

Summary

This research paper deals with the connotation of government's regulation on CSR. Public institution which include the legislature, are the driving force toward the policy making in turn which regulates the conduct of each and every person under the territory. Corporate social responsibility (CSR) as generally practiced through voluntary action of industries is market based, but in the context of developed countries the corporations even when complying with their part of responsibility does it just to gain an uppercut over corporate competitors. Thus there is a need for corporate law to create fear of prosecution in case of infringement. The researchers also submit that there is a need of public sector assistance to the succeeding sector i.e. private sector, in reference to CSR for difficulties which originate from the regulated CSR such as interpretation of codified expression, financial burden and problems of which they are not accustomed. Responsibility of government originates from the very virtue of Rousseau's 'social contract theory' through which government should create the environment and opportunities for the business. These relevant instances within the scope and nature of policy maker's intervention as government agenda and to the contrary voluntary action as a self-regulation of private sector.

In the debate surrounding Corporate Social Responsibility (CSR) there are two diverging schools of thought. The first one believes that only regulation can be effective in implementing CSR. Taking the opposite view, the opponents of regulation consider CSR as a voluntary and a non-regulated exercise, which must be left to the individual corporations. It is our view that a regulative approach, as it is proposed in some European Union countries, would mean costs for individual companies and a dead weight loss for the whole European economy.

In recent times, the issue of corporate social responsibility (CSR) has been given a lot of attention by both government and private stakeholders. It is broadly acknowledged among government, business and stakeholders across the world, that CSR is not about charity, but that it belongs to the core business of a company and therefore should be an integral part of doing business. Companies are under increasing pressure from society to take their social responsibility. This is especially so if it concerns companies with a business relation in a developing country, since these companies are more confronted with CSR issues.

CSR is a container concept which encompasses many different ecological, social and economic issues. Further, In order to give a more specific interpretation to the concept of CSR it is based on international treaties, guidelines and instruments enjoying broad international support that are relevant for business, such as human rights, labour rights, environmental protection, consumer protection, socio-economic development, corruption and other aspects of CSR. It also includes some fundamental operational aspects of CSR like supply chain responsibility, stakeholder involvement, transparency and reporting and independent verification.

The term governance denotes the system which 'provides direction to society' and is thus wider than government alone (i.e. formal authoritative institutions and organisations and processes of the public sector). Governments take a particular interest in this wider system of governance as they may be blamed for its perceived failures. Corporate social responsibility is thus a matter of interest for the governments across the world. Government, A Public institution which include the legislature, are the driving force toward the policy making in turn which regulates the conduct of each and every person (which here includes the private institutions such as industries, banks, firms, trade unions etc.¹) under the territory, As the Policy makers, more than any other stakeholder group, have been struggling to find a leg to stand on in the CSR debate. Regulate is what policy makers do. But how can there be regulation on CSR, when CSR is to be voluntary and market based? In the debate

¹ Chiranjit lal chowdhury v. union of india AIR 1951 SC 41

surrounding Corporate Social Responsibility (CSR) there are two diverging schools of thought. The first one believes that only regulation can be effective in implementing CSR. Taking the opposite view, the opponents of regulation consider CSR as a voluntary and a non-regulated exercise, which must be left to the individual corporations. It is our view that a regulative approach -as it is proposed in some European Union countries- would mean costs for individual companies and a dead weight loss for the whole European economy. This think piece argues that contrary to established thinking, there is no conflict between the two. Since corporate law protects the interests of the firm's shareholders, a corporate socially responsible or 'corporate citizenship' or 'community development' stance would involve the formulation of decisions that go beyond legal requirements and exceed the law, 'compliance plus'. Generally speaking, an organisation will avoid breaking the law because of the fear of prosecution (Bichta, 2000). The notion of CSR confers to activities that exceed legal requirements and the way in which the organization will manage the CSR agenda. In practice, CSR is currently translated as 'best practice' i.e., the rigorous assessment and management of a company's impacts across the entire business from the point of material supply to product disposal (Cowe, Porritt, 2002). In its broadest sense, contemporary CSR represents companies' responsibility to improve all their impacts on society, when not required to do so by law.

It is fair however to argue that within the present (business) share ownership paradigm, shareholders will have the final say if corporate action is not constrained by regulation. This position might be altered by changing the relationship between the board and stakeholders, which is the intention of the current meaning of CSR. It may be that government has a role to play towards creating the conditions where such a switch in emphasis can be made.

❖ INTRODUCTION

A semantic dissertation of 'corporate social responsibility'

Corporate social responsibility (CSR, also called corporate responsibility, corporate citizenship, responsible business and corporate social opportunity²) is a concept whereby [organizations](#) consider the interests of [society](#) by taking responsibility for the impact of their activities on [customers](#), suppliers, [employees](#), [shareholders](#), [communities](#) and other [stakeholders](#), as well as the [environment](#). This [obligation](#) is seen to extend beyond the [statutory](#) obligation to comply with [legislation](#) and sees organizations voluntarily taking further steps to improve the quality of life for employees and their families as well as for the local community and society at large.

The practice of CSR is subject to much debate and criticism. Proponents argue that there is a strong business case for CSR, in that corporations benefit in multiple ways by operating with a perspective broader and longer than their own immediate, short-term profits. Critics argue that CSR distracts from the fundamental economic role of businesses; others argue that it is nothing more than superficial window-dressing; still others argue that it is an attempt to preempt the role of governments as a watchdog over powerful [multinational corporations](#).

The idiom 'corporate social responsibility' originates -as all words and elements of the language- to express an idea. It incorporates to the noun 'responsibility' two adjectives, 'corporate' and 'social', to limit its broad meaning. After integrating the three words, their meanings are harmonized, creating a concept as simple or complex as the combination of the three words that form it. To propose more elaborate definitions is a mistaken or deliberate act of confusion. Therefore, to make clear *what* is corporate social responsibility we must fix what we understand for responsibility. Responsibility is defined, as 'the quality or state of being responsible, understood as a moral or mental accountability'. Responsibility is a self-reflection of moral basis. Given that morality is the doctrine, which distinguishes the principles of right and wrong in behaviour, it is necessary for a moral obligation to exist that the responsible subject has judgement, free will and knowledge of its actions. If animals or kids are not considered responsible for their actions it is because they are not capable of moral perspective. For that reason, being responsible implies a mature mind, educated according to a system of values. Once we have made clear what we understand for responsibility, to analyse the use of the two adjectives that complement the noun will be easier. 'Social' means 'relative to society' being 'society' a 'community, nation, or broad grouping of people having common traditions, institutions, and collective activities and interests'. Corporate means 'relative to a corporation'. If we add to 'responsibility' the two adjectives that limit its meaning we can define in the most fundamental way what we understand for 'corporate social responsibility': 'a moral or mental accountability by which a corporation is responsible in relation to society'. Moral principles lead the enterprise to judge the errors of its behaviour and to assume their consequences. The entrepreneurial essence of CSR and the semantic interpretation of the concept clearly point out the voluntary nature of corporate social responsibility. Regulating or directing the responsibility of the enterprise transforms its roots as an idea, changing it completely, destroying its uniqueness. A law that establishes obligations and norms to regulate the social behaviour of the company implies that, in the end, the government establishes what corporate social responsibility is in practical terms.

An approach for CSR that is becoming more widely accepted is community-based development projects, such as the [Shell Foundation's](#) involvement in the [Flower Valley](#), South Africa. Here they have set up an Early Learning Centre to help educate the community's children, as well as develop new skills for the adults. [Marks and Spencer](#) is also active in this community through the building of a trade network with the community -

² cf. Grayson, D. and Hodges, A. (2004) *Corporate Social Opportunity! Seven Steps to Make Corporate Social Responsibility Work for your Business*

guaranteeing regular [fair trade](#) purchases. Often alternative approaches to this are the establishment of education facilities for adults, as well as HIV/AIDS education programmes. The majority of these CSR projects are established in Africa. A more common approach of CSR is through the giving of aid to local organizations and impoverished communities in developing countries. Some organizations do not like this approach as it does not help build on the skills of the local people, whereas community-based development generally leads to more sustainable development.

Corporations exist to provide products and/or services that produce profits for their shareholders³. [Milton Friedman](#) and others take this a step further, arguing that a corporation's purpose is to maximize returns to its shareholders, and that since (in their view), only people can have social responsibilities, corporations are only responsible to their shareholders and not to society as a whole. Although they accept that corporations should obey the laws of the countries within which they work, they assert that corporations have no other obligation to society. Some people perceive CSR as incongruent with the very nature and purpose of business, and indeed a hindrance to free trade. Those who assert that CSR is incongruent with [capitalism](#) and are in favour of [neoliberals](#) argue that improvements in health, [longevity](#) and/or [infant mortality](#) have been created by [economic growth](#) attributed to [free enterprise](#)⁴.

❖ Arguments In Favour Of “NO REGULATION ON CSR” Based on Ideology: *Traditionally voluntary compliance*

Voluntary compliance is seen as an alternative to the state-imposed [regulations](#) on company's behaviour. Proponents of voluntary compliance argue that it is in company's own interest to behave socially responsibly and that in pursuit of good public image; company will

³ Malloy, D.C. (2003). "[Understanding the Nature of Ethics, and Purposes of Business Health Care and Law](#)", The Sport We Want (PDF), [Canadian Centre for Ethics in Sport](#), pp.59-79.

⁴ [Friedman, Milton \(1970-09-13\)](#). "[The Social Responsibility of Business is to Increase its Profits](#)", [The New York Times Magazine](#).

withdraw from doing actions, which could damage its perception by public. Thus there is no need for state [regulations](#).

In most definitions of corporate social responsibility, two fundamental principles remain unchallenged: a) CSR should be voluntary and, b) CSR should be market based. But from a policy point of view this raises a difficult question. For how can there be regulation on CSR, when CSR is to be voluntary and market based?

In principle, as this think piece will argue, there is no conflict between the two or between regulation and free market voluntarism. But in practice we have been led to assume that regulation is incompatible with voluntary CSR, and that we should not tamper with market forces in order to make CSR work better⁵.

Within a market economy, voluntary standards are considered to be more efficient, more Flexible, and less discriminatory than state-imposed taxes and quotas in meaningfully integrating social and environmental concerns within economic growth.

Voluntary standards and associated codes and certification schemes are emblematic of globalization, linked as they are with the growth of international supply chains, a reduced role for state organizations, and recasting of regulatory systems. These standards, codes, and benchmarks are proliferating, often as part of CSR or risk management initiatives. Realizing that voluntary standards can have the same impacts on market access as government-led regulations, public policy and multilateral agreements in a highly politicized atmosphere are struggling to keep up. There is now a tremendous amount of interest in standards among civil society, industry, government, and multilateral institutions.

Whether standards relating to sustainable development – around environmental, labour, or ethical issues – are adopted by a firm depends on the prevailing commercial pressures and on corporate leadership. Some of the drivers are as follows⁶.

- ❖ *Desire to enhance or sustain competitiveness through selling ethical or 'green' products (Sustainability as embedded quality), or recruiting and retaining high-quality staff.*
- ❖ *Risk to company brand or reputation (and hence shareholder value) as a result of consumer pressure or NGO campaigns.*
- ❖ *Pressure from investors, lenders, and insurers.*
- ❖ *Support from enlightened corporate leadership.*
- ❖ *Threat of regulatory action or emerging legislation.*

While trade associations may bemoan increased regulation, large companies may quietly welcome measures, which add a few bricks to the wall around the business that blocks new entrants to their markets. This logic applies to standards for 'sustainability' as much as to quality and safety. Voluntary self-regulation by individual companies or business associations is often initiated in the hope or expectation that best practice will become a legislated condition to market entry⁷. Standards developed and implemented nominally in the name of 'sustainability' but rationalized within corporate strategy as a means to avoid risk, build barriers to competitors, or survive in an era of increased competition and trade liberalization, are perceived to be less benign (subject to accusations of 'green washing') than standards arising from a core commitment to sustainable development. But outcomes for the environment, labour, or producers depend not so much on the commercial rationale for adopting a standard than on the sharing of costs and benefits of those standards along a supply chain over time.

⁵ Allan Lerberg Jørgensen, "The Rule of CSR and the Role of Law"

⁶ UK Cabinet Office 2000. Rights of Exchange: a performance and innovation unit report . The Role of Voluntary Initiatives. Available at <http://www.cabinet-office.gov.uk/Innovation/2000/trade/contents.htm>

⁷ "Acknowledging Progress, Prioritizing Action", Rita Kumar, Director, TERI

With the retreat of the state in economic activity in India, the imperative for business to take up wider social responsibilities is growing. The situation is complex and India is facing a compounded set of corporate responsibility challenges. The 'first generation' corporate responsibility agenda concerning conflicts between companies and communities over the control of natural resources is widespread. Examples include struggles between rice growers and shrimp farms, land disputes between plantation owners and indigenous communities, and resistance from communities to mining projects. Yet India also faces a range of 'second generation' issues relating to hazards of industrial production, exemplified by the 1984 Bhopal tragedy, but now encompassing a growing number of incidents across the subcontinent where industrial air and water pollution, and the dumping of waste is going beyond the limits of social and environmental tolerance. And, finally, as the pace of urbanization continues and liberalization opens up India to global consumption patterns, many of its cities are simultaneously confronting the 'third generation' responsibility issues related to products and services, whether they are auto pollution norms or pesticide residues in mineral water. Whereas business cannot be expected to take on the role of governments, in a situation where a majority of the population lives below the poverty line and has little or no access to basic public services such as health, education, water, and electricity, and where there are a multitude of complex sustainability challenges, CSR certainly has a potential for becoming a real tool for development: human, social, and economic. The voluntary action of corporations for CSR within a community will likely to rest on one or more of these arguments:

☛ **Human resources**

A CSR programme can be seen as an aid to [recruitment](#) and [retention](#)⁸, particularly within the competitive [graduate](#) student market. Potential recruits often ask about a firm's CSR policy during an interview, and having a comprehensive policy can give an advantage. CSR can also help to improve the perception of a company among its staff, particularly when staff can become involved through [payroll giving](#), [fundraising](#) activities or community volunteering.

☛ **Risk management**

Managing [risk](#) is a central part of many corporate strategies. Reputations that take decades to build up can be ruined in hours through incidents such as corruption scandals or environmental accidents. These events can also draw unwanted attention from regulators, courts, governments and media. Building a genuine culture of 'doing the right thing' within a corporation can offset these risks.⁹

☛ **Brand differentiation**

In crowded marketplaces, companies strive for a [unique selling proposition](#) which can separate them from the competition in the minds of consumers. CSR can play a role in building customer loyalty based on distinctive ethical values¹⁰. Several major [brands](#), such as [The Co-operative Group](#) and [The Body Shop](#) are built on ethical values. Business service organisations can benefit too from building a reputation for integrity and best practice.

☛ **License to operate**

⁸ Bhattacharya, C.B., Sankar Sen and Daniel Korschun (2008), "Using Corporate Social Responsibility to Win the War for Talent," MIT Sloan Management Review, 49 (2), 37-44; "[The Good Company](#)", [The Economist](#) (2005-01-20).

⁹ Kytte, Beth; John Gerard Ruggie (2005). "[Corporate Social Responsibility as Risk Management: A Model for Multinationals](#)" (PDF). Social Responsibility Initiative Working Paper No. 10.. Cambridge, MA: [John F. Kennedy School of Government](#), Harvard University.

¹⁰ Paluszek, John (April 6-7, 2005). "[Ethics and Brand Value: Strategic Differentiation](#)

Corporations are keen to avoid interference in their business through [taxation](#) or [regulations](#). By taking substantive voluntary steps, they can persuade governments and the wider public that they are taking issues such as [health and safety](#), diversity or the environment seriously, and so avoid intervention. This also applies to firms seeking to justify eye-catching profits and high levels of boardroom pay. Those operating away from their home country can make sure they stay welcome by being good corporate citizens with respect to labour standards and impacts on the environment.

❖ **CSR: REGULATION: Think piece**

Another driver of CSR is the role of independent mediators, particularly the government, in ensuring that corporations are prevented from harming the broader social welfare, including people and the environment. CSR critics such as [Robert Reich](#) argue that

governments should set the agenda for social responsibility by the way of laws and regulation that will allow a business to conduct them responsibly¹¹.

The supporters of regulating CSR base their argument in a perceived need to take decisions and clarifying concepts at a government level in order to prevent CSR from becoming pure corporate propaganda or a pointless marketing tool. They assume that State intervention is needed in order to level-playing field and ensure an effective implementation of rules on CSR.

When analysing these arguments we can identify two orientations. The first one suggests that the government has the role to support the CSR culture among enterprises. The second one assumes that a 'CSR Law' is needed to define concepts, normalize actions, standardise conducts, put in order audit systems, establish triple bottom line obligations for corporations present in the financial markets, favour ethical investment funds and stimulate public buying and hiring with those companies that can be classified as socially responsible. It is primary this second orientation of governmental policy that we judge is negative for the development of CSR.

Voluntarism does not rule out policy making. This teaches us something important in relation to the role of policy in CSR. It teaches us that we must move away from the notion that CSR by being voluntary must also be paid for by companies.

The regulation on CSR can be achieved by the way of constitutional provisions on the matter, legislations or Supreme Court guidelines on the matter as they are binding on each and every person.

➤ CONSTITUTIONAL PROVISIONS

Article 48A: Protection and improvement of environment and safeguarding of forests and wild life - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51A: Fundamental duties- It shall be the duty of every person of India,-

(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

➤ LEGISLATIONS

Environmental issues are thus clearly one aspect of Corporate Responsibility. Environmental policy (as it relates to demands on corporate behaviour) has, however, progressed much further than in the context of human rights and social responsibility. There is a much more directly applicable set of standards and accepted procedures, and there is a body of experience to show the degree to which business incorporates environmental concerns, while it will always be fruitful to draw on lessons learnt in the environmental area when aiming to advance the less mature CSR policy agenda. The legislations on the matter are:

☛ THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

The Act provides for constitution of Central and State Board's for the Prevention and Control of Air Pollution. The main functions of the Central and State Boards shall be to improve the quality of air and to prevent, control or abate air pollution in the country:

¹¹ In his new book, [Supercapitalism: The Transformation of Business, Democracy and Everyday Life](#)

- (a) Advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;
- (b) Plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;
- (c) Co-ordinate the activities of the State and resolve dispute among them;
- (d) Provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;
- (e) Plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;
- (f) Organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;
- (g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

☛ **THE ENVIRONMENT PROTECTION ACT, 1986**

An Act to provide for the protection and Improvement of Environment and for Matters Connected therewith.

Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

And Whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human being, other living creatures, plants and property;

3. (1) Subject to the provisions of this Act, the central government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protection and improving the quality of the environment and preventing, controlling and ablation environment pollution.

3. (II) (V) Restriction of areas in which any industries, operations, or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

3. (II) (VII) Laying down procedures and safeguards for the handling of hazardous substances;

☛ **FACTORIES ACT, 1948 and Its Amendment in 1987**

The Factories Act, 1948 was a post-independence statute that explicitly showed concern for the environment. The primary aim of the 1948 Act has been to ensure the welfare of workers not only in their working conditions in the factories but also their employment benefits. While ensuring the safety and health of the workers, the Act contributes to environmental protection. The Act contains a comprehensive list of 29 categories of industries involving hazardous processes, which are defined as a process or activity where unless special care is taken, raw materials used therein or the intermediate or the finished products, by-products, wastes or effluents would:

- Cause material impairment to health of the persons engaged
- Result in the pollution of the general environment

☛ **PUBLIC LIABILITY INSURANCE ACT (PLIA), 1991**

The Act covers accidents involving hazardous substances and insurance coverage for these. Where death or injury results from an accident, this Act makes the owner liable to provide relief as is specified in the Schedule of the Act. The PLIA was amended in 1992, and the Central Government was authorized to establish the Environmental Relief Fund, for making relief payments.

☛ **The BUILDING and OTHER CONSTRUCTION WORKERS (Regulation of Employment and Conditions of Service) ACT, 1996.**

The act provides for central and state Advisory committee along with expert Advisory committee to advise the Central Government on such matters arising out of the administration of this Act, committees consist of the members of parliament and other officers appointed by the central government. Act provides every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act. Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board which functions may:

- (a) Provide immediate assistance to a beneficiary in case of accident;
- (b) Make payment of pension to the beneficiaries who have completed the age of sixty years;
- (c) Sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
- (d) pay such amount in connection with premium for Group Insurance Scheme of the beneficiaries as it may deem fit;
- (e) Give such financial assistance for the education of children of the beneficiaries as may be prescribed;
- (f) Meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;
- (g) Make payment of maternity benefit to the female beneficiaries; and
- (h) Make provision and improvement of such other welfare measures and facilities as may be prescribed.

☛ **PLANTATIONS LABOUR ACT, 1951**

The Act prescribes for apart from other:

- **Canteens:** Under Section 11, the State Government has been empowered to ask Employers to open Canteen(s) in Plantations employing one hundred and fifty workers or more and to make rules for the working and maintenance of canteens.
- **Crèches:** The employer must provide and maintain suitable rooms for children where the number of workers is more than fifty or the number of children of women workers is twenty or more [Section 12].Crèches are to be maintained in clean, safe and sanitary conditions and are to be run by a woman trained in the care of children and infants as per the law.
- **Recreational facilities:** every employer to make provision in the Plantation for recreational facilities for the workers and their children [Section 13].
- **Educational facilities:** In every Plantation where the children- of the workers between the ages of six and twelve exceed the number twenty five, the employer is under obligation to provide educational facilities as may be specified by the State Government [Section 14].

- **Housing facilities:** It is the duty of the employer to provide and maintain necessary housing accommodation for every worker and his family [Section 15]. Every worker (including his family) is entitled to a housing accommodation after six months of continuous service whether staying inside or outside a plantation and who has expressed a desire in writing to live in the plantation. The requirement of continuous service of six months will not apply to a worker who is the member of the family of a diseased worker who was residing in the plantation. Under Section 16, the State Government has been empowered to make rules relating to standards of housing and constitution of an advisory board with representatives of workers and employers.
- **Liability of employer in case of accidents resulting from collapse of houses provided by him:** If the house collapse is not solely or directly attributable to a fault on the part of the occupant or to a natural calamity, the employer shall be liable to pay compensation to the worker or his kin suffering injury or death. In order to claim this compensation, the worker or his next of kin or his authorised agent must write to Labour Commissioner within 6 months of the accident. The compensation would be paid under the Workmen's Compensation Act, 1923.

☛ **THE PROTECTION OF WOMEN AGAINST SEXUAL HARASSMENT AT WORKPLACE BILL, 2007**

Section 3 of the bill: No woman employee at a work place shall be subjected to sexual harassment including unwelcome sexually determined behaviour, physical contact, advances, sexually coloured remarks, showing pornography, sexual demand, request for sexual favours or any other unwelcome conduct of sexual nature whether verbal, textual, physical, graphic or electronic or by any other actions, which may include, -

- (i) Implied or overt promise of preferential treatment in employment; or
- (ii) Implied or overt threat of detrimental treatment in employment; or
- (iii) Implied or overt threat about the present or future employment status;
- (iv) Conduct which interferes with work or creates an intimidating or offensive or hostile work environment; or
- (v) Humiliating conduct constituting health and safety problems.

☛ **EQUAL REMUNERATION ACT, 1976**

Section 4: DUTY OF EMPLOYER TO PAY EQUAL REMUNERATION TO MEN AND WOMEN WORKERS FOR SAME WORK OR WORK OF A SIMILAR NATURE. -

- (1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.
- (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.
- (3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than

two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers.

Section 5: NO DISCRIMINATION TO BE MADE WHILE RECRUITING MEN AND WOMEN WORKERS. - On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

➤ **SUPREME COURT JUDGMENTS and GUIDELINES**

☛ **Bhopal Gas Tragedy: A Downplay**

A large volume of water had apparently been introduced into the methylisocyanate (MIC) tank, causing a chemical reaction forcing the pressure release valve to open and allowing the gas to leak. This accident eventually provides for the good background for subsequent judgements in the cases of negligence of industries towards their objective and community. The cases which follows provides supreme court to set down examples with new principles and doctrines. The cases are thus:

☛ **Indian Council for Enviro-Legal Action v Union of India¹²;**

The Court held that the Company was absolutely liable for the environmental degradation caused by the production of 'H' acid. It was up to the company to pay for the pollution and redo the environmental damage and wrong caused by its industrial activity. Sec. 3 and 4 of the EPA, 1986 empowers the government to recovery cost of the pollution and sue the same for redoing the harm caused to the environment.

☛ **M.C. Mehta v. Union of India (Oleum Gas Leak Case)¹³**

The case of **M.C. Mehta v. Union of India** originated in the aftermath of oleum gas leak from Shriram Food and Fertilisers Ltd. complex at Delhi. This gas leak occurred soon after the infamous [Bhopal gas leak](#) and created a lot of panic in Delhi. One person died in the incident and few were hospitalised. The case lays down the principle of [absolute liability](#) and the concept of deep pockets.

☛ **TAJ MAHAL Case:**

Taj Mahal, one of the wonders of the world and the pride of India was facing serious threat from pollution caused by Mathura Refinery, iron foundries, glass and other chemical industries. As a result of very high toxic emissions from these industries, the Taj Mahal and 255 other historic monuments within the Taj trapezium were facing serious threat because of acid rain. The Petition was filed in the year 1984. The Supreme Court of India delivered a historic Judgement in December 1996. The apex Court gave various directions including banning the use of coal and coke and directing the industries to switch over to Compressed Natural Gas (CNG).

☛ **Ganges Pollution Case:**

Three landmark judgments and a number of Orders against polluting industries numbering more than fifty thousand in the Ganga basin passed from time to time. A

¹² AIR 1996 SC 1446

¹³ AIR 1998 SC 2340.

substantial success has been achieved by way of creating awareness and controlling pollution in the river Ganges.

☛ **Relocation Of 90000 Polluting Industries Operating In DELHI:**

A large number of hazardous industries had become a serious health hazard and posed danger to the life and health to a large population living in Delhi. Despite their ban, these industries continued to operate in Delhi in violation of the Master Plan and Environmental laws. Seeing the defiant attitude of the industries a petition was filed in the Supreme Court. In this case, in 1996 the apex Court ordered the closure of major polluting and hazardous industries from Delhi and their relocation in the neighbouring states. More than 1300 major polluting and hazardous industries were closed down in Delhi.

☛ **Child Labour Case:**

By raising issue of exploitation of child labour in Sivakasi (Tamil Nadu) match and fireworks factories, more than one million children working in hazardous industries in Tamil Nadu and other States in India were benefited. Thus ambit of the case was widened to include child labour in the whole country. The Supreme Court directed all the States to identify children forced into labour and come out with schemes for their rehabilitation. Child labour in hazardous industries has been banned. In another case, 194 children illegally detained in different jails in Orissa were released.

☛ **KAMAL NATH Case:**

In the State of Himachal Pradesh, Span motel, owned by the family members of Shri Kamal Nath, Minister for Environment and Forests, Govt. of India diverted the Course of river Beas to beautify the motel and also encroached upon some forest land. The apex court ordered the management of the Span motel to hand over forest land to the Govt. of Himachal Pradesh and Remove all sorts of encroachments.

The Court delivered a land mark judgment and established principle of exemplary damages for the first time in India. The Court said that polluter must pay to reverse the damage caused by his act and imposed a fine of Rs Ten Lakhs (Rs 10,00,000) on the Span motel as exemplary damages. The Supreme Court of India recognized Polluter Pays Principle and Public Trust Doctrine.

☛ **Gamma Chamber Case:**

Due to filing of case against radiation from a Gamma Chamber, students and teachers in Jawaharlal Nehru University (JNU), Delhi were saved from hazardous radiation.

☛ **[The laws related to Sexual Harassment at Work place:](#)**

The landmark judgment:

In *Vishaka .Vs. State of Rajasthan*¹⁴, Supreme Court of India laid down the guidelines for instituting an anti-sexual harassment policy at the workplace.

In the above case, Supreme court has defined sexual harassment as following:

“ Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (Whether directly or by implication) as :

- a) Physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non - verbal conduct of sexual nature.”

❖ CONCLUSION: *SOLUTION TO THE PROBLEM*

The researcher submits that it is of no mistake to regulate CSR:

Researchers agree that CSR needs to be market-driven. However, there is a tendency to accept the market as if it were somehow devoid of regulation. In CSR research and

¹⁴ AIR 1997 SUPREME COURT 3011

debates the idea of the business case has falsely come to signify the window of opportunity for CSR in a presumably unregulated free market environment. But markets are not free the way Adam Smith wanted them to be. Markets almost everywhere are already heavily regulated. However much of this regulation is about discouraging business behaviour that produce negative externalities for society. Look at the pricing and subsequent trading of Co2 emission quotas is a prominent example of this.

Corporate social responsibility (CSR) as generally practiced through voluntary action of industries is market based, but in the context of developed countries the corporations even when complying with their part of responsibility does it just to gain a uppercut over corporate competitors. Thus there is a need for corporate law to create fear of prosecution in case of infringement. The report, entitled, *Behind The Mask: The real face of corporate social responsibility*¹⁵, makes its case against CSR in section one, and presents its recommendations for international regulation in section three. Christian Aid is not alone in criticizing the voluntary approach. In June 2003, the Organisation for Economic Co-operation and Development (OECD) released a [report](#) on this very issue entitled *Voluntary Approaches for Environmental Policy: Effectiveness, Efficiency and Usage in Policy Mixes*. "This report concludes that the environmental effectiveness of voluntary approaches is often questionable, and their economic efficiency is generally low," states the OECD, a consortium of 30 developed countries committed to free market democracy. Companies and governments are very afraid when we talk about international regulation, but in fact we are talking only about extra-territorial jurisdiction for national regulation, underpinned by internationally agreed standards but for that each nation first has to legislate on the issue.

The researchers also submit that in a national legislation for the time being till the international consensus on the matter is reached should constitute a separate legislation for the corporate social responsibility of the industries which should:

- Make corporate social and environmental reporting and disclosure mandatory;
- Give directors a duty of care for communities and the environment, making them legally responsible for the actions of their companies overseas;
- Enable people harmed by companies' operations to seek redress in courts of jurisdiction and provide resources to allow them to do so.

The researchers also like to submit that, regulation will not, overnight, make a difference, So work on compliance, which has in effect already begun, which is absolute key to solve this need of the hour, which is essentially an extension of the voluntary approach. The act of compliance could be exercised through:

◆ **NGO: Involvement in consumer education.**

Today, social responsibility is no longer a matter of corporate discretion, due in large part to the NGO community's growing influence. NGOs and other stakeholders are more likely to acknowledge progress and success if companies are not candid about problems and mistakes. The NGOs comprise human rights, environmental, and community service groups. Many advocacy NGOs are extremely efficient in playing on the Media. The role of Media is often that of multiplying effects and reinforcing trends. In the bad guy/good guy world of modern media world, there is a need to make stories simple and understandable. Issues Linked to CSR have a solid potential to grasp the audience through the human interest Angle. whatever negative events happening around the globe, the chances of domestic Media coverage of the event rise from zero to 100 if NGOs manage to link a domestically owned company. The global consumer is becoming better informed every day, not least as to the

¹⁵ The report by UK-based anti-poverty religious charity: Christian Aid, Jan 2004.

geographic as well as social origins of goods and services. NGOs, media, modern technology, including the Internet, all "conspire" to ensure an ever more robust basis for ethical or socially responsible selection of consumer goods. The impact of the communication revolution deserves particular attention. While before consumer groups had to work really hard to reach out and sustain support for boycott campaigns among the politically conscious, modern communications make the average consumer far more likely to become influenced even by rather simple messages.

◆ **Star Ratings: for brand building through CSR.**

Corporate social responsibility (CSR) is a term which is now growingly familiar to private sector entrepreneurs operating in different fields of the country. CSR has opened up a new dimension to making businesses or enterprises responsible and contributory to their employees, the society, the national economy and the environment. Under the CSR concept many firms in Bangladesh have developed the awareness that their employees ought to be treated fairly, justly and equitably not only for the latter's well being but also for the firms to gain from employees' satisfaction and hence their working harder or more sincerely. Outside the firms, the entrepreneurs started and maintained initiatives ranging from environment-friendly activities such as planting trees and beautification to establishment of academic and health care institutions for the poor. There is no need to explain why these types of CSR activities related to establishment of various care facilities for the poor or in the alleviation of their poverty, should be hugely welcome. For more the net of such activities, the same would be in support of similar governmental endeavours with both streams making a greater impact on poverty reduction and delivery of critically needed services to the vast number of the non-affluent ones in the population. Thus, CSR needs to be recognised and promoted as positively complementary to government's own actions for social and economic distributive justice. The government or any other authority should in this regard must provide for the star rating to the enterprise ranging from 1 to 5 on the basis of work done by the concerned in community as well as in the social welfare of the society at large.

◆ **Tax Deduction: In case of valuable steps towards CSR**

CSR is gaining in momentum but it could really accelerate with the right kind of governmental stimulus given to it. CSR activities can be powerfully aided leading to their substantial increase, if only government takes the step of exempting such activities from taxation. Presently, businesses are required to pay 45 per cent tax on the money allocated for CSR. This reduces the amount available to them to undertake and complete projects and reduces the incentives to take up such projects in many cases. From reducing the rate of tax on CSR money or waiving the tax altogether, government can give a big boost to CSR. But the issue, accordingly which catches the eyes of researchers is that it also needs safeguards to ensure that the untaxed CSR money would be completely and incorruptibly used by businesses once the facility is extended. There would surely be a way for the government and businesses to devise a framework for ensuring satisfactory utilisation of CSR funds. But this goal should now be chased with some urgency and followed by a prompt decision to exempt or reduce tax on CSR money.

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- BSR (Business for Social Responsibility) is a global partner for responsible business leaders. With more than 14,00 members and affiliated companies worldwide, the BSR helps businesses achieve commercial success in ways that respect ethical values, people, communities, and the environment. <http://www.bsr.org/Meta/about/index.cfm>
- Ethical Trade Initiative An alliance of companies, NGOs, and trade union organizations committed to working together to identify and promote good practice in the implementation of codes of labour practice. www.ethicaltrade.org
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