34 per cent) are out of school⁴³. This means that a huge chunk of our population will not have the skills to be part of the labour market. Therefore it is no surprise that of the 13.4 million people with disabilities in India in the employable age group of 15-59 years, 9.9 million were non-workers or marginal workers⁴⁴. So, this means that they have no choice but to be dependent on social security. But there's one more statistic – only 49.5 per cent people with disabilities have been issued disability certificates – that piece of paper that is absolutely necessary for getting social security⁴⁵. The bottom line – millions of people with disabilities in the country are either forced to live a

life of poverty or be dependent on their families and caregivers. If that is not a blow to our claims of a huge demographic dividend, then what is?

The stated provision of systems that can enforce diversity pledges - such as affirmative action or reservations, designated departments, and grievance redressal mechanisms - was also checked. It was found that 46 of the companies report having a system to actually enable equal opportunity in recruitment, beyond a stated commitment to it in policy. More than two thirds of the companies have also made public their anti-sexual harassment policies. The companies collectively demonstrated limited systemic provision for ensuring diversity of all disadvantaged groups within the boards. A small proportion of the companies (11) have stated commitments to a disabled-friendly workspace.

Table 4.1: Identification of specific provisions that facilitate diversity in workspace (n=99)

Provisions	Number of companies
Provision for disabled-friendly workspace	11
Assessing diversity in Board of Directors	92
Assessing diversity in workforce	98

Measuring and disclosing diversity

The 2013 Companies Act mandated that at least one member of the Board of a Company should be a woman. As evidenced in the above table the great majority, 92 of the 99 companies, have shared publically the number of women within their Boards and also within their workforce; but in both these cases, 'diversity' is reported only to the extent of women's representation: the inclusion of some

other disadvantaged groups does not appear to be systematically tracked. High levels of disclosure of representation of Persons With Disabilities (PWDs) within the workforce were also found, but less than one quarter of companies (23 and 22 respectively) reported the number of staff from scheduled caste or scheduled tribe communities.

Table 4.2: Number of companies that disclosed disaggregated data on social categories in their Board and workforce (n=99)

Elements of diversity	PWD
Diversity in Board	0
Diversity in Workforce	79
Assessing diversity in workforce	98

It is important to have these figures in mind while talking about Corporate Social Responsibility (CSR) and disability because this picture needs to change. The problems plaguing disability inclusion in India are systemic. However, efforts to address issues at a macro level are few and too far in between. Looking exclusively at CSR efforts in the area of disability, we see more of charity than true empowerment. While looking at the micro-level is important, systemic issues can only be addressed if we look at the larger picture - schools that are not inclusive, infrastructure and transports not accessible, and employers not willing to open doors. Donating a few wheelchairs, hearing aids and Braille books, while helpful, does not have a multiplier effect. Yes, it does make for a good photograph for the annual reports, but will that change the big picture?

Traditionally, CSR has focussed primarily on service delivery with priorities set by the person at the helm of the company. While there is nothing wrong in service delivery, especially in a country like India, more often than not, it does not address the root cause of the problem. Without addressing the genesis, the solution cannot be sustainable and the status quo returns when the CSR funding dries up. Companies in India have shied away from being more active in catalysing policy level changes. A fair assumption for this would be that companies want to be away from issues that may be contentious and place them in a confrontational path with the political establishment. But what needs to be understood is that policy work need not always be activism. It could be as benign as creating scalable models of skill development; promoting solutions to access needs for a particular geographical area; or promoting research and documentation.

Section 135 of the Companies Act 2013 provides an opportunity not just to streamline CSR activities but also to look at addressing policy issues. Although disability was not exclusively mentioned in Schedule VII of the Act, the General Circular of June 2014⁴⁶ includes aids and appliances for

people with disabilities as part of CSR activities. Moreover, disability is a cross-cutting issue, and therefore it is part of other sanctioned CSR activities such as eradicating poverty and hunger, promoting education, empowering women, developing employment enhancing vocational skills, among others. The General Circular also states “entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated... The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities.”

So what can be done? The following could be a good place to start:

Align CSR with the company’s overall value system

CSR does not exist outside of the organisation’s overall values and beliefs. What does the organisation stand for? If it stands for promoting diversity and inclusion within all its processes, then CSR could feed into that. For example, Mphasis is a role model employer of persons with disabilities. Many of its CSR activities actually support their larger inclusive agenda. As part of its efforts to employ more people with disabilities, it supports organisations that work toward skilling people with disabilities

Focus on changing the larger picture

Service delivery programmes are very important in a country like India where there is a huge gap between services required and services available. However, to address the issue of why services are not available in the first place, there has to be a policy level intervention. For example, Microsoft collaborated with the Government of Maharashtra to institutionalise the use of accessible web documents in all departments. It also supported NGOs to raise awareness on the benefits of making the web more accessible.

⁴² National Centre for Promotion of Employment for Disabled People in India

⁴³ Source: http://www.unicef.org/education/files/allinschool.org_wp-content_uploads_2015_01_Fixing-the-Broken-Promise-of-Education-For-All-full-report.pdf

⁴⁴ Source: <http://niepmd.tn.nic.in/documents/skill-0715.pdf>

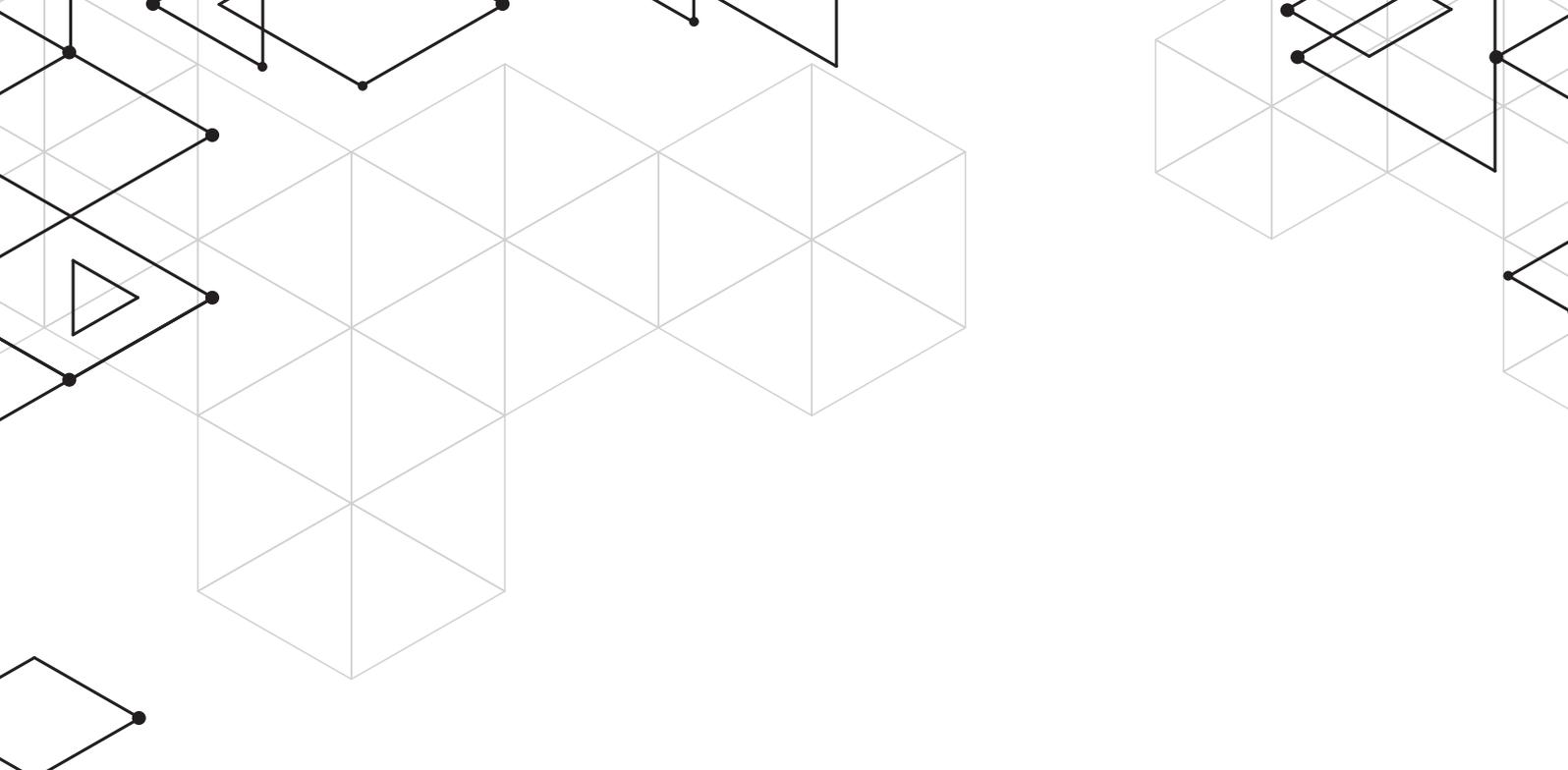
⁴⁵ Source: http://www.disabilityaffairs.gov.in/upload/57301ed5a347fDisabilities_AR_2015-16_%20English.pdf

⁴⁶ Source: http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/General_Circular_21_2014.pdf

Support activities with multiplier effects

Scalability is something that companies should look for when supporting CSR activities. It is more than a buzzword. It is not always possible to support projects at the local level that can be scalable, and not all ideas are equally scalable everywhere. But it is important to look for solutions that can be replicated. One good way of doing so is to be involved in larger information sharing networks. For example, the International Labour Organization (ILO) has a Global Business and Disability Network, a network of multinational enterprises, employers' organisations, business networks, and disabled people's organisations sharing the conviction that people with disabilities have talents and skills that can enhance virtually any business.

In September 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development that includes 17 Sustainable Development Goals (SDGs) and 169 targets. It has the ambitious agenda of eradicating extreme poverty and hunger by 2030 and to 'leave no one behind'. The private sector played an important role in bringing the business perspective to the negotiation process. The fact that the private sector was actively involved in shaping the SDGs also puts an onerous responsibility on them to be an active part of the implementation process. If corporates in India are to honestly take on the agenda for development, they have to look at CSR as means for creating an equitable society for all. The Companies Act 2013 may mandate only 2% of profits to be spent towards this, but it does require a 100% commitment. The present provides an unprecedented opportunity for CSR to re-invent itself. Going beyond charity is the only way to optimise it.



PART 3:

Corporate Social Responsibility: Whose Development?

Chapter 5:

The Companies Act and CSR: the landscape in India

- Pradeep Patra³⁸

It is over two years since the enactment of the mandatory CSR provision in India as per the Companies Act 2013. Starting from the end of year one, we have seen many attempts to provide an overview of things shaping up within CSR, primarily on the basis of public disclosures by companies. While most such analysis has limited itself to the total amount of expenditure or areas of expenditure, very few have attempted to look beyond the 2 per cent and tried to make sense of the broader picture i.e. impact of mandatory CSR on development discourse, CSR engagement in issues of equity and inclusive growth, as well as the changing relationship between the private sector, the Government and civil society. Discussions on the above should ideally provide the guiding force to any discussion on CSR and not the other way around, for the very basis of CSR was to “support inclusive growth and equitable development” as stated under principle 8 of the National Voluntary Guidelines, which arguably is the guiding document behind the CSR mandate.

While CSR was nothing new to Indian Companies

(for many had practised it for years in different ways), the mandate did provide three critical breakthroughs – i.e. a) It made it nearly mandatory for companies to spend on CSR, b) It provided an implementation framework for the CSR work to be carried out in a much more systematic way than before and c) it also attempted to unify the sporadic CSR activities in different geographies and with different focuses though a mandatory reporting requirement. This improved transparency was expected to go a long way in building mechanisms, both legal and non-legal such as greater public scrutiny to facilitate compliance not only to the rules but also to spirit of the law. It is over two years since the CSR implementation mandate with the second year CSR disclosure reports slowly coming out. On the basis of available reports, reanalysis done by other organisations and media reporting, there are a few initial observations which can fall into two broad categories – a) findings regarding compliance issues and b) observations around broader implications of initial CSR trends. The current paper is an attempt to provide a brief snapshot of select findings from both.

Compliance-related observations

i. CSR expenditure:

One of the major discussion points at the time of CSR provision enactment was the total amount this shall bring in for development. Estimates ranged from Rs. 15,000 crore to Rs. 25,000 crore. In the first year, however, nearly two thirds of companies failed to meet the recommended 2 per cent CSR expenditure limit, including 32 of the NIFTY 50 companies. The total actual amount of CSR expenditure estimates were somewhere between Rs. 6500 crore (IICA estimate on top-100 companies) to Rs. 10,000 crore. This was way below initial expectations. Recently, the Ministry of Corporate Affairs issued show cause notices to more than 100 companies for not meeting the spend requirement. While relative unpreparedness in the first year could be one of the reasons, we can only hope that companies are taking this seriously and are not falling back to the relaxation provided by “spend or explain” provision. The other critical aspect is with regard to the nature of expenditure.

The activities suggested under Schedule VII of the Act as eligible under CSR expenditure are as much prescriptive as suggestive in their broad mandate. With lack of a clear monitoring mechanism what is counted as CSR is varied and we have seen examples with companies counting either out of the mandate activities or core business costs as CSR. In many such cases, expenditures might nearly adhere to the rules but most certainly violate the spirit of the law and need to be looked into.

ii. Focus on need assessment, planning and monitoring of CSR projects:

Participatory needs assessment and a robust monitoring framework are critical building stones of a development project. While analysis done by Corporate Responsibility Watch (CRW) found a high level of compliance to formulation of CSR policies and establishment of CSR committees, it found only 17 of the top 100 have carried out

a needs assessment for designing CSR projects. Even more, only 1 company involved the community in designing its CSR projects. These findings accentuate the need for CSR to be closer to the community, not only in final delivery but also in the process of deciding what project to carry out as well as in deciding the manner it has

to be carried out in for maximum impact. Unless such community collaborations are established at different stages, questions will always remain on what needs to be done and what is being done. Furthermore, only 22 seemed to have any provision for an independent assessment of projects by an external entity.

Table 5.1 Findings of analysis of self-disclosed information by corporates

Recognition of key aspects	Number of companies
Identification of backward regions for implementing community development projects	23
Identify and specify some distinct vulnerable identities as target stakeholders with whom companies plan to implement their CSR programme	63
Presence of system for/to:	
Needs assessment for initiating CSR projects	17
Stakeholder consultation for formulating CSR policy	1
Independent impact assessment of CSR projects	22
Estimate number of beneficiaries	68
Determine distribution of expenses on CSR across themes	24
Source: <i>'Making Growth Inclusive: Analysing Inclusive Policies, Disclosures and Mechanisms of Top 100 Companies'</i> (October 2015): 39-42	

iii. Nature of CSR investment:

Following the lead provided by schedule VII of the CSR rules, most CSR expenditure by companies has concentrated on a handful of areas. For example, in a study carried out by McKinsey, it was found that over 90 % of CSR investment flowed into only 7 to 10 development sub sectors from a list of 50 subsectors it considered. Even within some of the well-endowed sectors such as education, much of the contribution has remained with primary education, leaving little for pre-primary, teacher training or special education needs. This skewedness is not only limited to thematic areas of investment but also extended to geographic areas of investment. The seemingly normal phenomena of highly industrialised and developed states getting the bulk of CSR investment and less industrialised – less developed states getting very little, is also a paradox when it comes to development paradigm.

iv. Limited disclosure:

The high level committee to recommend monitoring mechanism for CSR has done away with any stricter monitoring citing the initial

learning period as a reason. In such a scenario, it is expected that the companies proactively take measures including that of progressive disclosure practices to pre-emptively disable any necessity for stricter monitoring, even in the future. However, the disclosure levels have been disappointing so far, especially with regard to financial disclosures. For example as per an analysis done by CRW, only 24 of the top 100 disclose any thematic distribution of CSR expenditure. While the fear of increased public scrutiny could be one of the factors behind limited disclosure, companies need to look at the potential link between improved disclosures and improved public image and trust building with stakeholders.

v. Partnerships for Developments:

One of the most emphasised yet least acted upon aspects of the CSR mandate has been its implementation in partnership with civil society/ NGOs. At the moment much of the CSR work is a mix between implementation by the corporate's own foundations, employee engagement, contribution to funds and to a lesser extent by partnerships with NGOs. Civil society in India given its years of experience possesses the unique

understanding and skills to bring in social change. Corporates will do a lot of good if they partner with it in issue-specific interventions, rather than creating their own implementing foundations and

trying to reinvent the wheel. This would not only help them better understand complex societal problems but also to better design and engage with communities.

Some broader trends in CSR and their implications

Apart from the direct findings mentioned above, there are also many associated developments that are taking place and have serious implications on development. These are shaped by Government action or by the collective actions by corporates. Here are some of the key trends worth discussing:

a. Increasing role of Government in CSR:

After the initial enactment of the CSR mandate, several state governments have been only too willing to establish state development funds/entities for collecting or channelizing CSR money. The Gujarat CSR Authority and the Jharkhand CSR council are just two initial examples. While there is nothing wrong with approach at the surface, such engagements become vulnerable to misuse as tools to win direct or indirect goodwill from the government. What also makes them vulnerable and questionable is the nature of their constitution and approach to decision making. Most of them are constituted with members from Government and private sector, while other critical stakeholders such as civil society are left out. Continuation of such a scenario would necessitate the question as to whether CSR is becoming less of a philanthropic activity by the private sector and more of a welfare tool for governments to deliver their services. It does not quite go with the spirit of CSR and typically omits community inclusion and stakeholder engagement requirements.

b. CSR to further strengthen regional and social group disparities:

In India, development or the lack of it is still dominated by people inhabiting specific geographies and by people belonging to specific communities. And these are the people who most often get side-lined from any benefits of economic growth and thus have to be specifically considered for any development intervention. Given the fact that CSR investment also has the capacity to encourage additional investment from others, Government included, neglect of such communities may further exacerbate geographic and socio-economic disparities. A 2015 CRW study also finds that only 23 companies have included identification of backward areas to focus their CSR strengthens this argument. There is very little focus or investment on communities

belonging to SC/ST communities, or communities living around forest/hilly areas or geographically remote areas, or communities who still are living on the margins due to long standing social exclusion. The current CSR regime somehow bypassed the hard facts of what causes poverty other than a mere lack of income such as social exclusion, discrimination, lack of access resources and historic injustice. A CSR investment design without addressing these factors, shall only be working towards temporal charity rather than long-term solution.

c. Rethinking the role of CSR:

The total expected CSR expenditure may look large but it is pretty small in comparison to total Government expenditure on welfare service delivery. In such a scenario, a rethink on the role of CSR is also required. For example, will the maximum value from CSR be created by adding a few more service outlets or by creating innovations to get the maximum out of existing Government services? Will a community empowerment approach rather than providing them services for some time work better in the long run for the community to demand and obtain welfare services for themselves? These are hard questions that also demand a rethinking on the approach various companies take at their CSR. While it is understandable that these are complex issues that many a CSR intervention may find it difficult at the moment to get engaged with, such an approach can help forge community and NGO partnerships.

d. Impact on Civil Society:

The CSR mandate came into force at a time when traditional sources of support for civil society are drying up. Most bilateral and multi-lateral donors have withdrawn from India at the behest of Government notifications and stringent FCRA rules and other regulatory apparatus in the control

of Government is making it difficult for NGOs to access funds. The most adversely affected are the ones working with a rights-based approach, be it those working on issues of human rights or Governance and accountability. Many NGOs were looking to CSR, as a potential source of support. As mentioned above, not only has the CSR fund flow to NGOs been disappointing, but the nature of fund flow is now posing another danger to the sector. A lot of organisations that were working with a rights based approach are now turning into service delivery entities. Thus the alternative

views on development (the dissenting voices), which are equally significant to a democratic and pluralistic society are not only occupying a shrinking space but are also feeling a severe threat to their continuity. Mature corporate CSR and foundations world over have always supported a range of activities including work on human rights, be it the Rockefeller, the Ford or our own Tatas. There will never be a better time for corporate CSR to learn from their esteemed and often, more experienced, peers.

Challenges and way forward

It is understandable that many approaches suggested may appear complex, time consuming and not necessarily leading to an immediate tangible outcome: however, the long term benefits most certainly outweigh the increased input requirements. The mindset also has to change from ‘we invest,

hence we decide’ to ‘what is best value addition in development’ approach. Given its relative newness CSR is still at a nascent stage in India and is bound to improve in coming years. We have made a few steps in the right direction but there is a long way to go.

Chapter 6:

CSR - An opportunity to further gender equality

- Nishtha Satyam³⁹

The Companies Act 2013 mandating prequalified private companies to spend a predetermined percentage of their profits has largely been a win-win for all actors, significantly shaping the changing development paradigm. Most importantly, this has constructed a conducive environment for corporate citizenship, supported by a weighty envelope of development finance catapulting Corporate Social Responsibility from the backroom to the boardroom. The state of affairs on both sides of the bridge has strongly and successfully compelled India Inc. and a very robust Civil Society to move progressively along the trajectory of establishing common goals, convening multi-stakeholder platforms, and debate mutually acceptable measures of success.

While a few progressive companies have leveraged this opportunity to contribute to the most urgent national goals, many corporates are yet to see this as a chance to achieve a balance of economic, environmental and social imperatives (Triple-Bottom-Line Approach), while addressing the expectations of shareholders and stakeholders. This has to be seen in the context of a vast majority of policy decisions and initiatives in India being

based on the view that they must be focussed on the disadvantaged and marginalised, the poor and the deprived. They are based on the premise that assurance of fundamental rights and the expansion of opportunities would help achieve significant and sustainable human development. In order to advance such development, company policies and strategies must encourage, support, mandate, or directly demonstrate more socially and environmentally sound business practices. The country at large has been engaging with great intensity in the debate of developmental growth versus welfare based development, as evinced by the evolution of the CSR legislative process.

Undoubtedly, mandatory CSR in this context has sparked an interesting discussion on how Corporate India can use this to explore innovative ways to reach newer markets and penetrate deeper to the grassroots. Over the years, many of the stalwarts of business have proved that well-designed and carefully executed interventions not only lead to positive social change but also contribute to national development at various levels.

The Companies Act 2013 and Women's Empowerment

A significant win in the Companies Act 2013 is the establishment of women's empowerment and the promotion of gender equality as a stand-alone area of CSR, versus a mostly passive approach to investing in women and their empowerment. This lays a potent ground to ensure an intentional and not accidental or incidental focus on women, given that gender inequality around the world is deeply rooted in the distribution of resources, division of labour and attitudes, beliefs and practises. The universal

recognition of gender equality as a standalone goal is likely to be the first real step towards translating the rhetoric on gender equality to real resource investments in furthering the gender issue. However, before we appreciate this, it is important to reiterate why investing in women is important to the three parameters of effective CSR: meaningful change, sustainability of the change and scalability or replicability of the intervention that led to the change.

³⁹ UN Women

The Indian context

The India Responsible Business Forum (IRBF) Index 2015, shows that among 99 companies⁴⁰, by and large, most firms' public statements talk about equitable recruitment and career advancement for marginalised and excluded groups. About 60% of companies recognised the importance of not discriminating against women (63). The Companies Act mandate to have at least one woman board director has forced firms to take a hard look at the gender ratio in their firms and the number of women in senior management. As many as 92 of the 99 companies have publicly shared information on the number of women on their boards and also in their workforce.

Why Women need to be Targeted

Socially, when women control additional income, they spend more of it than men do on food, health, clothing and education for their children. This has positive implications for immediate well-being as well as long-run human capital formation and economic growth through improved health, nutrition and education outcomes.

Though India has seen great progress in socio-economic development, over the last decade, moving up by 18.65% on the Human Development Index between 2000 and 2011, its women across quarters have been left behind in this journey. Girl children continue to be undesirable and discriminated against, violence against women in public and private

spaces continues to rise, millions of women continue to defecate in the open and their access to resources and opportunities remains abysmal. Female labour force participation has dramatically decreased from above 40 per cent in the early-to-mid 1990s to 29.4 per cent in 2004-05, 23.3 per cent in 2009-10 and 22.5 per cent in 2011-12. One in three women and girls will be beaten, raped, abused, or mutilated in their lifetimes. A gross human rights violation, this pandemic fractures families and communities and hampers development, also costing billions of dollars annually in health care costs and lost productivity. Globally, more than 125 countries have specific laws that penalise domestic violence; yet 603 million women live in countries where it is not considered a crime.

⁴⁰ Source: <http://www.livemint.com/Companies/hl7qgbPQONG3y2gvtDeQPP/Policy-focus-is-on-women.html>, article published as on October 26 2015

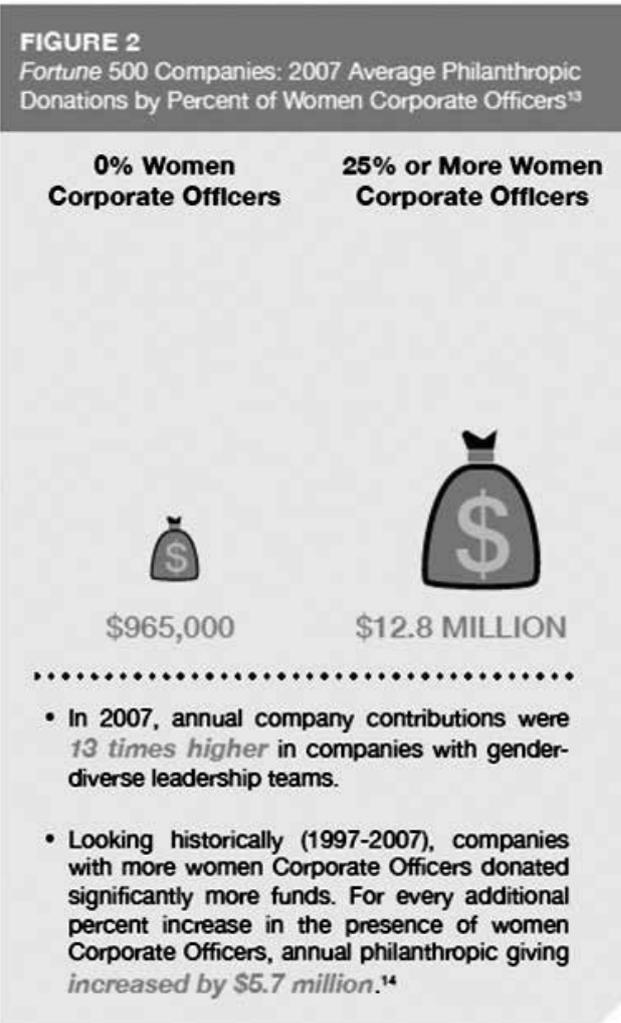
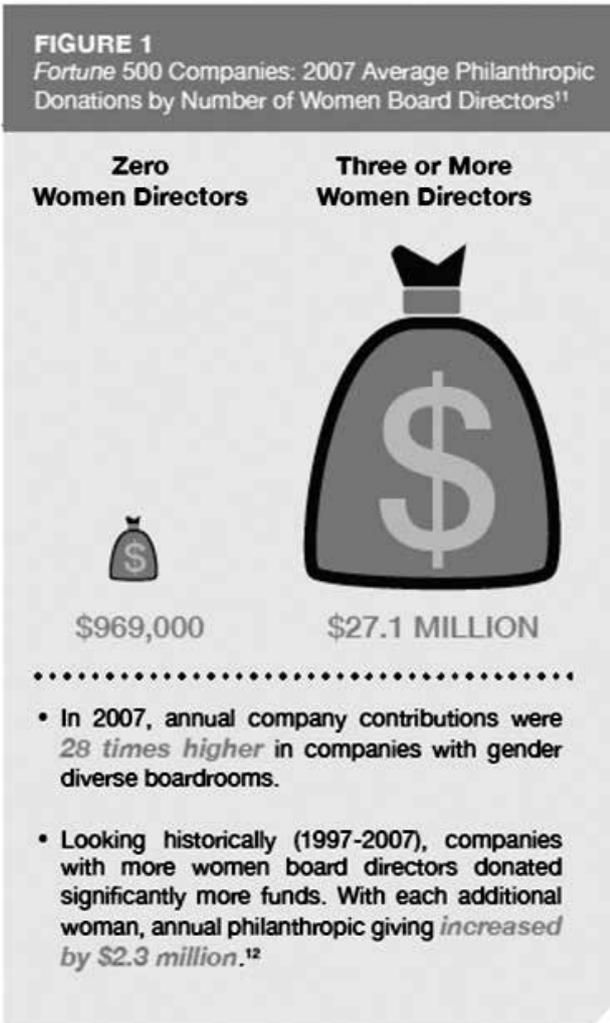
⁴¹ Source: <http://www.livemint.com/Opinion/ehA6VpaCCvOs0OjXfvKOZM/Women-in-the-workplace-Not-yet-a-better-balance.html>

Influence of Women on CSR

Interestingly, researchers from Harvard Business School examined how corporate leadership and organizational structure influence CSR. Focusing specifically on how women leaders might impact CSR, researchers from Harvard Business School and

Catalyst conducted follow-up analysis. Compared to companies without women executive leaders, they found that companies with gender-inclusive leadership teams contributed, on average, more charitable funds.

Gender-Diverse Executive Leadership is Associated With Higher Contributions



It's not only a matter of companies with more women leaders being larger and having more money to donate or of companies with more women being clustered in industries with higher levels of charitable giving. After controlling for key factors that might influence the amount of donations, including financial performance, company size, and industry, the presence of women leaders in Fortune 500 companies still has a significant, positive effect: more women leaders are correlated with higher levels of philanthropy.

The importance of women to effective and sustainable CSR initiatives is not just limited to their representation in the boardroom. Women control almost 70% of global consumer spending and can actually drive the market for eco-friendlier products resulting in increasingly sustainable production methods by many companies. Another key survey revealed that 55% of global online consumers said that they are willing to pay more for products and services from companies that are committed to creating positive social and environmental impact. We must here note that as per a recent survey by

Nielsen, propensity to buy socially responsible brands is strongest in Asia (64%) as compared to anywhere else in the world. One of the most important reasons and perhaps the most important for corporates as to why social returns of their investment must be measured and communicated is the demand for social performance data from consumers, most of them being women.

Despite the compelling business and social case to invest in women, many companies do not consciously and intentionally focus on women and girls or report on gender data. An important hurdle to analysing the impact on gender equality through CSR is the lack of consistent definitions and the lack of companies including gender in their reports.

It is also important to recognise that no single actor has the capacity to have an independent impact or

enough clout to fully influence their social value chain partners. Therefore, every company must attempt to internally recognize and find ways to work through multi-stakeholder platforms and aspire for collective impact to further the complex agenda of gender equality and women's empowerment.

In conclusion, there are fewer more critical issues for the economics, market positioning and international competitiveness of the business sector than the choices of members who make up its workforce and leadership. The world will never realize 100 per cent of its goals if 50 per cent of its people cannot realize their full potential. Being one of the first countries to have a comprehensive legislation on CSR, India is commendable in the opportunity it offers to the business sector for undertaking Corporate Social Responsibility focused on furthering gender equality, a prerequisite to achieving any other national or international goal.

Chapter 7: CSR implementation: who is watching?

- Subhash Mittal ⁴⁷

Undoubtedly, CSR spending has been rising. As per data released by the Ministry of Corporate Affairs, CSR spending of 460 top corporates, including 51 PSUs, in FY 2014-15 was around Rs 6338 crores⁴⁸. Another report states that top 250 companies allocated almost 14 per cent budget higher than the previous year⁴⁹, though at the same time, companies are finding it difficult to spend these allocations. The above-mentioned report states that more than 20% of

the budget could not be spent. This under-spending is understandable, since it takes time to identify good projects and then mobilise human resources, and win confidence of communities to implement projects which are credible. However, the question that this write-up looks into is what processes are in place to ensure that CSR funds genuinely reflect efforts of corporates in implementing their social commitments.

Lack of transparency in policy promoting unrelated projects

A corporation is required to undertake its CSR activities in accordance with a CSR policy as approved by its Board. The policy should provide a list of CSR projects or programmes, which a company plans to undertake. Of course, these projects need to be within the purview of the Schedule VII of the Companies Act. The CSR policy also needs to specify modalities of execution for each project, along with implementation schedules. The purpose of this detailed planning, as required under the Act, is to enhance transparency in the type of projects that the companies undertake for implementation.

The problem is that one would find it hard to locate a company whose CSR policy has such a detailed list of projects on its website. Most policies are vague and general in nature, or at best, just a list of domains picked up from Schedule VII that the companies plan to implement. Considering that already two years have elapsed since the CSR law became

effective, and we are half way into the third year, one would expect that the policy would have, by now, started specifying the projects to be implemented at the beginning of the year. Preparing a policy by involving and discussing with the community as required under the Business Responsibility Report is almost negligible in most cases.

Most company managements receive innumerable requests for CSR projects from several quarters and not being too specific in a Policy which is required to be disclosed on the website at the beginning of the year, allows a company to favour 'a few' or even to oblige personal contacts. Perhaps non-disclosure is more convenient, as it gives a company flexibility in selection of the projects. However, the biggest risk that the CSR department faces by not disclosing detailed projects in the public domain is that CSR may become a dumping ground for expenditure which a company cannot put anywhere.

Lack of assurance mechanism for CSR expenditure

The year-end reporting as required under the CSR Rules is quite specific. It asks, not only for project-wise details, but also where the project is located, the amount allocated for each project and the amount spent. The amount spent has to be further disaggregated in direct expenditure and overheads.

However, there is no requirement for audit of this report. Considering that there are numerous audit requirements under the Companies Act 2013, it is surprising that such an important report does not have any audit requirement.

⁴⁷ Member, Socio Research Reform Foundation but views are personal

⁴⁸ Ministry of Corporate Affairs in response to an un-starred question (Q 510) in Rajya Sabha on 1-3-2016

⁴⁹ India CSR Outlook Report 2015

To ensure that the companies do not charge spending on facilities being provided to employees, the rules provide that any project that benefit only the employees of the company and their families shall not be considered as CSR activities (Rule 4(5)). As the word 'only' has been used, it allows companies to charge expenditure where a large proportion is being spent on employees but could still qualify as CSR spending. Many corporates have residential complexes for their employees where they provide various types of facilities (at times even as part of an agreement with the unions) to their employees, ranging from medical facilities, to schools, to sporting facilities. Often, many of these facilities are located within gated communities, restricting access. However, in theory, if the facility is utilised even by one person or is just open to local community without them actually using the same, the companies could justify charging this under CSR, since the condition that the benefit is not for the employees 'only' is technically met.

When the draft rules were released, this anomaly was pointed out both in writing and during a

consultation meet at the erstwhile Planning Commission by the writer, who suggested 'only' should be replaced with 'largely' so that projects that largely benefit employees do not form part of CSR spending. However, the anomaly has remained on the statute book. The corporate lobby seems to have played a part in such drafting.

Many a time, the argument is given that not everything can be regulated. However, one must recognise the realities. Often, corporate executives' appraisals are linked to a company's profitability. For them, enhancing profits of the companies are of paramount importance, they will always find ways and means to achieve these results. Not allowing tax relief on CSR expenditure is often quoted as a justification for such blatant bending of the rules. One of the checks over such unwanted practices would be to have an audit assurance; otherwise it is quite likely that several facilities meant for welfare of the employees would start finding their way into CSR.

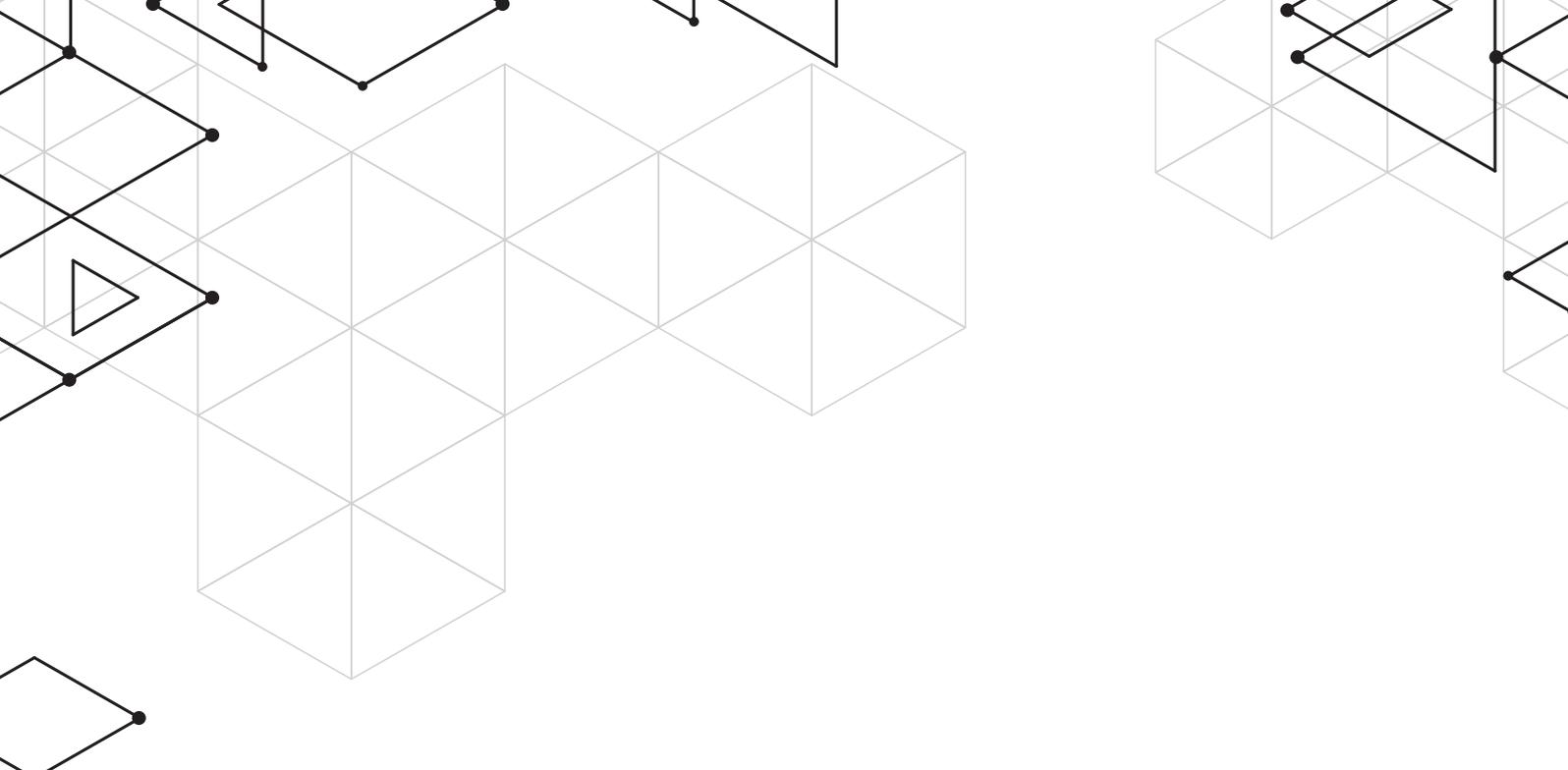
Present CSR reporting requirement focuses only on inputs and not on outcomes

Another very important aspect of CSR reporting is the total focus on 'input'-based reporting – i.e. how much money has been allocated and how much spent. No reporting is required on what has been achieved from the projects. It would be far better if during the planning itself, Output / Outcome indicators are given against each project. These indicators then should be monitored against what has been achieved. Such monitoring and public

scrutiny would be far better than indicating what has been spent. Even the Government of India, which spends huge amounts of funds, has been making efforts to move to outcome reporting rather than reporting only on allocation and spending. Therefore, there is a serious need to consider amending the rules accordingly. Such reporting would also help in shifting the focus from spending to achieving.

Concluding Remarks

One of the basic problems of current the CSR mechanism is that the only driver for this appears to be legislative requirement. Unless adequate and stringent processes are put in place to ensure that only genuine CSR activities are undertaken, the risks are that it will become only a compliance issue and not fulfil the objectives for which it was brought in.



PART 4:

State, Business and Community - A Need for Accountable Relationships

Chapter 8:

Business and human rights: an international perspective

- Viraf M. Mehta³⁷

It has been five years since the endorsement, in June 2011, by the United Nations Human Rights Council of the United Nations Guiding Principles (UNGP) on Business and Human Rights presented by the Special Representative of the United Nations Secretary General, Professor John Ruggie. The Guiding Principles are designed to operationalise the three-pillar framework and consist of:

- The State duty to protect human rights
- The corporate responsibility to respect human rights
- The need for greater access to remedy for victims of business-related abuse

Although the UNGPs are regarded as the global standard of practice that is expected of States and Business, they are not by themselves legally binding upon either. However, the calls for an international legally binding treaty or instrument on Transnational Corporations and other business enterprises with respect to human rights, is gaining momentum, and will continue to be debated vigorously in the near future.

In India, an equal number of years have passed since the release, in July 2011, by the Ministry of Corporate Affairs, of the National Voluntary Guidelines for the Economic, Social and Environmental Responsibilities of Business (NVGs), wherein businesses were called upon to respect and promote human rights. The mandating by the Securities and Exchange Board of India (SEBI) of disclosure and reporting by companies of non-financial (social and environmental) information further supported the right and access to information on business impacts. Additionally, the National Human Rights Commission (NHRC), in consonance with National Human Rights Institutions (NHRIs) of several other countries, is exploring how it might address Business and Human Rights issues.

Against this backdrop, it is pertinent to note that the UN Working Group (UNWG) on the issue of

human rights and transnational corporations and other business, 'strongly encourages all states to develop, enact, and update' a national action plan (NAP) on business and human rights as part of the State's responsibility to disseminate and implement the UNGPs. Presently, about a dozen States have complied with the requirement to develop NAPs, and several others are in the process of doing so. An examination of the extent to which the Govt. of India (GOI) is ready or willing and prepared to develop a national framework and action plan on business and human rights is a critical aspect of this discussion.

In 2015-16 the Ethical Trading Initiative (ETI) undertook a project to examine the case for India to develop an NAP, and provide input on the most appropriate processes through which such a framework or plan might best be developed, and what such a framework or plan should contain. The project convened multiple consultative dialogues with representatives of business and civil society organisations at different locations in the country over a period of nine months to gauge responses to the areas of enquiry mentioned above, and released a report (Background Paper for India's National Action Framework on Business and Human Rights) which provides a detailed account of findings and recommendations arising out of these consultations. The report's author, Prof Surya Deva, convincingly articulates several reasons why such a framework would be in the interest of Indian business. A model of economic development that is both sustainable and inclusive requires an unambiguous commitment by business to respect human rights, and where business has adverse impacts or violates human rights, it must be held to account, and victims provided access to remedy. The ETI-led consultative process referred to above, as well as the analysis of the SEBI-mandated Annual Business Responsibility Reports (ABRR) by Corporate Responsibility Watch (CRW) has shown that very few Indian companies have explicit human rights policies and systems to monitor and review progress, despite the passage of five years since the release of the NVGs, wherein Principle 5 required businesses to respect

³⁷ Advisor (Partners in Change) and was a member of the drafting committee of the NVGs in 2011 and 2016, and a Rapporteur at the UN Asia Regional Forum, 2016.

and promote human rights. Coupled with this, the scant attention being given by companies to human rights issues in their domestic supply chains requires urgent correction. Additionally, very few Indian transnational companies have developed comprehensive strategies to manage human rights issues and impacts in their overseas operations, thereby exposing them to greater risk and reduced opportunities. As Prof. Surya Deva has noted, companies operating in India that have violated human rights of workers or communities have faced local resistance and protests, leading to unsustainable delays in establishing a new facility, or disruptions to existing ones. There are numerous cases where companies, be they public sector undertakings (PSUs), foreign MNCs or domestic private companies, across varying industry sectors (mining, beverages, auto, cement, and many others) have faced such protests and disruptions, demonstrating the need for comprehensive and interrelated human rights systems that address each of the three pillars of the UNGPs.

The process of developing a NAP would provide a valuable opportunity for reviewing, assessing and harmonising the current international and national legal and policy frameworks related to business and human rights, and provide investors, foreign and domestic, a human-rights respecting destination. This will also require the active participation and support of State Governments, particularly those which are home or host to vulnerable and marginalised communities impacted by business activity. Notwithstanding the recent attention on mandated CSR (read, corporate community development), companies that attempt to substitute or mistake the need of its stakeholders of philanthropy, rather than a human-rights based discourse and design of projects, will need to change course. The present time is also an opportune moment for Business membership organisations (BMOs), Chambers and Associations to commit themselves to understanding and promoting the B&HR agenda amongst their membership.

An equally important aspect of the B&HR discourse is the actions being taken by National and State Human Rights Institutions (NHRIs) across the world to address the requirements of the UNGPs in a comprehensive way. In India we have recent indications that the National Human Rights Commission (NHRC), are considering the options available to engage with the B&HR agenda, with

specific focus on providing effective access to judicial and non-judicial remedy to victims of human rights violations and abuses by companies. This will be an crucial aspect of a NAP or Framework, and civil society organisations protecting and supporting the rights of the communities and people they represent should engage with the NHRC develop a robust, effective and credible mechanism to ensure that corporates respect human rights, and access to remedy for victims.

Regionally, there are some significant developments in the B&HR discourse, and prominent amongst them was the 1st United Nations Asia Regional Forum on Business and Human Rights (Asia Forum), held in Doha from 19-20 April 2016. The event, (convened by the Working Group on the issue of human rights and transnational corporations and other business enterprises) , attracted over 400 participants from 60 countries, with significant representation from civil society (39%), and Business (28%).

The programme focussed on each of the three pillars of the UNGPs, and the salient issues discussed included:

- The rights of migrant workers
- Impacts of large-scale land acquisitions
- Garment sector supply chains
- Forced labour and child labour and human trafficking
- The right to privacy in the digital domain
- Access to remedy through judicial and non-judicial mechanisms
- Indigenous peoples' rights
- Mega sporting events
- Human rights defenders

Participants also discussed the national and regional application of global business and human rights issues, such as national action plans, corporate human rights reporting, corporate human rights due diligence, to mention a few.

The Report of the Asia Forum contained over a dozen recommendations, and many of these, along with the range of issues covered, are highly relevant to the Indian context. It is hoped that the recent attention to business responsibility issues internationally and nationally will include a robust human rights mechanism as a core aspect.

Chapter 9:

Responsible financing - A crying need to eliminate 'cronyism' and irresponsible lending through transparent public disclosure

- Reena Cherian, Rohan Preece⁵⁰ and Pradeep Narayanan

Background

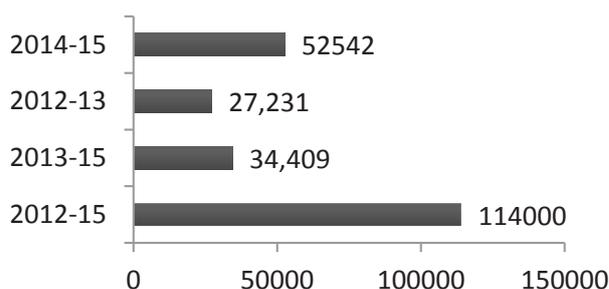
Vijay Mallya, a well-known industrialist, who founded the Kingfisher Airlines, is charged with up to 22 cases in various courts because of loan defaults worth Rs 9,091.40 crore as on November 30, 2015. He left the country on March 2, 2016 and the Public Sector Banks whom he owed this huge amount filed a case against him in the Debt Recovery Tribunal. In August 2014, the State Bank of India sent a notice to the borrower wherein it alleged Kingfisher Airlines of fund diversion to other entities like UB Group companies and held responsible the United Breweries (Holdings) for 'deliberately avoiding payment to lenders,' thus making Mallya a 'willful defaulter'. K C Chakravarty, former deputy governor of the Reserve Bank of India stated, "The Kingfisher case is an example of collective failure of the system. The banks should have declared it a NPA much earlier. Why did the RBI even clear the restructuring of Kingfisher?" Vijay Mallya, though, is only the tip of the iceberg, together, all the willful defaulters owe state-owned banks at least Rs 64,335 crore.⁵¹

While this is one set of narratives, another set highlights that in the year 2014 alone, 5650 farmers and 6750 agricultural labourers committed suicide⁵². Activist Kishore Tiwari is of the view that debts are the core reasons for the farmer suicides. There are also various examples of cases about which one can say that the decision to pursue the farmers – but give Mallya free rein for so long – can be seen as prejudiced. The system looks very rigid for the

farmers pushed to suicide, but looks very flexible for some defaulting corporates. Why?

The incidental achievement of the notorious case of the Mallya-Kingfisher story is that it has brought the problem of Non-Performing Assets⁵³ to public attention. Going by insightful media reports, as on March 2014, the NPAs of 40 listed banks were 2.42 trillion, up from 1.8 trillion in March 2013 or a 33% rise. And these are just the NPAs. Restructured assets at all banks are an additional 3.66 trillion (7.8% of advances)⁵⁴. To be precise, the total Gross Non Performing Assets (GNPAs) of banks stood at Rs 5,94,929 crores as at end March 2016. Between financial years 2012-13 and 2014-15, 29 public sector banks wrote off a total of Rs 1,14,182 crore. An amount of Rs 52542 crore was written off in the year 2014-15 alone.

Chart 9.1: Amount written off (Rs crore)



⁵⁰ Partners in Change

⁵¹ At the end of September 2015, State Bank of India had the most willful defaulters — 1,160 — who owed it Rs 11,700 crore. Punjab National Bank had 904 willful defaulters, who owed it Rs 10,869 crore at the end of December 2015. Source; <http://indianexpress.com/article/explained/what-is-vijay-mallya-accused-of/>

⁵² National Crime Records Bureau Report, 2014

⁵³ The banks classify an account as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter. In the light of looming NPA crisis affecting the PSBs, there was a delay in reflecting the overdue amounts borrowed by the companies as NPAs. In the case of Vijay Mallya and several corporate entities like Winsome group, they are categorized as willful defaulters. RBI classifies willful defaulters as those borrowers who have the assets/capacity to repay the loans but is unwilling to pay back.

⁵⁴ http://cag.gov.in/sites/default/files/cag_pdf/4jan2016/psu_audit-bank.html

The crisis resulting from NPAs and wilful defaulters has created furore and anticipation in both the financial sector as well as in India's civil society and raised questions on the transparency and ethical business conduct of banks. Clearly, banks have significant responsibilities as custodians of public money and as powerful sources of finance for activities that impact people, the environment and the wider economy.

Kingfisher's is not an isolated case - in a context in which the banking system is continuously under pressure, there are many such examples that require a closer look. One such example is the Winsome Group, which is into diamond trading and which has accumulated loans of Rs.6581 Crores from a consortium of 15 PSBs.⁵⁵ Another example is Reliance Gas Transportation Infrastructure (RGTIL), which owns and operates a 1,386-km gas pipeline connecting the Andhra coast with Gujarat, and has received a sanction from public-sector banks to repay its principal loan by 2030-31, as against the current repayment schedule of doing so over the next four years. The company, well known for its linkages with political parties, had a total debt of Rs 16,010 crore as of 2014-15.⁵⁶ In November 2014, the agreement for a loan between SBI and Adani Group, which would have been the largest given by a domestic bank for an overseas project, was signed off, disregarding serious doubts over Adani Group's ability to service the debt⁵⁷.

Additionally, there is the example of the Rampal-based Coal Power Plant, a diplomatic project of India and Bangladesh, in which the Export-Import Bank of India has committed to pay the debts. In 2012, the plant was proposed to be built in Rampal, but the development since then has been held back by delays. The area is surrounded by the world's largest mangrove forest, the Sundarbans, a living

and effective natural fence protecting the coastal belt areas of Bangladesh, and a UNESCO World Heritage Site. The proposed 1320 MW power plant project (made of two generating units of 660MW), is said to threaten irreparable damage to the livelihoods of two million inhabitants dependent on this area⁵⁸, along with massive environmental impacts. The Indian Exim Bank is proposed to be the financial partner for paying the debt despite threats of huge financial risks involved in the project. Though currently under scrutiny from UNESCO, the project looks to be going ahead, despite the overwhelming environmental and social costs. From a financial perspective, this is just another example of the stalling of a project funded by the Indian banks, which has resulted in accumulation of NPAs.

Banks, especially the Government owned banks have, over the years, evolved very strong systems of due-diligence. A senior bank representative⁵⁹ stated, *"The government banks, over the period, have been successful in erecting a very strong foolproof system. It cannot be easily broken unless there is connivance. It is true, in many cases, that one can easily link to nexus, although this cannot be proved."* Talking about the regulatory reforms he said, *"there are RBI representatives on every bank's board, all big loans are passed with their knowledge."* So, this system could be brokered only through a systematic cronyism. The challenge for the Public Sector Banking system is often to secure freedom from 'informal' pressure by politicians and bureaucrats who hold positions of power. Often huge loans get disbursed without adequate risk assessment or with the government's persuasion and pressure. In all these cases, there have been reports of possible violations of ethics, transparency, environment and even consumer rights. There seems to be a very thin line between cronyism and irresponsible lending.

⁵⁵ <http://www.thehindu.com/news/national/winsome-groups-rs-7000cr-default-a-criminal-conspiracy/article8742334.ece>

⁵⁶ http://www.business-standard.com/article/companies/ambani-company-gets-loan-restructuring-package-115061200040_1.html

⁵⁷ The SBI Chairperson announced the agreement in Australia during a bilateral visit, but then in December 2015, denied having loaned any amount to the Adani group and said that only an MoU was signed, on the basis of which they could do a due diligence process. <http://www.dnaindia.com/money/report-state-bank-of-india-denies-funding-adani-s-australian-coal-project-2153562>

⁵⁸ http://www.banktrack.org/show/dodgydeals/rampal#tab_dodgydeals_update

⁵⁹ Personal communication with bank representatives and civil society in Delhi, 2016

Recognising the need for a citizen's watch over banks

There is no dearth of monthly, fortnightly and weekly statements that different banks make to regulatory organisations. Banks do have a fair system of reporting, especially financial reporting, for instance the regulatory Basel III disclosures, and to RBI. Nevertheless, banks disclose very little in the public domain. The best way to address the issue of cronyism and the connected issue of irresponsible lending is to ensure transparent disclosures by banks so that the monitoring is a shared responsibility- of the government, of RBI, of civil society organisations and of wider citizenry.

Acknowledging that there are many different ways of scrutinising banks, it is clear that the recent disclosure movement has democratised opportunities significantly, providing civil society and wider citizenry with access to policies and mechanisms online. Using these resources, the authors have facilitated modest studies into bank policies that flag up a way forward for how a concerned public can better hold their financial institutions accountable. Here we look at three possible approaches: (1) a study of policies of 10 banks in India, (2) a study of policies listed in BRRs and (3) a study of 3 banks according to an international framework on responsible financing.

As early as 2007 in a circular on *Corporate Social Responsibility, Sustainable Development and Non-Financial Reporting – Role of Banks*⁶⁰, the RBI expressed the need for banks to take holistic account of their impacts. Defining non-financial reporting (NFR) as “basically a system of reporting by organizations on their activities as regards the triple bottom line, that is environmental, social and economic accounting”, it goes on to make an argument for it. It further says, “in this context, the urgency for banks to act as responsible corporate citizens in the society, especially in a developing country like ours, need be hardly overemphasized.”

Today, while most banks are abiding by the norms of financial reporting (FR), Non-Financial Reporting (NFR) is generally sidelined. Besides the RBI notification, Principle 1 of the 2011 National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVGs) stresses the importance of ethics and transparency and asserts the need for disclosures. An analysis of the Business Responsibility Reports, a mandatory reporting to SEBI against the NVGs, indicate that most of the 18 FIs in the BSE Top 100 have policies for most of the principles (Table 9.1). However, they are not all in the public domain.

Table 9.1. Financial institutions reporting on existence of Policies on 9 principles of National Voluntary Guidelines (n = 18)

S. No	NVG Principles	Banks/Financial Institutions reported in their Business Responsibility Reports, 2013-14, that: -		
		They have policies	Their policies conform to any national / international standards	They formally communicated to all relevant internal/ external stakeholders
1	Ethics, Transparency and Accountability	17	17	17
2	Product lifecycle Sustainability	15	15	13
3	Employees' Well-being	17	17	16
4	Stakeholder Engagement	17	16	16
5	Human Rights	17	16	15
6	Environment	16	16	15
7	Public Advocacy	12	11	10
8	Inclusive Growth	17	17	15
9	Consumer Value	17	16	15

Source: Corporate Responsibility Watch database, 2016

⁶⁰ Non-Financial Reporting and Corporate Social Responsibility-RBI Circular

Further, a random sample of 10 banks operating in India was taken up in this study. It included 2 international banks, 3 PSBs and 5 private banks.

Table 9.2: Banks disclosing their policies on key themes on their respective websites; (As on 31 July, 2016) (n = 10)

Policies		Number of banks have policies on the following themes in their websites			
		Environment and social risk assessment framework	Whistle Blower Policy	Corporate Loan Policy	Individual Personal Loans Policy
1	Have made policies available on public domain and provide updates on compliance	-	4	2	10
2	Have provided some information but not the policy itself	2	-	-	-
3	Have not mentioned anything about the policy	8	6	8	-

Source: Database on Policies of Banks, Partners in Change, 2016

It is surprising that while all banks disclosed their personal loan policies in their website, none of these have the corporate loan policies (as on 31st, July, 2016). When it was enquired, at least two banks stated that they had actually removed the policy in recent times for undisclosed reasons. Notable, too, is the lack of information about environmental and social risk assessments.

To add global perspective on the policy disclosure situation of Indian banks, policies of three banks were analysed to find out whether their disclosures are in consonance with global standards. The Fair Finance Guide (FFG), a set of globally respected disclosure guidelines⁶¹, was used for analysis.

Table 9.3: Public Disclosure by 3 Indian banks of policy instruments and Information identified by the Fair Finance Guide. (As on 31 July, 2016)

Themes	Number of Policy Instruments indicated by FFG	Number of policy instruments publically disclosed by the Bank		
		Bank 1 (Govt)	Bank 2 (Pvt)	Bank 3 (Pvt)
Accountability and Transparency	18	4	2	11
Taxes and Corruption	13	2	2	2
Labour	12	2		
Human rights	13	4	2	4
Nature	14	0		1

Source: In-depth Analysis on three banks done by research team (Lorina, Reena and Dikshit), Partners in Change, 2016

The table above demonstrates that Indian banks have still a long way to go in terms of public disclosure, with the 3 banks shown here only meeting a small proportion of the disclosures envisaged by the FFG.

⁶¹ The Fair Finance Guide was originally developed by Oxfam Novib and other Dutch NGOs with technical support from Profundo. It is now used in 9 countries in Europe, South America & Asia.

Concluding remarks

Banks are very significant institutions that have instrumental value in promoting wider Corporate Social Responsibility, respecting human rights and enabling more equitable development in India. Given that they are the key source of financing for most industrial projects, applying responsible financing norms to banks could significantly strengthen the social and environmental responsibility of the wider business sector. However, for that to happen, the banks themselves need to disclose more progressive ESG policies. This requires sharing of information about their commitments and mechanisms as well as their compliance.

In the current climate, the public eye is probably the strongest institution that could keep the banks responsible. There are a number of civil society groups that could play the role of a watchdog on behalf of Indian citizens to ensure that banks use public money in a responsible and sustainable manner. The need of the day is a disclosure movement that makes banks disclose key information in the public domain.

Chapter 10: Crony capitalism and CSR

- Paranjoy Guha Thakurta⁶²

The debate is over a century old: capitalism versus socialism. But the clash of the two worldviews has acquired a new dimension and grown in intensity. Those who believed in *laissez faire* – a French term meaning ‘allowing events to take their own course’ and symbolizing an economic doctrine arguing for minimal government intervention in markets – are on the back-foot. Believers in the position that markets had inbuilt self-correcting mechanisms are having second thoughts. They are today wondering if this is a crisis ‘in’ the system or a crisis ‘of’ the system itself. The verdict is not yet out.

At a time when international capitalism is going through an unprecedented crisis, it is worth reflecting on the strengths and weaknesses of India’s so-called mixed economy. Our first Prime Minister Jawaharlal Nehru wanted the country to assimilate the best elements of both capitalism and socialism. More than six decades later, the verdict is almost unanimous: we took the worst of both worlds.

Currently coexisting in India is a range of political and economic systems including different forms of feudalism, capitalism and socialism. After the era of the licence-controlled Raj, private enterprise (the hallmark of capitalism) was stifled by excessive and mindless bureaucratic controls till the 1990s, while the big capitalist houses continued to benefit from restrictive trade practices. At the same time, the state has hardly been able to provide health-care and elementary education (of the kind prevalent in socialist societies like the Soviet Union, Cuba and Vietnam) to the vast majority of its people. There is all-round consensus that the country’s health-care and primary education systems are in a pretty pathetic state. The government used to spend more per head on health-care during the 1950s and 1960s than it does at present. India still has one of the highest school drop-out rates in Asia.

In India, our notions of private and public were turned upside down. Thus, private corporate groups were frequently run with public funding from government-controlled banks and financial

institutions, while public sector undertakings often served as the personal fiefdoms of politicians and bureaucrats in power – the state thus became the ‘private’ property of the privileged few. For instance, when Swaraj Paul’s Caparo group tried to take over DCM and Escorts, the Rajiv Gandhi government intervened. The families that began private sector businesses put up a very small portion of the equity or risk capital, whereas the bulk of the money came from government institutions. The losses of the public sector were also translated into the profits of the private sector and, more often than not, the gap between the ‘right’ and the ‘left’ became obliterated insofar as economic policies were concerned.

There is now in existence in India forms of crony capitalism, a classic nexus between business and politics, which Wikipedia describes as being “an economy in which success in business depends on close relationships between business people and government officials... Crony capitalism is believed to arise when business cronyism and related self-serving behaviour by businesses or businesspeople spills over into politics and government, or when self-serving friendships and family ties between businessmen and the government influence the economy and society to the extent that it corrupts public-serving economic and political ideals.”

India’s billionaires and her poor stand in stark contrast. While the world’s largest democracy has always been extremely polarised in terms of income and wealth, these inequalities have deepened and sharpened in recent years. In an already highly heterogeneous and deeply divided nation, the gap between the ‘haves’ and the ‘have-nots’, the affluent and the underprivileged have not narrowed. On the contrary, these divisions have widened along a variety of lines, on the basis of gender, caste, race, religion, ethnicity and birthed identities. After the phase of “liberalization” that began in the early-1990s, natural resources which belong to the people of the country have been misallocated and mis-priced, whether it be iron ore, land, coal, water or electro-magnetic spectrum used for telecommunications.

⁶² Editor, Economic and Political Weekly; this article was written when the author was an independent journalist.

There are a number of similarities in the economic policy prescriptions espoused by the country's two largest political parties, the Bharatiya Janata Party (BJP) and the Indian National Congress. Both parties apparently reject some of the 'socialist' policies that were put in place in the 1960s and the 1970s, although there are sections within both the BJP and the Congress that believe in 'inclusive' economic growth that creates jobs for the *aam aadmi*.

Here are some facts and figures to consider:

The richest one per cent of Indians own more than half the country's wealth. Ninety per cent of the population owns less than a quarter of the country's wealth. The richest 10 per cent of Indians have been getting steadily richer since 2000. These are the findings of various studies, including one published by Credit Suisse in October 2015.

Forty-three per cent of Indian children under five years are underweight, stated the Third National Health Survey, 2005-06, implying that this country accounts for more than three out of ten stunted children in the world.

Economic inequalities have led to inequalities of opportunity, besides access to education and health-care. India has made little progress in human development. According to a recent (December 2015) report of the United Nations Development Programme, a ranked list that measures various dimensions of human well-being, the country was placed at 130 out of a list of 187 countries.

Various reports have indicated that wealthy Indians invest in sectors dependent on exclusive government contracts and licenses (including real estate, mining, construction and telecommunications). A study by Oxfam estimates how these 'rent-thick' economic sectors contribute to a substantial portion of the net worth of India's rich and would be sufficient to eliminate extreme and absolute poverty in the country twice over.

Following pressure from civil society organisations and politicians cutting across party lines, in December 2014, the government of India legally mandated large corporate entities to adhere to a set of guidelines on social, environmental and economic responsibilities taking cognisance of the fact that a purely philanthropic approach towards fulfilment of these responsibilities would be inadequate.

Certain promoters, directors and senior management personnel of corporate entities perceive corporate social responsibility (CSR) as "philanthropy for the sake of philanthropy", as opportunities for "tax breaks" rather than vehicles for lasting economic and social transformation. Ratan Tata, chairman emeritus of Tata Sons, opposed the idea of making CSR mandatory through a two per cent 'tax' on average net profits. He claimed that CSR is something that comes from within and cannot necessarily be effective in the form of a tax. Rahul Bajaj, another prominent industrialist (he heads the Bajaj group, which is among the largest producers of two-wheeled vehicles in the world) who was a former member of the Rajya Sabha, the upper house of Parliament, says he was the only one among a large group of legislators who opposed the government's decision to make the two per cent norm for CSR spending mandatory for private companies. He says he told former Prime Minister Manmohan Singh on the subject of CSR: "Don't mandate my generosity. Don't mandate my conscience."

It is clear that the government and the government-owned corporations have to show the way to the private sector as far as CSR is concerned. Energy Minister Piyush Goyal, who belongs to the BJP which is right-wing and pro-free market in its ideological outlook, points to the contrast between government-owned or public sector corporations and private companies in fulfilling social responsibilities. He said that public sector undertakings under the ministries he oversees added 1,28,000 toilets in schools in just one year. The achievements of private companies in this regard were negligible in comparison. The short point: privately-owned firms are more concerned about profit maximisation and ensuring high returns to promoters, directors and shareholders than about community development and social welfare.

Chapter 11:

Irresponsible business practices arising from crony capitalism

- Ashok Bharti⁶³

In today's era of neo-liberalism, India is projected as a viable destination for attracting investment from foreign companies operating with huge capital resources at their command. Corporations have become the principal institutions propelling the growth of capitalist economies. The neo-liberal state is increasingly succumbing to the pressures of global capital and this has weakened the state's power to take decisions that uphold public interest. Corporations are given full rein to propagate the ideas of capitalism and the free market. These ideas have driven big corporations to encourage innovation and wealth creation in India.

The development efforts that are done in the name of public welfare have put the lives of the common masses at stake. Business practices have never been immune from placing the principle of profit maximisation above all human and ethical principles. These unethical business practices have to be understood in the wider context of neo-liberal policies that pave the way for more inflow of capital from the developed countries into developing countries like India. Big corporations dictate policies that reflect their vested interests and this gives them enough leeway for conducting business operations that put human lives in danger.

In order to meet the growing needs of capital, corporations are usurping public lands to implement their development projects. Land acquisition becomes imperative for expansion of industries. Public lands are increasingly getting privatised without concern for indigenous people, who, for centuries hold traditional rights over their lands. The process of land acquisition has spelled doom for the Dalits and Adivasis living in the remotest corners of the country. Their protests against these unethical practices have gone unnoticed and unheeded by the Indian government, that has pursued a policy of repression, to silence the voices of the common people. It has treated the vulnerable sections of society with utmost contempt and condescension. Coal manufacturing companies seek huge profits

from their mining operations which are often conducted on public lands in a manner that may be deemed "unethical". An article titled "Indigenous and Dalit communities at risk of forced evictions in Chattisgarh" published by Amnesty International India in September 2014 sheds light on the non-egalitarian nature of development policies. In August 2014, the South Eastern Coalfields Limited (SECL), a subsidiary of state-owned Coal India Limited (CIL), Chattisgarh issued orders of eviction to people who lived in Ponri village in Korba. The evictions in August were carried out without genuine consultation, adequate notice or compensation, or the provision of adequate alternative housing. The authorities demolished houses in Ponri village in order to hasten the mining operations. The eyewitnesses told Amnesty International that SECL security personnel and paramilitary personnel forcibly evicted families from their homes without giving them enough time to collect their belongings. Moreover, such mining operations had disastrous effects on the environment in terms of air pollution, depletion of their water resources and loss of common land.

In light of these unethical practices, the state has a major responsibility to constrain such corporate conduct. Corporations have to be made accountable to the public for their monopolist and corrupt practices and this requires a strict legal framework that prevents such unethical behaviour to proceed in the long run. They have to revisit their existing policies and need to align their business objectives with social responsibility. They have to work in tandem with the government to ensure that the idea of "social responsibility" is enshrined in corporate ethics. India has recently become the first country to legally mandate expenditure on corporate social responsibility.

⁶³ National Confederation of Dalit Adivasi Organisations

Policy interventions

Articles 15, 16 and many others of the Indian Constitution lay the framework of inclusion in the nation. The need of the hour is to push these within the corporate sector, beginning with work places, hiring practices and government backed HR policies. This can play a vital role in following and fulfilling the Constitutional mandates that are amiss presently. The widely contested policy of Affirmative Action (AA) in private sector companies can play a key role in providing inclusive recruitment practices. This may be on the lines of preferential treatment at the time of hiring based on one's caste, tribe, gender or providing a fixed quota system for population proportionate representation. Equal opportunities herein would highlight that the idea of equality can be realised only when preferential treatment is given to individuals from weaker or disadvantaged backgrounds. The implementation of AA, however, should be backed by enough programmes that make the policy relevant to achieving its target of nation-

building and community development: especially that of the Dalits, Adivasis and other minorities. AA plays the role of providing opportunities and representation to the weaker sections in the private economy. However provisions should also be made for individuals to perform to the fullest of their capacities and cope with the demanding nature of work.

To make workplaces inclusive, there is a need to formulate and implement appropriate policies, develop redressal mechanisms and provide constant training and orientation for employee skill upgradation so that they are able to manage the evolving needs of the company and the economy at large. **A national-level monitoring authority with regards to AA in the private sector shall be constituted for smooth implementation and quicker impacts.**

Arguments of merit and language barriers

Any efforts to introduce AA policy in the private sector faces stiff opposition, the advocates relying heavily on the arguments of 'merit', 'quality' and 'hard work'. The private sector exclusion of the marginalised is further compounded by the lack of 'English' language skills and formal professional/technical education. English language being synonymous with white-collar companies, Dalit and Adivasi community jobseekers find it difficult to compete and also find it difficult to cope with the language, which can affect integration as well as progress. Language training during recruitment could thus play a vital role in determining welfare of communities and at the same time fulfilling in the requirements of the companies. In the context of discussions around merit, the historical and prevalent injustices against the Dalits, Adivasis and

other populations are often ignored. Advocates of merit herein tend to forget the exclusive social networks and 'word of mouth' hiring that only the privileged classes have, not to mention the historic social and educational advantages. The AA policy and thorough developmental/orientation programmes can thus serve as a necessary counterpoint to historic and enduring privilege. **Similarly, implementing scholarships and freeships in private educational institutions can bring down the expensive nature of higher education.** This would provide increased opportunities to disadvantaged groups and prepare a generation of learners equipped with the market and company requirements.

Table 11.1: Identification of specific groups vulnerable to discrimination⁶⁴ at recruitment and career advancement, in policy (n=99)

Stage in career	Vulnerable groups identified by company policy on non-discrimination	
	SC	ST
Initial Recruitment	62	26
Career advancement	26	12

⁶⁴ Featured companies used different terminology to refer to the various social categories mentioned here. For example, the term SC is used in this table, but in framing policies, certain companies referred instead to not discriminating on the grounds of caste.

Revealing data on the marginalised

The adoption of the AA policy is only voluntary for industrial lobbies such as, for example, the Confederation of Indian Industry (CII). It is however pertinent that the member companies should at the least reveal data on their supply chain engagement, CSR policy, community engagements, recruitment policy and other relevant data on the number of Scheduled Caste and Scheduled Tribe employees, representation of women, Dalits and Adivasis in the board, Dalit women, differently abled persons and others. The disclosure of such information is essential as it pertains to issues that have a direct impact on the lives of disadvantaged groups,

including their livelihoods, consumption patterns, welfare and the environment. Mandating disclosures of this nature would therefore incline companies to be more responsible in their business practices and approach to society as a whole. For example, on an average every fourth consumer belongs to the Dalit community and therefore becomes an integral part of the companies' engagement with society. Similarly the companies should, as a mandate, provide information and numerics on the demographic reach and value of their products. This will indicate how well they are servicing the interest of different socio-economic groups.

Participation of vulnerable groups is a critical component of CSR programmes and reflects the extent to which the programmes are inclusive. However, only two companies mentioned involvement of vulnerable groups such as SCs and STs in needs assessment processes and only one company mentioned the involvement of these groups for impact assessment of their CSR programmes.

The Companies Act, 2013 requires companies to spend at least two per cent of their net profits, averaged over the three preceding financial years, on CSR. This mandate is applicable to those companies with a net worth of more than Rs.500 crores or more, or turnover of Rs.1,000 crores or more, or net profit of Rs.5 crores or more during any financial year. The Act also defines the activities that constitute CSR. These activities range from eradicating extreme hunger and poverty, to reducing child mortality, to ensuring environmental sustainability.

Although a positive obligation is cast upon the corporate leaders to ensure such expenditure, it is important to treat this novel provision with caution. Corporate activity cannot be a substitute or proxy for government in enhancing human development indicators. By resorting to corporate philanthropy, the government cannot have the luxury of squeezing public expenditures. In a country like India where the marginalised groups like the Dalits and the Adivasis bear the brunt of corporate-led development policies, the government cannot think of abrogating its social welfare responsibilities.

Mandating CSR spending is an inadequate answer to solving India's problems like caste discrimination, poverty, education for the poor, malnutrition, gender inequality, child mortality, unemployment, etc., issues that require a long term commitment to solving some of India's intractable problems. For

example: If companies are spending on education institutions, to safeguard the interests of the beneficiaries of such projects, the content and quality of curriculum, access by students, assessment and improvement and long-term sustainability have to be ensured. Companies usually operate in pursuit of short-term or long-term benefits and they may come to view "social spending" more as legal compliance rather than voluntary.

CSR spending is also likely to create trusts, societies and non-governmental organisations (NGOs) of all varieties, motivations, and allegiances to absorb such funding in the name of charitable and welfare measures. Charitable giving can be used as a reputation builder for a particular company. Corporate donors have their own preferences in supporting charities and the bigger charities that are more well known are being flooded with money. Smaller charities often lack the capacity to cope with companies' bureaucratic and operational demands.

Budgetary allocations for dalits and tribals present a gloomy picture and the funds are inadequate for the upliftment of the marginalised classes. The persistence of socio-economic backwardness of the Dalits and the Adivasis necessitated the creation of the Special Component Plan (SCP) for Scheduled Castes, now known as Scheduled Caste Sub-Plan (SCSP) and the Tribal Sub-Plan (TSP) for Scheduled Tribes. The prime objective of the SCSP is to

channelise funds and benefits through identified schemes, for which the States/UTs and Union Ministries have to earmark funds in proportion to the SC population in the State/UTs and the country respectively.

Compared to the last financial year, the money allocated under the Scheduled Caste sub-plan (SCSP) and Tribal Sub-plan (TSP) has drastically come down in the Union Budget 2015-2016. This year, Dalits have been allocated only Rs. 30,850 crore and the allocation for Adivasis stand at Rs. 19,980 crores. In 2014-15, while the SCSP was allocated Rs. 43,208 crore, TSP had Rs. 26,714 crore.

The guidelines under these two programmes clearly state that the Scheduled Castes (SCs) should be allocated 16.6 per cent of the plan outlay, which

amounts to Rs. 77,236 crore towards SCSP. Similarly, Scheduled Tribes (STs) are entitled to get 8.6 per cent of the plan outlay, which amounts to Rs. 40,014 crores towards TSP. This means that the allocation for Dalits is short by a good 61 per cent and that for Adivasis is short by 53 per cent.

Principle 8 of the NVGs envisaged a particular focus on marginalised communities. Encouragingly, 63 companies (as shown in Table 11.2) identified women, children, scheduled tribes, scheduled castes and youth as their target stakeholders. A lower proportion - 23 companies - stated a commitment to identify backward regions as a focus of the CSR programmes. And only one company involved communities in the process of formulating its CSR policy.

Table 11.2: Recognition and presence of knowledge systems that enable inclusive community development initiatives (n=99)

Recognition of key aspects:	Number of companies
Identification of backward regions for implementing community development projects	23
Identify and specify some distinct vulnerable identities as target stakeholders with whom companies plan to implement their CSR programme	63
Presence of system for/to:	
Needs assessment for initiating CSR projects	17
Stakeholder consultation for formulating CSR policy	1
Independent impact assessment of CSR projects	22
Estimate number of beneficiaries	68
Determine distribution of expenses on CSR across themes	24

The shrinking budgetary allocations indicate that the present government is more inclined to serving the business interests of the corporate rather than to take the needs of the vulnerable sections of society into consideration. The huge concessions given to the big businesses reflect the pro-corporate bias of the current government, camouflaged by so-called pro-people rhetoric. The allocations to SC and ST

schemes are far from adequate and they are faced with the threat of declining agricultural output and even the threat of losing their farms to corporates who are appropriating their lands without giving them adequate compensation. In the context of corporate-led development, humanitarian values are overlooked by greed mongers who live in an age of decaying moral standards.

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Chapter 12:

Do Indian companies respect CSR obligations to consumers?

- Ankita Kashyap⁶⁵ and Prof Sri Ram Khanna⁶⁶

Companies are expected to engage with and meet the societal expectations of their stakeholders. Apart from investors, workers and management, government, and community, consumers are also an important stakeholder group of each company that produces and sells goods and services. This article seeks to answer the question, 'do Indian companies engage with and meet the expectations of their consumers'?

Traditionally, Indian companies treat their customers the same way a diner at a New Delhi restaurant deals with a dish of choice. The diner is happy to polish it off at one go, despite quality issues. For the business, the cycle of mediocrity continues day after day. So, Indian companies frequently focus on a sales approach to sell a product or service to a consumer by hook or by crook. Once the money has exchanged hands, the story is over. There is no concern or need felt for consumer satisfaction, feelings or loyalty.

This is in strict contrast to a few Indian companies who treat a customer like a farmer rearing chickens for eggs to be sold in urban markets. This farmer treats every chicken with respect. The farmer buys the best bred chicks, rears them well, feeds them a healthy diet every day, cleans the chicken pens every day to ensure there are no infections and arranges

for medicines from a veterinary doctor in case any chicken gets sick. Once the chickens have grown fully, they yield returns in the form of nearly 300 eggs a year to be sold in the lucrative urban markets. Only a few Indian companies treat their consumers in this fashion. They care for the feelings and perceptions of their customers, their consumer experience with the product or services, returns and refunds. They also look into the post-sale services long after the warranty has run out. In case things go wrong, they are quick to make amends and have an in-house consumer grievance redressal system that dissatisfied consumers can use to lodge complaints.

Most consumers who interact with such companies support these brands with continued business, goodwill as well as loyalty.

Can such companies be identified from disclosures made in Annual Reports and Corporate Social Responsibility (CSR) reports? It should be possible. But the record of Indian companies is such that most do not appear to care about their customers /consumers. Consumers have their own set of expectations when it comes to judging companies and forming an opinion regarding a particular business organisation.

Consumer expectations from companies

When companies engage with their consumers through their CSR activities, they influence the perception of the consumers in one way or the other. This influence is dependent on various factors. The assessment of consumers regarding the business practices of companies is related to the correspondence between the consumer's and the company's expectations.

Research suggests that consumers make inferences about a company's CSR activities on the basis of very limited information available to them. Consumers relate that minimum amount of information to other

CSR activities either of the same area or another area for which they have no real information and accordingly form an overall impression of the company (Smith Craig, Smith Daniel and Lopez Sofia, 2010). This is known as the "Halo effect". The Halo effect, as studied in the research above, exists and results in perceptions about the company in the mind of the consumers. But, it is observed that in the Indian case, ethical consumerism is not very developed. The question then remains about the extent to which the ethical behaviour of the company affects the decisions of the consumers.

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Hence, companies need to be careful in formulating their marketing strategy and business practices insofar as they affect consumers. The proactive behaviour of companies towards CSR has been due to the emergence of international markets. The customers in a global space require a high quality product at an affordable price and within their convenient reach. In keeping with the dynamic nature of the environment surrounding the company and the ever-demanding customer base, a company must create value for its customers and not blindly pursue profit maximisation. Due to this reason, there is a stark contrast between the way many foreign companies and some Indian companies devoid of international experience deal with consumers and customers respectively.

Though the consumers' expectations and definition of value creation could differ from one company to another depending upon the class of goods/ services provided, these can be classified into broad heads that are more generic and widely acceptable.

Analysing disclosure on CSR practices

Of late, companies with net worth of Rs 500 crore or more, turnover of Rs 1000 crore or more or net profit of Rs 5 crore or more are required to submit business responsibility reports (BRRs) as part of their Annual Reports as mandated by SEBI. The BRR framework is drawn from National Voluntary Guidelines on Social, Environment and Economic Responsibility of business issued by the Union Ministry of Corporate Affairs (Ministry of Corporate Affairs, 2011).

The first set of these reports have been published and we need to find out whether these reports, prepared and presented to stakeholders, especially to a large stakeholder group like consumers, represent facts or are polished details aimed cover up the reality. To decipher the truth, we need to look at disclosures made by companies in their reports very carefully.

We tried to analyse disclosures made by companies on their CSR practices to find out how well the companies disclose information related to consumers. For our analysis, we selected some consumer goods companies and tried to study their Business Responsibility Reports and the information regarding their business practices that are available in the public domain.

The parameters used for analysis included -

- Quality of Disclosures - Disaggregated

These include⁶⁷:

- Fair marketing, factual and unbiased information and fair contractual practices
- Protecting consumers' health and safety
- Sustainable consumption
- Consumer service, support, and complaint and dispute resolution.
- Consumer privacy and compliance
- Product and service labeling
- Access to essential services
- Education and awareness
- Market communications

These broad parameters are majorly the concerns of the consumers with respect to the behaviour of the company. So, the company should have the above-mentioned elements in order to satisfy its customers.

information, material information, balance of information, comparable information, inadequate reporting

- Sustainability Quantification - Recycling of products, recycling of waste, energy reduction, green house gases emissions, sustainable sourcing
- Stakeholder Engagement - Mapping of internal and external stakeholders, identifying marginal stakeholders, procedures for identification, level and method of engagement, communication to stakeholders
- Customer Engagement - Consumer dispute resolution, responsible trade practices, fair trade and equity to consumers, customer cases, consumer's education.
- Customer Satisfaction - System for feedback, consumer policy and procedures for customer satisfaction, customer data privacy, consumer's health and safety, product labelling.

Most of the companies concealed much more than they revealed. The revelation about their practices, especially with respect to consumers, is limited to their positive side and the companies conveniently hid the adverse effects caused by them from the consumers and the public as a whole.

Hiding stakeholder engagement

The companies claim to follow stakeholder engagement but do not detail aspects such as lists of internal and external stakeholders mapped, level and methods of stakeholder engagement followed, the results and outcome of the discourse/ discussions with the different stakeholder groups and the initiatives undertaken to address the concerns of different stakeholders. The absence of these details in the report raises a doubt about the reliability of the claim made by most companies about stakeholder engagement.

Most companies across sectors fail to provide information in a disaggregated manner. Most of

the BRR questions are answered in a composite way. This makes it difficult to comprehend the information properly. The companies should disclose segregated information as it makes the information more comprehensive and understandable. Also, the companies do not provide information on a comparable basis. The real picture of the activities undertaken by the company can be ascertained only when the claims made by the company are backed by supporting information (as in the case of financial reports). Further, the supporting information should be in quantifiable terms. The comparative data should be provided so that the genuineness and the actual impact of the initiative can be understood.

Inadequate disclosures

The companies refrain from providing full disclosure on the policies, with regard to consumers, procedures on consumer code of conduct, frequency of undertaking the consumer survey, the number of consumer cases and complaints pending against the company, the cases filed against the company on account of irresponsible advertising, unfair trade practices and activities undertaken for consumer awareness and protecting consumer health and safety.

The companies are neglecting some very important issues with regard to socially responsible behaviour. The reason for inadequate disclosure can be attributed to the BRR framework that is not comprehensive. These questions have been developed from the National Voluntary Guidelines (NVGs) of the Ministry of Corporate Affairs, 2011.

However, the questions do not encourage the companies to move out of their comfort zone as they do not ask for disaggregated, comparable and comprehensive disclosures. Moreover, companies are also not voluntarily going beyond the NVGs and integrating their disclosures with international guidelines.

Companies should use the NVGs in conjunction with international guidelines like ISO 26000, GRI G3.1 and G4 Sustainability Guidelines, AccountAbility's AA1000 Standards, UN Global Compact etc, available on corporate social responsibility. The onus for such a situation lies with SEBI and not as much on the companies. The framework proposed by SEBI allows companies to circumvent information that will aid a complete, material and disaggregated disclosure.

Can the BRR Framework be improved?

For more comprehensive and relevant disclosures in the BRR, we suggest modifying the existing BRR questions so that the companies are pushed to provide more specific and complete answers that will enable the stakeholders to make an informed choice.

Some of the changes suggested by Consumer Voice, an investor advocacy group registered with SEBI in a memorandum submitted to SEBI earlier this year, are as follows:

Table 12.1: Consumer Voice’s suggested modifications to questions in the BRR format

BRR questions based on NVGs	Suggestions based on NVGs and international guidelines
Percentage of customer complaints pending as on the end of financial year? <i>[Section E, Principle 9- Question 1]</i>	Percentage of customer complaints <ul style="list-style-type: none"> • Filed during the reporting period • Resolved during the reporting period • Pending as on end of reporting period • Average time taken to resolve the consumer complaint
Percentage of customer cases pending as on the end of financial year? <i>[Section E, Principle 9- Question 1]</i>	Percentage of customer cases <ul style="list-style-type: none"> • Filed during the reporting period • Resolved during the reporting period • Pending as on end of reporting period
Details pertaining to question 1 of principle 9, if any. <i>[Section E, Principle 9- Question 1]</i>	Provide brief summary on issues on which complaints and cases are pending against the company.
Does the company display product information on the product label, over and above what is mandated as per local laws? <i>[Section E, Principle 9- Question 2]</i>	Does the company display product information on the product label, over and above what is mandated as per local laws? If yes, mention the guidelines and codes that the company follows on product labelling.
Details pertaining to question 2 of principle 9, if any. <i>[Section E, Principle 9- Question 2]</i>	
Any case filed by any stakeholder against the company regarding unfair trade practices during the last five years and pending as on end of financial year? <i>[Section E, Principle 9- Question 3]</i>	Any case filed by any stakeholder against the company regarding unfair trade practices during the last five years? Are any of those cases still pending? If yes, provide details of the cases pending against the company regarding unfair trade practices
Any case filed by any stakeholder against the company regarding irresponsible advertising during the last five years and pending as on end of financial year? <i>[Section E, Principle 9- Question 3]</i>	Any case filed by any stakeholder against the company regarding irresponsible advertising during the last five years? Are any of those cases still pending? If yes, provide details of the cases pending against the company regarding irresponsible advertising.
Any case filed by any stakeholder against the company regarding anti-competitive behaviour during the last five years and pending as on end of financial year? <i>[Section E, Principle 9- Question 3]</i>	Any case filed by any stakeholder against the company regarding anti-competitive behaviour during the last five years? Are any of those cases still pending? If yes, provide details of the cases pending against the company regarding anti-competitive behaviour.

BRR questions based on NVGs	Suggestions based on NVGs and international guidelines
In case of a combined response for cases filed by stakeholders for unfair trade practices, irresponsible advertising and anti-competitive behaviour, please input yes here. <i>[Section E, Principle 9- Question 3]</i>	In case of a combined response for cases filed by stakeholders for unfair trade practices, irresponsible advertising and anti-competitive behaviour, please input yes here. Also explain the reason for providing a combined response.
Details pertaining to question 3 of principle 9, if any. <i>[Section E, Principle 9- Question 3]</i>	Details pertaining to question 3 of principle 9, if any. Provide summaries for cases pending against the Company.
Does the company carry out any consumer survey/ consumer satisfaction trends? <i>[Section E, Principle 9- Question 4]</i>	Does the company carry out any consumer survey/ consumer satisfaction trends? What has been customer satisfaction trend of your company?
Mention frequency of consumer surveys in months <i>[Section E, Principle 9- Question 4]</i>	Mention the frequency of consumer surveys in months. Which method was used to conduct the consumer survey?
Details pertaining to question 4 of principle 9, if any. <i>[Section E, Principle 9- Question 4]</i>	Details pertaining to question 4 of principle 9, if any. What has been the result or outcome of the consumer survey? What activities and initiatives the company has taken based on these consumer surveys?

As of August 2016, there has been no movement on the part of SEBI to take note of these concerns. We do hope that SEBI will pay attention and revise the BRR and make it an effective reporting mechanism.

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Chapter 13: 'Collaborative Commons' for communities and business: the marker of success

- Tom Thomas⁶⁸

With inputs from Anamika Dutt, Rohan Preece and Shireen Kurian

Whether social theorist Jeremy Rifkin's predictions about a shared economy and the destruction of capitalism before the middle of the century are accurate or not, what they offer are solutions of how societies will have organised themselves, socially and politically in a new global economy. According to him, when the marginal cost of producing each additional item falls to essentially nothing, then everything becomes free. In the heart of the argument lies the fact that in their pursuit of profit, businesses will have rung their own death knell, undermining their own margins. Capitalism will have, thus, destroyed itself. In its place, Rifkin argues, "will emerge a civilisation based on a new and more fulfilling communitarianism, free of the hang-ups that have characterised the materialistic individualism of the late capitalist age."⁶⁹

This is in direct challenge to Milton Friedman's rather myopic view that "the social responsibility of business is to increase its profits" thereby laying emphasis only on the shareholders. Today, the sentiment that Friedman expressed finds resonance amongst most businesses, which lays a hugely disproportionate premium on capital with complete disregard to the most critical constituent of the production relations – the people. What Rifkin postulates is the transitioning of businesses from 'capitalist to collaborating entities', entities that collaborate and empathise with other people, with other communities. The relationship between business and community will be one that will bridge the divide between the rich and poor and reduce the huge asymmetry between business and community that we witness today.

Interestingly, while a few responsible corporates might be discarding the Milton Friedman dictum their ethos is still ingrained with the sentiment of increasing profits at the cost of the planet and it's people. Adding to this is the new Companies Act that has made CSR a financial obligation, but it is still a secondary priority. Going by the Rifkin theory, the forewarning for business is that their key stakeholders (customers, employees, shareholders and communities) are moving towards the collaborative commons and that they, too, must follow. While it would augur well for Indian businesses to heed this warning, the government would do well by encouraging such a move.

Rifkin's thesis throws light on the new economic paradigm that will drive the "third industrial revolution" and emphasises "*that information technology and bandwidth will break down the conventional boundaries that have hitherto confined information flows and economic decisions within centralised, vertically structured, exclusive and profit-oriented organisations. As a result, relationships will be built around "distributed, lateral, peer- to-peer, and sharing" structures. A "collaborative commons" will come into being, where success will be measured by the contribution made to improving public wellbeing and not by the return on capital invested*"⁷⁰. The theory is not about CSR but the framework does suggest a model for companies to meet its social obligations and make a more meaningful impact on communities.

⁶⁸ Praxis - Institute for Participatory Practices

⁶⁹ Rifkin, Jeremy; *The Zero Marginal Cost Society: The Internet of Things, the Collaborative Commons, and the Eclipse of Capitalism*; Palgrave Macmillan; 2014

⁷⁰ <http://indianexpress.com/article/opinion/columns/csr-corporates-should-reach-out/>

Collaborative Commons and the CSR debate

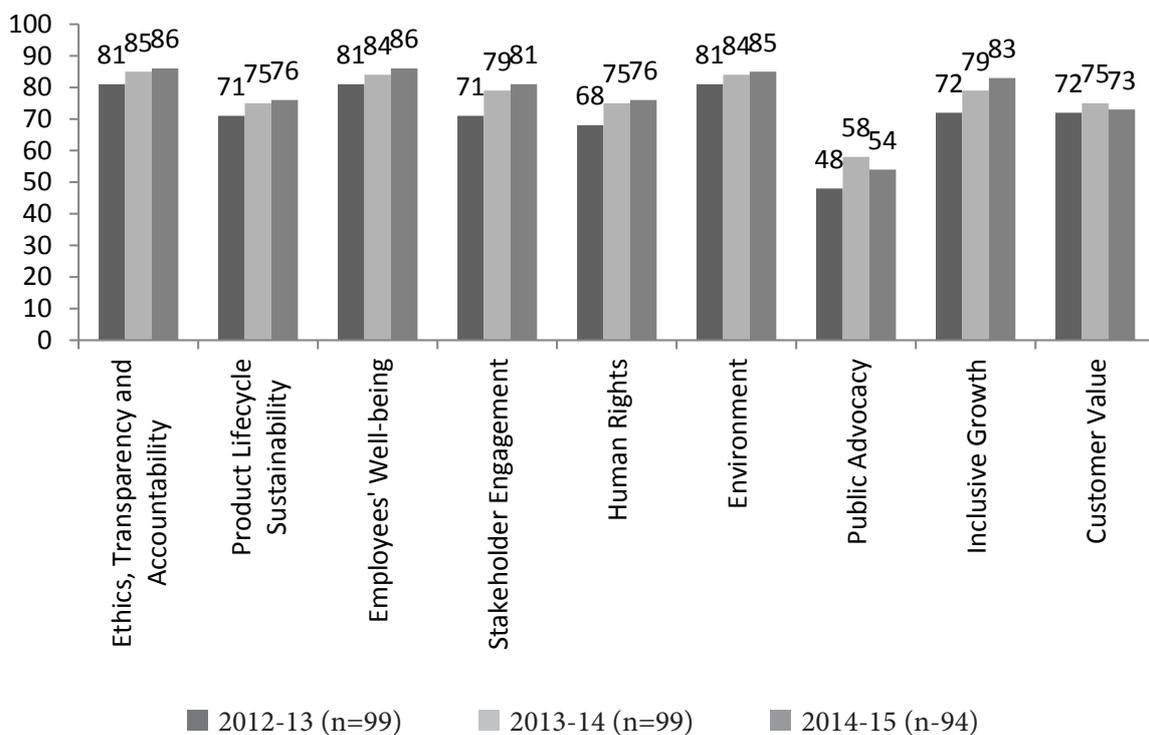
The writing on the wall, thus, indicates that the emerging Internet of Things⁷¹ is propelling us to an era of nearly free goods and services, leading to a rise of a global Collaborative Commons, in the hope that capitalism is overshadowed. However, this will not be relevant in India because parts the country are still waiting for the “second industrial revolution”. Where Rifkin’s notion of a “collaborative commons” resonates with the current discussion on CSR, is in suggesting that corporates should rethink the current siloed approach to CSR.

Today, without understanding the sub-culture of poverty, companies are not engaged with the beneficiary community. Adhoc and piecemeal contributions towards campaigns like Swachh Bharat or issues such as education leave the problems unaddressed. For example, companies might provide money to build toilets but the larger issues of cleanliness and availability of water for maintenance remain. Renovating classrooms and constructing schools do little about enhancing the quality of education. The result is that their contribution has had a limited impact.

This kind of approach is also mainly due to the fact that much CSR is devoid of social conviction. CSR funds are allocated for social projects, but seldom out of social conviction. This is mostly done to please political and bureaucratic leaders, or to secure public support for specific project investments. There is a need for Boards of companies to introspect and ask pertinent questions around whether the company should limit its CSR involvement to simply meeting the financial obligations set down in the act or if it should get more deeply engaged in tackling the systemic problems of society?

For a country that is still grappling with providing basic utilities and infrastructure like electricity and proper roads, India has a long way to go in establishing collaboration between business and their communities. Seldom are channels of communication established between communities and business, for an informed and prior consent about the impacts that business operations and CSR activities would have on the communities.

Chart 13.1: Percentage of companies that say they consult with relevant stakeholders when formulating policies related to the 9 NVG principles



Source: Top 100 Company Business Responsibility Reports

⁷¹ <http://www.thezeromarginalcostsociety.com>

Information which stakeholders' companies consider as relevant raises the issue of who should be consulted. An analysis done by CRW of 2012-13 company data⁷² suggested that customers/consumers are most frequently cited as relevant stakeholders, followed by suppliers and vendors, employees, shareholders/investors and government and regulators. The local community is only considered to be a relevant stakeholder by approximately half of the companies on which data is available.

Necessity of social impact assessments and free, prior and informed consent

The IRBI data⁷³ showed that 28 of 99 companies do not explicitly recognise, within their policies, the need for impact assessment of the community. Most worryingly, the principle of Free, Prior and Informed Consent (FPIC) was publically recognised by only one company, and only three companies recognised and provided details of a system to ensure provision of similar or better living conditions and services for people affected by business operations.

Levels of consultation were also very low, with only nine of the companies committed to a public hearing and communication of project impacts to the community, just two publishing impact assessment reports in the public domain, and the same number consulting stakeholders for formulation of policies on resettlement and rehabilitation. More generally, there is a concerning level of opaqueness in the way that companies report the impact of their business operations on local communities, with very few disclosing information on the number of people displaced, affected, rehabilitated and resettled.

The findings of the IRBI raise an important question. Just how should companies interact with and relate to local communities? Clearly, companies cannot shrug off responsibility for the impact of their activities on the community. A core requirement must be that they share information with them.

Companies owe the affected community detailed information about the scale of the project, the extent of intended displacement, expected impact of project, the measures taken to mitigate these, compensation, alternative livelihood options, grievance redressal and other related information. Such information needs to be in the public domain where it can be accessed easily to ensure accountability.

The Principle of Free, Prior and Informed Consent (FPIC), despite having been endorsed by the United Nations and other international bodies, is yet to enter the realm of law in India. Yet with companies like Vedanta Resources learning the hard way about the need to get community consent, it also makes some sense for them to have mechanisms to safeguard the principle of enabling local people to be stakeholders in business activities affecting them. It is also right, in the context of a democracy in which non-state agents are becoming increasingly active and powerful, to utilise the principle of FPIC as a way of preserving democracy – a way of keeping corporations in check. In fact it is even more important for corporations to inculcate this principle given that they are not electorally accountable – and given that their formal 'constituencies' (shareholders) are likely to be far removed from the scene of development, and unable, therefore, to grasp the implications.⁷⁴

Connected here are two constitutional imperatives: the right to equality and the right to freedom from exploitation. If Adivasis, who number disproportionately highly among India's poorest and most disadvantaged, are to survive on equal terms, their worldviews also need to be given equal interest. They have a totally different view of the environment to that held in most mainstream quarters – and may view territorial integrity to be of sacred importance. So a violation of the local environment of an Adivasi may mean something quite different to the violation of the local environment of a non-Adivasi, making the need for full consultation, thorough and sensitive understanding, and consent-taking even more important in tribal contexts.

⁷² http://www.corporatewatch.in/images/Beyond_2percent_Report_final.pdf

⁷³ http://www.corporatewatch.in/images/Making_Growth_Inclusive.pdf

⁷⁴ <http://southasia.oneworld.net/peoplespeak/transforming-csr-into-business-responsibility-towards-protecting-environment-and-community#.V1v5b-LdU7Y>

Conclusion

Though the nexus between business, state and media are all-permeating, the good news is that there are laws, state regulations and executive orders, that define a number of aspects of the relationship between the business and community. Some of these have been derived from the fundamental rights that every citizen enjoys. Whether it is social impact assessments or negotiations related to wage, employment conditions and others, these are all stipulated in laws and regulations. These stipulations, often, remain in statute books with very little impact. Locating citizen actions within Rifkin's theory, should ideally entail urging businesses to look for returns not through the "invisible hand" of the market but through the "helping hand" of collaborative partnerships between the business and the community. The vision is that while accepting the importance of "people, planet and profits", they would rank people and the planet ahead of profits. Bringing information onto a platform and solidarity among all stakeholders, holds the key to correct the asymmetry that exists between businesses and its stakeholders and reverse the gigantic suction of the world's resources into the hands of a few.

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