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FROM VOLUNTARY TO BINDING: A COMPARATIVE LEGAL ANALYSIS OF CORPORATE SOCIAL RESPONSIBILITY AND THE RIGHT TO LIFE IN SRI LANKA AND INDIA

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Corporate Social Responsibility (CSR) is a global standard which is widely recognized as part of Ethical Business Conduct. However, its voluntary nature in many jurisdictions makes it challenging to hold corporations accountable for severe human rights violations; particularly the right to life. This study investigates whether the voluntary nature of CSR principles in Sri Lanka and the partially binding CSR laws in India safeguard the right to life and proposes suggestions for a legal framework that transfers Sri Lanka's voluntary regime to legally binding obligations. This research uses doctrinal and comparative methodologies to evaluate legal, institutional and policy frameworks on corporate accountability and human rights in Sri Lanka and India. Section 135 of the India's Companies Act 2013, imposes obligations for companies to spend 2% of their average net profits on CSR activities. In contrast, Sri Lanka lacks legal mandates, and instead rely on sector-based voluntary codes. However, both jurisdictions fail to secure the right to life in practice due to weak enforcement, minimal oversight, and limited impact assessments. This research argues that voluntary CSR cannot safeguard the right to life, and even mandatory provisions without proper enforcement mechanisms are ineffective. A hybrid legal model is suggested to Sri Lanka where statutory provisions to safeguard the right to life are combined with independent regulatory oversight and mandatory human rights impact reporting. Furthermore, it is essential for India to establish independent authorities with prosecutorial powers to investigate whether the companies are integrating human rights due diligence in their operations. In conclusion, to safeguard the right to life, transferring symbolic CSR practices to legally binding obligations is essential in both jurisdictions.

Keywords: corporate social responsibility, right to life, Sri Lanka, India, legal reform, human rights, companies act

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INTRODUCTION

Corporate social responsibility (CSR) is a globally recognized, inextricable concept in ethical business standards. However, CSR remains a voluntary obligation in many jurisdictions, leading to serious human rights violations, particularly the right to life. The Bhopal gas disaster in India evidences weak corporate accountability. Lack of robust regulations in Sri Lanka can also lead to such disasters in the future.

This study investigates whether the non-binding CSR principles in Sri Lanka and the partial enforceability of CSR laws in India are sufficient to safeguard the right to life in Sri Lanka and India and identifies reforms to strengthen corporate accountability.

The objective of the study is to examine and assess the legal framework of CSR in safeguarding the right to life in Sri Lanka and India, and suggest policy reforms for India and Sri Lanka by conducting a comparative analysis.

METHODOLOGY

This study adopts both doctrinal and comparative methodologies with a qualitative approach. The doctrinal methodology is used for a detailed examination of existing legal texts and evaluating existing principles and applications.

However, for identifying gaps, recognizing best practices, assessing effectiveness, and highlighting areas for improvement, comparative methodology is utilized. Furthermore, comparison focuses on four aspects in both jurisdictions related to CSR which directly affect the safeguarding of the right to life, such as legislative enactments, case laws, constitutional recognition and voluntary codes.

RESULTS AND DISCUSSION

The CSR framework in Sri Lanka is fragmented and it includes statutory laws such as the Companies Act No. 7 of 2007, the National Environmental Act No. 47 of 1980 and the Factories Ordinance No. 45 of 1942. Section 187 of the Companies Act No. 7 of 2007 facilitates directors to consider the interests of employees, the community, and the environment when making decisions. Compliance with the National Environmental Act No. 47 of 1980 is, typically embedded within the CSR framework, as safeguarding the environment is a critical aspect of corporate responsibility. Occupational health and safety are governed by the Factories Ordinance No. 45 of 1942. These regulations provide indirect safeguards but no binding CSR mandate.

The initial observation emerging from the study is that CSR in Sri Lanka remains voluntary. Sri Lanka encourages CSR through various sector-specific non-binding guidelines and frameworks without making it a binding legal obligation. The Central Bank of Sri Lanka's Code of Conduct focuses on financial literacy, community development and environmental sustainability in the banking and finance industry. Ethical Tea Partnership (ETP) Standards in the tea plantation industry ensure fair wages, provide access to education and improve health and safety standards. The apparel and textile industry ensures fair labour practices, safeguards workers' rights and contributes to community development through the Garments Without Guilt Initiative. Tourism and hospitality industry utilizes Sustainable Tourism Standards to focus on environmental conservation, cultural heritage, preservation and community engagement. Furthermore, Sustainability Reporting Guidelines (2015) encourage companies to report on their CSR activities and their impact on economic, environmental and social aspects. Moreover, Environmental, Social and Governance (ESG) reporting requires companies listed on the Colombo Stock Exchange to disclose their ESG practices.

Among the key findings, it was revealed that Sri Lanka's legal framework offers indirect recognition of the right to life and the right to a clean environment. As Hashim (2013) observed "the right to a healthful and clean environment has been regarded as a vital aspect of the right to life, for without a healthy and clean environment it would not be possible to sustain an acceptable quality of life, even life itself". Yet, both these rights are not explicitly recognized in the 1978 Constitution of Sri Lanka. However, these rights have emerged through judicial interpretation of other fundamental provisions. Article 11, which prohibits torture and cruel, inhuman or degrading treatment or punishment, encompasses aspects of the right to life. Furthermore, Article 12 (1) which ensures equality before the law and equal protection under the law has been used in environmental law cases where the community welfare is ensured through the right to a clean environment. Justice Prasanna Jayawardene in *Wattegedara Wijebanda v. Conservator General of Forests* stated that "while environmental rights are not specifically alluded to under the fundamental rights chapter of the Constitution, the right to a clean environment and the principle of intergenerational equity concerning the protection and preservation of the environment are inherent in meaningful reading of Article 12 (1) of the Constitution". It indicates that development of the right to life and the right to healthful environment in Sri Lanka is judicially constructed rather than legislatively mandated.

Furthermore, it was identified that corporate liability is imposed only through judicial precedent in the absence of explicit case laws. *Bulankulama and Others v. Secretary, Ministry of Industrial Development* involved a Mineral Investments Agreement which disregarded the Environmental Impact Assessment Report required under National Environmental Act No. 47 of 1980 and the Mines and Minerals Act No. 33 of 1992. Justice Amarasinghe, in his decision, remarked that income and economic growth are not the sole criteria for measuring human welfare, but balancing development with fundamental rights. Furthermore, in *Ravindra Gunawardane*

Kariyawasam v. Central Environment Authority and 10 Others (Chunnakam Power Plant Case), the power plant company had not submitted an Environmental Impact Assessment, and the environmental protection licence was not obtained from the Central Environmental Authority. The Supreme Court of Sri Lanka held that "citizens of Sri Lanka have a fundamental right to be free from unlawful, arbitrary or unreasonable executive or administrative acts or omissions which cause or permit causing of pollution or degradation of the environment." These cases indicate that in the absence of binding CSR obligations, courts have stepped into safeguard the right to life. However, enforcement depends on litigation rather than judicial activism, leaving significant gaps in corporate accountability.

The above gaps in the Sri Lankan framework related to CSR, contrast with that of India which is the first nation to mandate CSR in 2014, offering instructive insights to Sri Lanka. The CSR provisions are predominantly articulated under Section 135 of the Companies Act 2013, which mandates qualifying companies to spend at least 2% of their average net profits from the previous three years on CSR activities. Furthermore, Schedule VII of the Act lists activities that qualify as CSR activities. Additionally, companies are obliged to disclose their CSR activities and expenditures in their annual reports. The Board of Directors is required to approve a CSR policy and ensure compliance with the CSR provisions. Companies meeting the criteria of the provision must establish a CSR committee comprising board members to oversee CSR activities and compliance. Many companies engage in voluntary CSR activities beyond the legal minimum in addition to the mandatory requirement for qualifying companies. These initiatives are driven by corporate values, stakeholder expectations, and the desire to enhance corporate reputation and social impact. Not only that, companies adopt additional voluntary standards and frameworks such as ISO 26000, Global Reporting Initiative (GRI) guidelines, and the UN Global Compact Principles to guide their CSR practices. Although India's framework appears more advanced on paper, poor enforcement and limited monitoring tilt CSR towards compliance formality rather than being a genuine effort to safeguard the right to life.

Moreover, Article 21 of the Indian Constitution states that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." The significance of this is that the right to life encompasses the right to a healthy environment and access to basic needs, which are the prime objectives of CSR principles. However, the major drawback observed here is that the right to a healthy environment is acknowledged only as an extension of Article 21 on the right to life, which is an indirect recognition rather than an independent guarantee.

Furthermore, case laws which demonstrate both the potential and limitations of this approach include the *Indian Council for Enviro-Legal Action v. Union of India* and *Vellore Citizens' Welfare Forum v. Union of India.* In *Indian Council for Enviro-Legal Action v. Union of India,* several chemical factories located in the village of Bichhri, Rajasthan, operated plants without any form of licence. The Supreme Court of India held that the respondents were liable for the harm caused to the environment and ordered them to compensate the claimants and take necessary steps to remove sludge and other pollutants from the area. In *Vellore Citizens' Welfare Forum v. Union of India*, large-scale pollution was caused by tanneries in Tamil Nadu. The Supreme Court of India held that, as an absolute liability, the tanneries were to pay for the harm caused to the environment and should bear the cost of restoring the degraded environment. These case laws prove that, even though India has a robust legislative framework to uphold the best practices of CSR, it is often undermined by weak enforcement mechanisms. Within the case of Sri Lanka, judicial involvement imposes liability even though the absence of consistent monitoring and enforcement weakens the impact. Consequently, in India, the role of CSR in safeguarding the right to life is undermined by limited compliance mechanisms and uneven implementation, even in the presence of a comparatively robust constitutional and judicial framework.

Furthermore, the inadequacy of independent authorities to trace violations of human rights arising from corporate operations is a common issue in both jurisdictions. Due to this, CSR is often used for reputational branding without voluntary best practices. Furthermore, the absence of penalty clauses for non-compliance with CSR is also evident in both jurisdictions. Another major drawback in this area is that communities affected by corporate activities lacking CSR are rarely allowed to participate in CSR planning.

However, in comparison to the Sri Lankan context, India has learned lessons from past tragedies like the Bhopal gas tragedy, which took place in 1984 exposing more than 500,000 people who lived close to Union Carbide India Limited to highly toxic gases, marking a bleak chapter in CSR in India. Although Sri Lanka has not yet experienced such major tragedies, in the absence of a robust binding CSR framework, it is high time to rethink and reconsider developing a comprehensive legal framework and imposing penalties and punishment for non-compliance.

CONCLUSIONS/RECOMMENDATIONS

It is evident that a transition from the current voluntary CSR framework to binding legal obligations is essential to effectively safeguard the right to life. It is mandatory to ensure that CSR becomes a fundamental component of corporate responsibility, making corporations directly accountable for human rights violations.

India, the first country to mandate CSR under Section 135 of the Companies Act 2013, needs stronger enforcement mechanisms to hold companies accountable for violations of human rights. Therefore, it is suggested that independent monitoring bodies comprising of experts in law, human rights, and corporate governance should be established to engage in auditing corporate compliance, assessing the impact of CSR initiatives and imposing penalties for non-compliance. Furthermore, regular audits can prescribe mandatory detailed report submissions from the companies on their CSR activities, including the impact of their operations on human rights. Moreover, these regulatory bodies should be vested with the power to take legal action against companies that fail to comply with CSR mandates or engage in activities that harm the right to life.

Sri Lanka is yet to mandate CSR principles, and therefore, a comprehensive legal framework integrating CSR with human rights protection must be developed by amending existing laws or introducing new legislations that mandate CSR activities. The proposed legal framework for CSR should focus on enhancing environmental sustainability, occupational safety and community welfare, giving priority to activities that directly contribute to the protection of the right to life. Sri Lanka can shift to a hybrid model combining statutory obligations with independent regulatory oversight. However, judicial activism can act as a stopgap when the laws are weak but it cannot be a substitute for binding statutory duties.

Furthermore, companies can be encouraged to engage in socially responsible practices through government mechanisms such as introducing tax incentives for companies that exceed minimum CSR requirements. Additionally, Sri Lanka can obtain regional cooperation to support harmonized standards. Financial regulators could introduce guidelines for ESG investments, ensuring that capital is directed towards companies that uphold the principles of CSR and human rights. Moreover, policymakers could develop standardized Environmental, Social and Governance (ESG) reporting frameworks that include compulsory disclosures on human rights risks and the measures taken to mitigate them.

In conclusion, it is essential to have a robust and binding legal framework on CSR to safeguard the right to life by transforming symbolic commitments into enforceable obligations. Moreover, strengthening enforcement mechanisms and incorporating ESG criteria offer a chance to better align corporate actions with human rights.

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