

3RD JUSTICE G.A. THAKKER
MEMORIAL LECTURE 2023

BY

HON'BLE SHRI JUSTICE DIPAK MISRA,
FORMER CHIEF JUSTICE OF INDIA,

ON

'CONSTITUTIONAL PERSPECTIVE OF CORPORATE
SOCIAL RESPONSIBILITY'

AT MAHARASHTRA NATIONAL LAW UNIVERSITY
(MNLU), MUMBAI

ON
24TH JUNE 2023

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Professor (Dr.) Dilip Ukey, the Vice-Chancellor of Maharashtra National Law University,

Professor (Dr.) Anil G. Variath,

The Family Members of late Justice G.A. Thakker,

My dear students,

Friends from the electronic and print media,

Ladies and Gentlemen,

I am immensely delighted and extremely honoured to deliver 3rd Justice G.A. Thakker Memorial Lecture. Justice Thakker, as I have understood, was a man of great determination. His commitment to justice is quite well-known in the legal circle. He had an exceptional career as a counsel, for he possessed persuasive advocacy skills, deep understanding of law, meticulous analysis and fearless presentation of the case in courts. He demonstrated his

versatility and mastery over various branches of law. His courtroom presence commanded respect and his dedication to justice earned him admiration from colleagues.

As a judge of the High Court of Bombay, Justice Thakker exercised his judicial powers with wisdom and devotion to serve the cause of justice. He showed intellectual integrity and sincerity. His judgments are marked by their depth of analysis, clarity of reasoning and profound understanding of the underlying social and moral dimensions. Moreover, Justice Thakker's unwavering commitment to ensure access to justice for all segments of the society deserves special recognition. Throughout his career, he consistently advocated for the protection of the rights of the marginalized, underprivileged and vulnerable populations. It should be the collective responsibility to carry forward his vision, upholding the principles of justice, equality and fairness.

Presently, let me advert to the topic of the Lecture – 'Constitutional Perspective of Corporate Social Responsibility'. It is a well-known social and philosophical idea that a concept, that emerges with the efflux of time by the process of evolution and introduction of law, has the

possibility of prior existence in a different form because of some affirmative perception of the collective value and wisdom. Starting from the '*Vedas*' to the '*Gita*' and others like '*Artha Shastra*' of *Kautilya* and '*Niti Satakam*' of *Bhartruhari*, there is reference to charity for good causes and to deserving people for upliftment of the society. In *Rig Veda*, it has been said:

“Let the stronger man give to the man whose need is greater, let him gaze upon the lengthening path of life.”

'*Lokasamagraha*' and '*Lok-kalyan*' are constantly mentioned as a duty and responsibility for the people who are in a position and capable to work for the collective upliftment. The '*Shastras*' also prescribed the rule for the King to govern with care and concern so that all people would live in happiness : "*Loka Samastha Sukhino Bhavanthu*". Thus, from the ancient days, the concepts of charity, help and responsibility were ingrained either in '*Dharma*' in the classical sense of the term or '*Samsakar*' having insegregable nexus with community interest.

In the early period of modern industrial civilisation, companies were conceived as vehicles of doing business having financial interest. There were certain undertakings which did some welfare work for the society. It was an expression of philanthropic attitude and also, in a way, promotion of goodwill, distinct social identification and respectability. It was all voluntary. It may be that they were inspired by the doctrine that economics should be friendly with ethics and social good and not solely meant for profit.

Nothing remains static despite the strong desire of the status-quoists. Time brings change in the social order and societal purpose. It is time that has the potentiality to bury such conditions of thought. *Bhagwati J.*, in *National Textile Workers' Union and Others v. P.R. Ramakrishnan and Others*¹, opined thus:

“4. xxxx

It began to be realised that the company is a species of social organization, with a life and dynamics of its own and exercising a significant power in contemporary society.

The new concept of corporate responsibility

¹ (1983) 1 SCC 228

² 1950 SCR 869 : AIR 1951 SC 41

³ (1987) 1 SCC 395

transcending the limited traditional views about the relationship between management and shareholders and embracing within its scope much wider groups affected by the trading activities and other connected operations of companies, emerged as an important feature of contemporary thought on the role of the corporation in modern society. The adoption of the socialistic pattern of society as the ultimate goal of the country's economic and social policies hastened the emergence of this new concept of the corporation. The socio-economic objectives set out in Part IV of the Constitution have since guided and shaped this new corporate philosophy.

xxxx”

And further:

“5. xxxx

Today social scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep-rooted

affiliations with the rest of the community in which it functions.

xxxx”

The aforesaid view was expressed when there were no guidelines or statutory command.

It is apposite to state here that in the said judgment, reference was made to the decision in *Chiranjit Lal Chowdhuri v. Union of India*² wherein it had been observed as follows:

“We should bear in mind that a corporation, which is engaged in production of a commodity vitally essential to the community, has a social character of its own, and it must not be regarded as the concern primarily or only of those who invest their money in it.”

The learned Judge referred to the view expressed at the International Seminar on Current Problems of Corporate Law, Management and Practice held in New Delhi where it

² 1950 SCR 869 : AIR 1951 SC 41

was observed that “*an enterprise is a citizen. Like a citizen it is esteemed and judged by its actions in relation to the community of which it is a member as well as by its economic performance*”. The Court added:

“5. xxxx

That is why it is regarded as one of the paramount objectives of a company to bring about maximisation of social welfare and common good.

xxxx”

Four years later, in *M.C. Mehta and Another v. Union of India and Others*³, the Constitution Bench opined:

“30. xxxx

we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure.

xxxx”

³ (1987) 1 SCC 395

A three-Judge Bench, in *Aneeta Hada v. Godfather Travels and Tours Private Limited*⁴, has clearly opined that a company has reputation. The purpose of saying this is that the commercial concerns and collective good have been recognized by the highest Constitutional Court and there has been a transformation. The relationship between corporations and society has undergone a process of evolution.

The understanding of Corporate Social Responsibility (CSR) ranges from simple ones to more comprehensive ones. It encompasses a range of activities that demonstrate responsibility and advocate for a holistic approach to social development and environmental sustainability. CSR is viewed as businesses committing to contribute to sustainable economic development by collaborating with employees, their families, local communities and the society at large. An ethically responsible business should embrace economic, legal, ethical and philanthropic responsibilities.

At the international level, CSR is being actively promoted as a development model that provides an alternative to state intervention. It is seen as a way to

⁴ (2012) 5 SCC 661

address issues of governance involving individuals, groups and companies who are all stakeholders in the process. CSR has continued to grow in importance and gain significance over the years. During the Rio Conference on Environment and Sustainable Development, 1992, the United Nations invited multinational enterprises to assume a commitment towards society and the environment by including, in their commercial agreement, provisions to protect basic human rights, worker's rights and the environment. This CSR concept is also linked to the notion of sustainable development defined by the Brundtland Commission in 1987⁵. The Commission defined sustainable development as the pursuit of development that caters to the present needs without compromising the ability of future generations to fulfil their own needs.

There have been numerous attempts at the international as well as the national level to deal with the impact on human rights of corporate activity through legal regulations. The 2011 UN Guiding Principles on Business and Human Rights rest on three interrelated pillars : the State's duty to protect, the corporate responsibility to respect, and access to remedy. The principles offer a common

⁵ Brundtland Report, 1987

ground from which to begin the work of implementation as the emphasis was not more on creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses and integrating them within a single, logically coherent and comprehensive template.

It should be borne in mind that it would be an illusion to imagine a successful business when the society around it is itself failing. A prosperous and a growing society is the *sine qua non* for any business to succeed and the reverse is equally true. That is the fulcrum, that is the bedrock.

Corporate Social Responsibility, as has been told, has the legal legitimacy. One may, at a first glance, think that it has only a statutory base but, on a deeper understanding, all of us would appreciate that it has a constitutional perspective and it is normatively connected with the constitutional provisions, philosophy and values. The nexus between CSR and the Indian constitutional scheme emerges as a precursor for a glorious sustenance of both the Indian citizenry and the Indian businesses, for there can be no thriving of Indian business unless there is simultaneous proportional prosperity of the populace. The concept of CSR

in innate in our Indian constitutional framework and it cannot be viewed as a separate apparatus alien to the constitutional principles.

The Preamble of the Constitution of India and the preambular goals set out therein conceive for the Indian corporations, which are considered as legal juristic persons in the eyes of law, strict and genuine adherence by their responsibility towards the Indian citizenry. The Preamble of our Constitution was framed with great thought and deliberation and it reflects laudable and noble objectives which it strives to achieve by requiring every citizen, including Indian corporations, to abide by the Constitution and respect its ideals and institutions.

Social justice, which is enshrined in the Preamble, has been, time and again, invoked by the Constitutional Courts for upholding legislations aimed at removing economic inequalities⁶, providing decent standard of living to workers⁷ and to protect the interest of the weaker sections of the society⁸, all of which are intrinsic facets of CSR.

⁶ *Lingappa Pochanna Appelwar v. State of Maharashtra*, (1985) 1 SCC 479

⁷ *D.S. Nakara v. Union of India*, (1983) 1 SCC 305

⁸ *Sadhuram Bansal v. Pulin Behari Sarkar*, (1984) 3 SCC 410

The Parliament of India, in 1976, had inserted the term 'socialist' in the Preamble of the country's Constitution thereby committing itself to ensure a development process which would be guided and spearheaded by the State. This incorporation casts more responsibility on the State when one goes through the Articles under the Chapter 'Directive Principles of State Policy' which is basically a guidance for governance and also for promotion and enhancement of the welfare of the State.

Article 38(1) encapsulates the constitutional concern for human rights and it requires the State to promote the welfare of the people. It lays stress on social and economic justice. It obliges the State to endeavour to minimize inequalities in income and eliminate inequities in facilities and opportunities among the citizens. Similar is the object of Article 39 which, *inter alia*, enjoins the State to frame its policy in such a manner that it results in ensuring that there is no concentration of wealth and means and that the ownership and control of material resources are so distributed as to best subserve the common good.

Article 42 lays down that the State shall make provisions to secure just and humane conditions of work.

Article 46 enjoins the State to protect the poor from social injustice and all forms of exploitation.

It is worthy to remind oneself with regard to Articles 1 and 25 of the Universal Declaration of Human Rights that clearly envision about equality, dignity of a human being, the role of the State and standard of adequate living.

At this juncture, it is apposite to mention that some argue that the Directive Principles of State Policy are basically obligations of the State and there is no justification to connect it with Chapter IV of the Constitution to involve private entities. This argument, according to me, has no constitutional acceptance. Before the Guidelines and the statutory framework came into place, the Supreme Court, in *National Textile Workers' Union* (supra) had opined:

“6. xxxx

Our Constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order envisaged in the Preamble and the Directive Principles of State Policy. The Preamble contains the profound declaration pregnant

with meaning and hope for millions of peasants and workers that Indian shall be a socialist democratic republic where social and economic justice will inform all institutions of national life and there will be equality of status and opportunity for all and every endeavour shall be made to promote fraternity ensuring the dignity of the individual.

xxxx”

Any statutory scheme that meets the concept of social justice and conception of human rights cannot be regarded as constitutionally invalid.

The statutory structure of Corporate Social Responsibility has to be seemly understood and appreciated. Section 135 and Schedule VII of the Companies Act, 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 provide the threshold limit for applicability of CSR to a company. The CSR activities must be undertaken with respect to certain areas which are listed under Schedule VII of the 2013 Act, some of which include:

- (i) Activities to eradicate hunger, poverty and malnutrition.
- (ii) Promotion of preventive healthcare, education and gender equality.
- (iii) Setting up homes for women, orphans and senior citizens.
- (iv) Undertaking measures for reducing social and economic inequalities.
- (v) Ensure environmental sustainability, balance in the ecology and welfare of animals.
- (vi) Protection of national heritage, art and culture.
- (vii) Taking measures for the benefit of armed forces veterans, war widows and their dependents.
- (viii) Provide training to promote rural, nationally recognized, Paralympics sports (Olympic Sports).
- (ix) Contribute to the Prime Minister's National Relief Fund or any other fund which has been set up by the Central Government for socioeconomic development, relief and welfare of SC, ST, OBCs, minorities and women.

The provision also states that a company shall give preference to the local areas and those areas around which the company operates for undertaking the said CSR activities.

In our Constitution, we find a strong emphasis on social and economic justice. All CSR activities are related to Fundamental Rights under Articles 15, 21 and 21-A of the Constitution, which provide for the right to life in its connotative expanse, though it is not so specifically stated. It is important to note that the acknowledgement of basic needs and necessities of a citizen has been incorporated in Article 21 of the Constitution of India through many a pronouncement. Article 21 of the Constitution includes right to life and personal liberty and right to life itself includes vast things from bare necessities of life to food, clothing, shelter, health protection, right to medical assistance etc.

Article 21, which ensures the right to life with dignity, has been interpreted by the Apex Court to mandate corporations to participate in CSR initiatives. The Court has issued commands to corporate entities in various significant cases requiring them to assume responsibility for environmental preservation, public health and the well-being of disadvantaged communities. In *Indian Council for Enviro-Legal Action v. Union of India*⁹, the Court underscored the significance of sustainable development,

⁹ (2011) 8 SCC 161

establishing a connection between it and both the Directive Principles of State Policy and CSR. As per the observations of the Apex Court in the case, it is imperative for businesses to implement sustainable practices in order to safeguard the environment and uphold the rights of forthcoming generations.

The High Court of Bombay acknowledged the significance of CSR in the realm of healthcare through its verdict in *Court on its own motion v. Union of India*¹⁰ wherein the Indian Medical Association, Vidarbha Hospitals Association, and the Government were instructed to collaborate and establish a protocol aimed at enhancing the level of sanitation and hygiene within hospitals, while also promoting awareness among physicians, patients, personnel and other relevant parties.

In *Indian Social Action Forum v. Union of India*¹¹, the highest Court of the land emphasized on the importance of CSR funds in the context of environmental conservation. The Court mandated that corporations allocate a segment of their CSR budget towards the restoration and purification of rivers. This directive aims to synchronize their endeavours

¹⁰ 2021 SCC OnLine Bom 2930

¹¹ (2021) 15 SCC 60

with the objectives of the Directive Principles of State Policy of safeguarding the environment.

The significance of CSR initiatives in relation to the rights of the indigenous communities was laid stress upon by the Apex Court in *Lafarge Umiam Mining Private Limited v. Union of India*¹² wherein the Court ruled that corporations conducting business in tribal regions are obligated to engage in Corporate Social Responsibility endeavours aimed at mitigating the social and economic issues faced by the indigenous communities impacted by industrial operations.

Therefore, the aim is to make CSR efforts serve as a stimulus for auxiliary arm of the government to enforce Fundamental Rights and most notably Article 21 of the Constitution. Collaboration between the corporate sector and the Local Governments through CSR is an effective approach towards peoples' empowerment and poverty alleviation.

The Supreme Court, as the final interpreter of the Constitution, has consistently emphasized upon CSR in

¹² (2011) 7 SCC 338

achieving the socio-economic goals outlined in the Directive Principles of State Policy.

The right to life has been expanded to include all that which gives meaning to man's life such as tradition, culture, heritage and its protection to the fullest measure, right to shelter (which includes the necessary infra-structure to live with human dignity), right to reasonable accommodation to live in, and quality of life for residents of hilly areas where access to road itself is treated as access to life. All these rights have been connected to the Seventh Schedule of the listed items mentioned as CSR activities of the corporate which reads thus: "*Protection of national heritage, art and culture including restoration of building and sites of historical importance and works of art, setting up of public libraries, promotion and development of traditional arts and handicrafts*".

Article 21A expressly recognises the right to education as a Fundamental Right. The term 'education' rightfully finds its place in the Seventh Schedule of the Companies Act. One can never be oblivious of the fact that education as a catalyst to empower one. As *Felix E. Schelling* puts it:

“True education makes for inequality; the inequality of individuality, the inequality of success, the glorious inequality of talent, of genius;”¹³

The corporate entities should make efforts to spread such education and not only make an attempt to make people literate.

At this juncture, I am obliged to say that there is some criticism in certain quarters that the Supreme Court has created innumerable rights on the foundation of Article 21 of the Constitution. I may hasten to say that wider and expansive interpretation of Article 21 enhances the citizenry progress and achievement in a democracy. Unless such progressive interpretation is understood and respected, the whole thing may entail in mere existence. I am sure, my young friends as the filaments of future generation, will guard the same.

In the present decade, which is beaming with unparalleled opportunities on account of globalization, there is an unprecedented collective cry to inculcate CSR with a

¹³ *Felix E. Schelling*, 1858-1945

telescopic constitutional vision. The collective aspiration and desire for inclusive development makes it imperative to usher in an era where CSR efforts of Indian Corporations are guided by the well-established concept of Constitutional Governance.

In a body polity like ours, where the Constitution of India is the supreme fundamental Law, Constitutional Governance as a core precept, is neither hypothetical nor an abstraction but is real and concrete, which has the effect potentiality to steer and navigate the CSR models of Indian corporations.

It is obligatory to say here that with the aid of judicial creativity, the Apex Court has solved complex legal issues by making effective usage of CSR. In the case of *G. Sundarrajan v. Union of India & Ors.*¹⁴, the Court while dealing with the issue of allowing a PSU, namely, the Nuclear Power Corporation of India ('NPCIL') to build and operate nuclear reactors in the country, categorically directed:

¹⁴ MANU/SC/0466/2013

“12. NPCIL, in association with the District Collector, Tirunelveli should take steps to discharge NPCIL Corporate Social Responsibilities in accordance with DPE Guidelines and there must be effective and proper monitoring and supervision of the various projects undertaken under CSR to the fullest benefit of the people who are residing in and around KKNPP.”

Thus, it can be safely stated CSR plays a vital role in the advancement of the world today. Corporates require the backing of the general public everywhere, which goes a long way in improving and enhancing their goodwill. Individual organizations are finding new innovative means to enhance their social standing by adopting ecological affirmation, social reviews and social-economic programmes.

Professor Dow Votaw has said on ‘Corporate Social Responsibility’ and I quote:

“The term is a brilliant one; it means something, but not always the same thing, to everybody. To some it conveys the idea of

legal responsibility or liability; to others, it means socially responsible behaviour in an ethical sense; to still others the meaning transmitted is that of 'responsible for' in a causal mode; many simply equate it with 'charitable contributions'; some take it to mean socially 'conscious' or 'aware'; many of those who embrace it most fervently see it as mere synonym for 'legitimacy', in the context of 'belonging' or being proper or valid; a few see it as a sort of fiduciary duty imposing higher standards of behaviour on businessmen than on citizens at large."¹⁵

An interesting aspect pertaining to CSR needs to be noted. It is noticed that there is a different kind of competition amongst the companies with regard to the nature of community service keeping in view the type of locality. It is indubitably a praiseworthy phenomenon and it would not be out of place if it is treated as competition for 'Social Constitutionalism'.

¹⁵ *Dow Votaw (1973:11) on Corporate Social Responsibility.*

At this stage, I would like to suggest that the corporates, as a part of their responsibility, should allocate certain amount for women empowerment and for building of real social respectabilities for the transgender and LGBTQ community. Interpretatively, the Seventh Schedule to the Companies Act, 2013 permits so. But, a significant one, developing an innovative method, having regard to the concept of constitutional equality, is the responsibility of the corporates.

In conclusion, I would like to say that Corporate Social Responsibility, when approached from a constitutional perspective and human rights angle, holds immense potential. By aligning business interests with societal well-being, we can harness the power of CSR to create a more inclusive and equitable society, where human rights are respected and protected. It must be driven by a genuine commitment to create sustainable impact and foster long-term change. Transparency, accountability, and stakeholder engagement are crucial in ensuring the effectiveness of CSR initiatives and building trust with the communities we serve.

It should be remembered what *Mervyn King*, a member of the House of Lords and famous British economist, has said:

“Global market forces will sort out those companies that do not have sound corporate governance.”

Thank you all for your courteous patience.
