

CSR AND RIGHTS OF INDIGENOUS PEOPLE : DISTORTED REALITIES

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Introduction :

In a world where every aspect of life is currently ridden with need to protect the rights of the people against greater powers, Human Rights and their protection in the Business Sector have recently received great attention. Law has a great role to play when it comes to ensuring that the oppressed, in every case, have a voice and a tool to put forth their rights. Wherever and however business operates it has either positive or negative impacts on the communities. However, greater attention is on the negative impacts of companies' operations on communities, including those that can lead to displacement, pollution from factories and mining projects. Even where a company is not causing damage to the environment, its mere presence can alter the social composition of the local community or create tensions among different groups and lead to displacement of individuals, families or whole communities.¹In the wake of major abuses in recent decades, general public has increasingly called for companies to be held to human rights standards. Many corporate executives are coming to realize that ignoring human rights and environmental concerns can have a detrimental effect on their company's bottom line while causing not only ecological destruction, but also the destruction of human health and lives.

Thus, in June 2011, the United Nations Human Rights Council (UNHRC) approved by consensus the Guiding Principles on Business and Human Rights prepared by John Ruggie. The guidelines foresee that companies should respect human rights and must address the negative impacts on human rights in which they have some involvement. The report also predicted that the responsibility to respect human rights requires that companies confront these consequences when they do occur. Businesses were provided with operational guidance on the implementation of their responsibility to protect human rights through the principle of corporate respect for human rights² based on three pillars.

The first pillar concerns the duty of states to protect against human rights abuses committed by third parties, including businesses, by passing laws, appropriate policies, regulation and adjudication so that businesses don't violate human rights and also ensuring implementation through labour inspection, licensing requirement, investigations, guidance for business. The second pillar is the corporate responsibility to respect human rights, and the third is the need for greater access by victims of human rights violations to an effective remedy. These guidelines provide a foundation for companies to be accountable for respecting human rights and, consequently, for companies to take steps to ensure that their actions do not lead to human rights violations that could result in displacement. These guidelines are completely voluntary in nature and are not binding on any state.

Around the same time the Association of Southeast Asian Nations (ASEAN) announced that the first thematic study of its new Intergovernmental Commission on Human Rights would address the issue of business and human rights. The framework is considered the biggest initiative of Corporate Social Responsibility (CSR) in the world with more than 7000 companies. Even India was not far behind it has implemented the National Voluntary Guidelines, which incorporated the John Ruggie Guidelines.

The focus of the research article will be the significant problem of how the corporations, industries who are polluting the water and violate the human rights of the various Indigenous communities. They are displaced from their native land by companies for doing business and suffer violation of

their Right to Life guaranteed under Article 21 as well as in international instruments like in UDHR, ICCPR, ICESCR. These also include the Declaration on the Rights of Indigenous Peoples that specifically recognises the prior informed consent of indigenous peoples is necessary for any project affecting their water resources.³

These guidelines and the above mentioned Declaration are both International Instruments. As a result of the Principle of Dualism followed in the Indian State, it is difficult to ensure the exact implementation of these instruments through the Parent Acts in the country. The article further discusses the ways the violations occur and a few recommendations regarding the Corporate Social Responsibility Mandate.

Indigenous Communities: Status

Most indigenous communities directly depend on nature for their livelihoods—wild plants and animals for food, for clothing, for fuel, medicine, and shelter. The economy, identity, and cultural and spiritual values, as well as the social organisation of indigenous persons are closely linked to biological diversity and natural ecosystems. Their habitats situated in landscapes experience rapid social and economic change resulting from factors such as the immigration of farmers and ranchers, and from logging and mining⁴. Deforestation and forest fragmentation along with road networks, forest degradation and impoverishment is decreasing the availability of natural resources for indigenous communities.

The term “indigenous people” is not recognized in India as given in the Convention on Indigenous people and they have in no way been guaranteed with any special status, per se, unless recognized under the constitution as Scheduled Caste or Scheduled Tribe. Thus, their rights have also been construed to be safeguarded under Article 244(1) and by the provisions of the Fifth Schedule of the Constitution. Therefore, currently, the indigenous tribal communities are to be considered on the same footing as Scheduled Tribes.

The source of livelihood for forest dwellers for generations has been forests and forest lands, and so they are considered inseparable. Indigenous Peoples possess vast tracts of territories rich in natural resources and a wealth of intellectual assets and cultural property. Yet they are the most marginalised and disenfranchised people in the world. The situation with every passing day is getting worse. Because they have been stripped of their rights to self-governance and control over their assets. Globalisation has accelerated the exploitation of Indigenous territories and resources to an extent that threatens their very existence.

In the labour sphere, for example, indigenous peoples are among the groups most at risk of being subjected to various forms of forced labour. Furthermore, while they constitute approximately five percent of the world’s population, indigenous peoples account for around 15 percent of the world’s poor⁵.

Thus, there was a necessity to protect the inherent rights of indigenous people to empower them to utilise and to exercise control over forest for sustainable development.

International Instruments:

The UN Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on September 13, 2007, provides a global framework for efforts to advance indigenous peoples’ rights. Together with other human rights instruments and growing human rights jurisprudence concerning indigenous peoples, the Declaration contains crucial guidance for building societies that

ensure full equality and rights of indigenous peoples. Indigenous representatives played a key role in the development of this Declaration. This universal human rights instrument is celebrated globally as a symbol of triumph and hope. While it is not legally binding on States, and does not, therefore, impose legal obligations on governments, the Declaration carries considerable moral force. Effective implementation of the Declaration would result in significant improvements in the global situation of indigenous peoples. The text recognises the wide range of basic human rights and fundamental freedoms of indigenous peoples. Among these are the right to unrestricted self-determination, an inalienable collective right to the ownership, use and control of lands, territories and other natural resources, their rights in terms of maintaining and developing their own political, religious, cultural and educational institutions along with the protection of their cultural and intellectual property. International law also lays out specific conditions that apply to the forced evictions of indigenous peoples.

The 2007 Declaration on the Rights of Indigenous Peoples point out that “[i]ndigenous peoples shall not be forcibly relocated from their lands and territories... without the free, prior and informed consent of indigenous peoples concerned....”

The Declaration also requires that the government and indigenous peoples reach agreement on “just and fair compensation and, where possible, with the option of return” prior to evictions taking place.

Further, international human rights law establishes the rights of individuals to participate in public affairs. The term “public affairs” has been broadly defined to include “all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels”. The right to participate in public affairs is not restricted to a specific issue and extends to all levels of governmental decision-making.

With the increasing realisation of the apocalyptic prospect looming ahead if the current trend of indiscriminate and greedy consumption of natural resources lead to increasing levels of environment-related protests and positive activity. Thus, India took a step forward by passing a Law that would protect the Human Rights of the Indigenous People at home.

Indian Act:

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Forest Rights Act (FRA), 2006) is a key piece of legislation that stipulates the rights of forest dwellers and others who depend on forests for their livelihoods and cultural identity. The 2006 Act is supported by many judicial decisions that demonstrates a willingness to proactively ensure that indigenous rights are safeguarded.

The Act is a result of the protracted struggle by the marginal and tribal communities of our country to assert their rights over the forestland over which they were traditionally dependent. This Act is crucial to the rights of millions of tribal people and other forest dwellers, as it provides for the restitution of deprived forest rights across India, including both individual rights to cultivated land in forestland and community rights over common property resources. The notification of Rules for the implementation of the Forest Rights Act, 2006 on 1st Jan 2008, has finally paved the way to undo the ‘historic injustice’ done to the tribal people and other forest dwellers.

Few Drawbacks of the Law:

- While the preamble vests responsibilities and authority for sustainable use and conservation of

biodiversity and maintenance of ecological balances but there is little in act or rules on how to operationalise either.

- The terms such as livelihood needs have not been defined.
- The condition of domicile for residing in forest area for three generations as given in the definition of the other traditional forest dweller in the Act is resulting in severe sufferings to the farmers.

Since these traditional forest dwellers are mostly illiterate persons, they don't have any proof to support the fact that they are dwelling in forest land for three generations. And the land records are also not available.

Example of the blatant violations of the rights of the Indigenous People can be seen in two cases namely, Industrial mining by Vedanta in Niyamgiri Hills and the construction of steel plant over a vast area including forest lands in Orissa by the Korean Giant POSCO.

The plethora of rights guaranteed under the FRA clearly stood violated due to the land grabbing, displacement and other human rights violations committed upon the tribal and other forest dwellers by authorities.

Activism:

As a part of the Role of Law in protection of Human Rights, S. 135 of the Companies Act, 2013, presents a beacon of hope. It makes the realization and practice of Corporate Social Responsibility mandatory, thereby bridging the gap between the government and those governed. Along with proper legislations, activism on the part of the judges has very successfully lead the country into an era of awareness and action against the violation of Human Rights.

Indian Judiciary, being an independent organ of the system has been successful in protecting the Human Rights of the people of India. Initially, the development of the law and the rules occurred as actions tiptoeing around the well-established rules and regulations. But the recent developments have witnessed the beginning of a fundamental shake-up of existing law, resulting in the decisions of the judiciary, turning into reforms. This will ensure the expansion of the scope of regulation.

In landmark judgments throughout the past decades, it has been well established that the Right to Environment is enshrined under the Right to Life, under Art. 21. Even before the law regarding Corporate Social Responsibility made the active participation of the Corporations necessary, the Indian Judiciary has held the Corporations responsible for their acts of pollution and Violation of the rights of the people. Vigilante Litigation has played a great role in cases of the Ganga Pollution Case, Vellore Welfare Forum case, The Kanpur Tanneries case and so on.

Recommendations:

1. Sovereignty of the International Law

In India, the municipal law holds the sovereign position when it comes to the remedial nature of the law. The international treaties and the conventions, even though ratified by India, do not give them a binding power on the Indian Supreme Court to follow the rules therein. The Municipal Law of the nation itself is the supreme law and cannot be questioned. Hence, the sovereignty of the International Law, should be established with respect to cases relating to gross Human Rights Violations. The 1503 procedure of the UN⁶ should be advertised and the NGOs in the country made aware of it.

2. Consent to Operate for Industries:

Under the Pollution index defined by the CPCB, the industries and the companies that

causepollution have been divided into four parts, namely, red, orange, green and white. Out of this, the red, orange and green industries cause more pollution, that rises above the allowed range and thus they have to obtain permission to be established and function. While the white industries do cause pollution, it is within the range allowed, and hence no permission to function or establish is needed. The white industries along with the other industries should also be made to obtain the consent to Operate if they are being established in a sensitive environment.

3. CSR Committees:

Further, the CSR Committees should be necessarily formed in every company irrespective of their yearly turn over, according to the Companies Act, 2006. This shall ensure the awareness and action of even the smaller corporations against their own acts of violations of the rights of the surrounding communities.

Conclusion:

The discourse of corporate social responsibility, implying a voluntary engagement with ethics and social and environmental sustainability, in addition to making a profit, was largely constructed by the multinationals themselves, partly in an effort to fend off political-ideological attacks and partly to work around the 'crisis of legitimation' that forms a part of the larger derailment of ethics in the public sphere.⁷

Thus, to bring about harmony in the law and practical situations, it is vital to put in practice what has been penned down in the name of guidelines and laws so that nobody can violate one's basic rights to life and dignity.

(End notes)

- 1 Corinne Lewis "Businesses' human rights responsibilities", available at <http://www.fmreview.org/preventing/lewis.html> last accessed on 09 June 2016.
- 2 www.ohchr.org/Documents/.../GuidingPrinciplesBusinessHR_EN.pdf
- 3 Article 32(2), United Nations Declaration on the Rights of Indigenous Peoples, in Report to the General Assembly on the First Session of the Human Rights Council, UN Doc. A/HRC/1/L.10 (2006).
- 4 Indigenous Peoples and Conservation, Edited by Kristen Walker Painemilla, Anthony B. Rylands, Alisa Woofter and Cassie Hughes, Conservation International, Available at http://www.conservation.org/publications/Documents/CI_ITPP_Indigenous_Peoples_and_Conservation_Rights_Resource_Management.pdf
- 5 Ibid
- 6 <http://hrlibrary.umn.edu/svaw/law/un/enforcement/1503.htm>
- 7 Raman, K. R. (2007). Community-Coca-Cola interface: Political-anthropological concerns on corporate social responsibility. *Social Analysis*, 51(3), 103-120.