

Corporate Governance, Violation of Human Rights, Crime and Indian Corporate

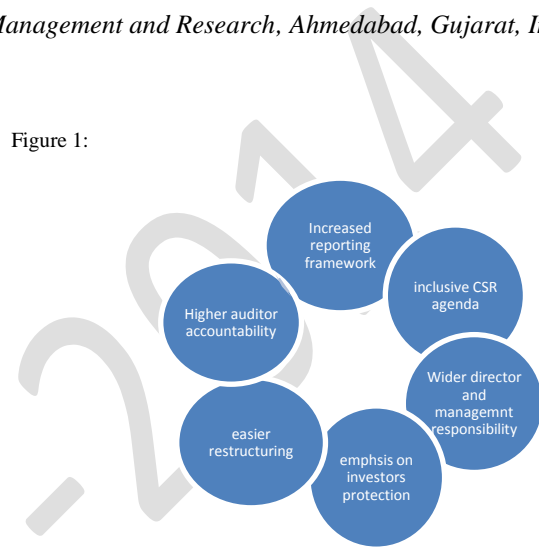
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Abstract— The ideologies developed over the years by the Indian Globalised Corporate are corporate culture with enhanced emphasis of corporate social responsibility and governance. Since times immemorial Crime has become the hidden face of Indian corporate. Crime like financial frauds, child labour to crime against women. The Constitution of India laid down a few principles and rights engraved for the protection, upliftment and overall social development of community. Corporate, an important component of society has left no stone unturned to commit possibly all the crimes, as a reward to the society. Governance and social responsibility the two strong pillars on which the Indian corporate flaunts its image, brand and popularity for survival, growth and competition. The broader scope that corporate has depicted in the Indian and global context, the concept of CSR and governance is on the outer surface. The broad coverage of CSR is as shown below.

Figure 1:



The six component structure above encompasses broad disclosure of ingredients falling within the domain of each component.



The work highlights lack of corporate in discharging responsibility towards the various interested groups of society and the impact of new CSR and Governance norms under the Companies Act 2013.

Keywords:

I. INTRODUCTION

Companies Act, 2013, the long awaited act, expected to answer the need of globalised, developing and growing economies in the midst of increasing number of crimes, exploitation, corruption, scams and crisis. The narrow understanding of corporate governance with the Indian Corporate and the stakeholders has been given an eye opening understanding with the broad contents Companies Act 2013 encompasses. The chart below gives an idea about various aspects covered in Corporate Governance.

- a. Increased reporting Framework, has given new definition of Holding and subsidiary company, uniformity of financial year with rules for mandatory consolidated statement, regulating the financial statement, use of concept of useful life for depreciation and mandate for compulsory internal audit and reporting on internal financial control.
- b. Second component encompasses regulations for audit and auditors responsibility.
- c. Easier restructuring has brought the long drawn need for simplicity to rationalize multilayer structure, simplifying procedure for merger and cross merger, buy – out deals, governance for share capital reduction.
- d. Investors the only status enjoying groups have been extended the protection through better Regulations for insider trading, oppression and mismanagement, fraud risk mitigation and related party transaction.
- e. Wider director and management responsibility, have been the area that has undergone a new understanding for the position of independent

- director, women director, rotation of director and director’s reporting
- f. The creamy concept of corporate, CSR, the rewards to the society, the joy of giving back to the society, the concept more promised to be practiced with ethics, fairness and devotion has been given a pool of regulations with aspects of inclusion as discharge of social responsibility, measuring and quantifying the same.
- g. As per the survey conducted by Cone Communications echo, Consumers have expressed their view of expected CSR activity.
- h. CSR is a dynamic and activity oriented performance playground that has remained untouched on
- i. the corporate domain for long. The narrow idea of CSR performance by the corporate is a myth which has been utilised as a large platform of branding, image personification and popularity. The following are some of the expected areas of CSR to be considered by the corporate. Figure 2

The idea of survival adopted by the corporate i.e. the ‘Triple Bottom Concept’ emphasizing on Economy, Environment and Society, promotes themselves to be the best to return to the society by carrying out various events and activities under the

Factors	% of consumer in 2013	% of consumer in 2011
Economic development	38	34
Environment	19	32
Poverty and Hunger	11	11
Human rights	11	12
Education	9	9
Health & Disease	8	8
Water	4	6

domain of CSR have been only clouding their expected image personified. However no longer is this possible, because of inclusion of CSR measuring yardstick in the new Companies Act 2013. The most untapped area of CSR, Human Rights, a fight for living with dignity, pride and respect has been violated in various spheres of corporate activities and events with crimes like child labour, forced labour, crime against women and others.

Human Rights are those minimum rights which are compulsorily obtainable by every individual as he/she is a member of human family.

Defining child labour is restricting the coverage or limiting the crime that can find a place under the umbrella term, “Violation of constitutional Rights” or “Violation of Human Rights”.

Article 32 of the UN Convention on the Rights of the Child recognizes the right of children to be protected from economic exploitation, from performing any work that is hazardous, interferes with their education, or is harmful to their health or physical, mental, spiritual, moral or social development.

As per ILO, child labour is engagement of children below the age of 14 for full time or part time basis. The traditional Indian belief, that more people in the family means more hands and resources to earn for the family is a misconception progressing towards the path of poverty. The prime reason for forced child labour is birth of a child to an illiterate family taking ahead the legacy of the family and creating a vicious circle of crime engulfed with a series of constitutional and human rights violated but none of them being reported or resolved.

Although India has the largest number of child labourers under the age 14 in the world, child labour problem is not unique to India; worldwide, in many countries children are forced to work with disastrous consequences. Children, under age 14 are often forced to work for as many as 18 hours a day. They are subject to malnutrition, impaired vision, deformities from sitting long hours in cramped over crowded work places, they become easy preys to deadly diseases like serious respiratory diseases, T.B., and Cancer. Biologically, childhood is the span of life from birth to adolescence. According to Article 1 of UNCRC1 (United Nation’s Convention on the Rights of the Child), “A child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”

During NSS 66th Round (2009-10)	Major State all India		Age Group 5-14		
	Rural	Urban	Urban		
Sr. No.	Male	Female	Female		
1.	Andhra Pradesh	88156	110191	20767	15548

2.	Assam	144655	31909	11833	757
3.	Bihar	224292	38665	11017	2548
4.	Chhattisgarh	3669	7321	636	0
5.	Delhi	-	-	18576	0
6.	Gujarat	150487	207973	15945	16282
7.	Haryana	22664	17471	28073	3988
8.	Himachal Pradesh	2300	2942	2156	0
9.	Jammu & Kashmir	11274	16872	1139	0
10.	Jharkhand	63684	14661	4123	0

11.	Karnataka	89796	113429	20793	2479
12.	Kerala	1182	0	0	1583
13.	Madhya Pradesh	91454	32812	57688	9063
14.	Maharashtra	66370	127996	54230	12077
15.	Orissa	54390	38288	36522	5363
16.	Punjab	16802	6433	15664	9937
17.	Rajasthan	93055	261871	43184	7826
18.	Tamil Nadu	0	13880	3471	0
19.	Uttaranchal	14810	7239	3219	2103

20.	Uttar Pradesh	101229 4	546320	147820	68899
21.	West Bengal	357265	134657	31946	27716
All India		251110 1	172727 1	546897	198602

Data on Child Labour based on Employment Unemployment Survey

Source: CHILDREN IN INDIA 2012

- A Statistical Appraisal Social Statistics Division, Central Statistics Office, Ministry of statistics and Programme Implementation, Government of India.

Source: CHILDREN IN INDIA 2012

- A Statistical Appraisal Social Statistics Division, Central Statistics Office, Ministry of statistics and Programme Implementation, Government of India.

Number of child labourers rescued, rehabilitated and mainstreamed through National Child Labour Project scheme during the last three years and current year, State-wise No. of children during the last three years and current year, State-wise No. of children Mainstreamed

Sl. No.	State	2009-10	2010-11	2011-12	2012-13 Up to Dec. 2012
1	Assam	3685	274	227	10848
2	Andhra Pradesh	13689	1858	13202	7840

3	Bihar	7998	8552	19673	1162
4	Chhattisgarh	1063	5164	4914	2004
5	Gujarat	1437	2129	609	569
6	Haryana	1354	1293	1895	1722
7	Jammu & Kashmir	Nil	43	184	132
8	Jharkhand	1816	1015	2216	4003
9	Karnataka	3217	135	3761	742
10	Maharashtra	5,150	5113	4532	4328
11	Madhya Pradesh	9,692	13344	17589	5044
12	Orissa	10,585	14416	13196	10309
13	Punjab	1,023	123	168	0
14	Rajasthan	12,326	4415	1020	4155
15	Tamil Nadu	6,321	6325	5127	3537
16	Uttar Pradesh	40,297	28243	29947	10617
17	West Bengal	13,187	2215	7456	3117

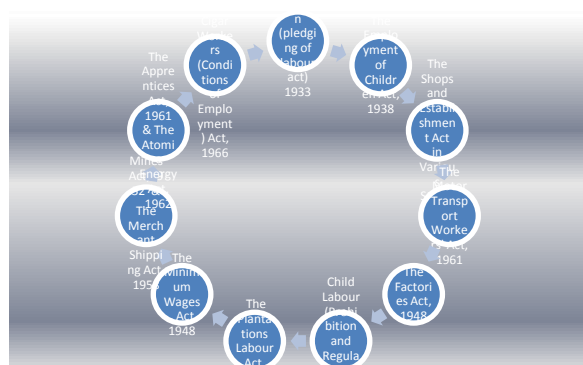
Source: CHILDREN IN INDIA 2012

The table displays the number of children engaged in child labour and the success of rescue and rehabilitation programmes in the previous years. The details are the facts in spite of having various laws prohibiting child labour.

The efforts to curb child labour are implemented through various laws depicted below:

- A Statistical Appraisal Social Statistics Division, Central Statistics Office, Ministry of statistics and Programme Implementation, Government of India.

Figure 3:



Enforcement Figures on Child Labour

As per the data received from various States, the details of inspections carried out, prosecutions launched, convictions made under the Child Labour Act during the last five years and current year are given as under

Year	No. of Inspections	No. of Prosecutions	No. of Convictions
2007	363927	12705	617
2008	355629	11318	763
2009	317083	11418	1312
2010	239612	8998	1308
2011	84935	4590	774
2012	25040	589	167
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** The information yet to be received from many States

Government has made undertaken various projects, drafted various policies and plans and implemented various benefits in order to curb child labour. In association with Indian Labour Organisation (ILO), government of India has signed a MOU in the year 1992. A project was organised and undertaken by the Ministry of Labour, Government of India and the Department of Labour, United States of America (USDOL), Indus child labour programme worked at developing a comprehensive multipronged communication strategy. Through this project, an estimated 103,152 children and adolescent workers were withdrawn and rehabilitated. The Project was concluded in March 2009 {Government of India, Planning Commission, Working Group for Social inclusion of Vulnerable Group like Child Labour and Bonded and Migrant Labour in the 12th Five Year Plan (2012-17)}.

As per the National Sample Survey 2012, the total number of children engaged in child labour is,

Age Group 5- 14 (Total of all states)		
Rural	Male	2511101
	Female	1727271
Urban	Male	546897
	Female	198602

Source of Data: Rajya Sabha Unstarred Question No. 2128, dated 12.12.2012

However the list of industries engaging child labour and are prohibited under the Act are,

List of Occupations Processes prohibited under the Act

- 1) Transport of passengers, goods or mails by railways;
- 2) Cinder picking, clearing of an ash pit or building operation in the railway premises;
- 3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train;
- 4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- 5) A port authority within the limits of any port;

6) Work relating to selling of crackers and fireworks in shops with temporary licenses; 7) Abattoirs/Slaughter House; 8) Automobile workshops and garages; 9) Foundries; 10) Handling of toxic or inflammable substances or explosives; 11) Handloom and power loom industry; 12) Mines (underground and under water) and collieries; 13) Plastic units and fibreglass workshops; 14) Domestic workers or servants; 15) Dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centers; and 16) Diving. 17) Caring of elephant. 18) Working in the circus. Source: (Lok Sabha Unstarred Question No. 2669 dated 10.12.2012)

PART B

Processes (Industrial Activity)

1) Beedi-making. 2) Carpet-weaving including preparatory and incidental process thereof; 3) Cement manufacture, including bagging of cement. 4) Cloth printing, dyeing and weaving including processes preparatory and incidental thereto; 5) Manufacture of matches, explosives and fireworks. 6) Mica-cutting and splitting. 7) Shellac manufacture. 8) Soap manufacture. 9) Tanning. 10) Wool-cleaning. 11) Building and construction industry including processing and polishing of granite stones` 12) Manufacture of slate pencils (including packing). 13) Manufacture of products from agate. 14) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos. 15) `Hazardous processes` as defined in Sec. 2 (cb) and `dangerous operation` as notice in rules made under section 87 of the Factories Act, 1948 (63 of 1948) (16) Printing as defined in Section 2(k) (iv) of the Factories Act, 1948 (63 of 1948) 17) Cashew and cashewnut descaling and processing. 18) Soldering processes in electronic industries. 19) Aggarbatti` manufacturing. 20) Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting. 21) Brick kilns and Roof tiles units. 22) Cotton ginning and processing and production of hosiery goods. 23) Detergent manufacturing. 24) Fabrication workshops (ferrous and non ferrous) 25) Gem cutting and polishing. 26) Handling of chromites and manganese ores. 27) Jute textile manufacture and coir making. 28) Lime Kilns and Manufacture of Lime. 29) Lock Making. 30) Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enamelling workshops, lead mining, plumbing, cable making, wiring patenting, lead casting, type founding in printing shops. Store typesetting, assembling of cars, shot making and lead glass blowing. 31) Manufacture of cement pipes, cement products and other

related work. 32) Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products. 33) Manufacture of dyes and dye stuff. 34) Manufacturing or handling of pesticides and insecticides. 35) Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry. 36) Manufacturing of burning coal and coal briquettes. 37) Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather. 38) Moulding and processing of fibre glass and plastic. 39) Oil expelling and refinery. 40) Paper making. 41) Potteries and ceramic industry. 42) Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms. 43) Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting. 44) Saw mill - all processes. 45) Sericulture processing. 46) Skinning, dyeing and processes for manufacturing of leather and leather products. 47) Stone breaking and stone crushing. 48) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form. 49) Tyre making, repairing, re-treading and graphite beneficiation. 50) Utensils making, polishing and metal buffing. 51) `Zari` making (all processes). 52) Electroplating; 53) Graphite powdering and incidental processing; 54) Grinding or glazing of metals; 55) Diamond cutting and polishing; 56) Extraction of slate from mines; 57) Rag picking and scavenging; 58) Processes involving exposure to excessive heat (e.g. working near furnace) and cold; 59) Mechanised fishing; 60) Food Processing; 61) Beverage Industry; 62) Timber handling and loading; 63) Mechanical Lumbering; 64) Warehousing;

The statistics prove how informed and aware are our industries, the processing/ manufacturing units of Indian corporate are about child labour; A crime, Child Labour, leading to restricting the right to live, play, learn and bloom happily. The CSR in Indian corporate promotes the idea of education and establishment of schools for a bright future, country and the citizen, however forgot to fight for those who are even deprived of their right to childhood.

Amongst the most talked about domain of corporate social responsibility, the most rarely practiced is the protection of Women Human Rights. Women employees have been awarded a bunch of human rights since ancient times. However before we proceed to the broad area of human rights, its coverage and violation, we focus on the ancient Indian history depicting human rights violation of women in India. The status of women in ancient India and some prominent practices are,

The Sati Practice, a practice where in the widow of the deceased would immolate herself on her husband's pyre. A practice that was voluntary but made a mandate because of social acceptance.

Jauhar refers to self immolation practice by both wives and daughters of defeated warriors, in order to avoid capture and consequent molestation by the enemy.

Purdah a still prevalent practice among some communities requires women to cover themselves as to conceal their skin and form from males.

The most heinous crime against women in the Indian society is rape, an attempt to kill their right to live with dignity. This form of crime or an ill deceit act has been a part of the Indian soil since ancient times where in the most remembered one is, act of Duryodhan on 'Draupadi' in the ancient times is a remarked event. The journey of indecent act against women is still in practice. To quote, an example of sexual harassment in the workplace and suicide of an advocate. A suicide committed was an extreme result of sexual harassment by a fellow lawyer and some senior advocates. Having regard to the sensitive nature of the complaint, the commission issued a notice to the chief secretary and DGP, Andhra Pradesh for an indication of the current status of the criminal investigation. After the investigation and case registered u/s 306 IPC. After the proceedings the charge sheet was filled. In a parallel action, the Commission also took up the wider question of the sexual harassment of women in legal profession and called for and considered reports/comments from the Secretary, Andhra Pradesh Bar Association, the Secretary, State Bar Council of Andhra Pradesh, the Chairman, Bar Council of India, New Delhi as well as the President, Bar Association of India.

During a meeting with the members and officers of the Commission on 4 May 2001, which was attended amongst others by Shri Soli J. Sorabjee, Attorney General of India, Shri D.V. Subba Rao, Chairman Bar Council of India and Shri R.K. Jain, Senior Advocate, Supreme Court, a decision was taken to constitute a High Power Committee to examine this matter further.

Accordingly, such a Committee was constituted on 21 December 2001, under the Chairmanship of Shri Soli J. Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal profession and to make suitable recommendations for the penalisation/punishment for those who may be involved. The Committee would also consider whether amendments were needed to the Advocates Act, 1961 and the Bar Council Rules. The other members of this Committee are Shri Raju Ramachandran, Advocate, Supreme Court of India; Shri A.K. Ganguly, Advocate, Supreme Court of India; Ms. Meenakshi Arora, Advocate, Supreme Court of India; Smt. M. Daruwala, Director, Commonwealth Human Rights Initiative, New Delhi and Ms. Naina Kapoor, Director, SAKSHI, New Delhi. (Sexual harassment in the work place and suicide of Sangeeta Sharma, Advocate: Andhra Pradesh (Case No.203/1/2000-2001).

A former law intern, who accused a former judge Swatenter Kumar of sexually harassing her while in office in 2011, moved Supreme Court on Monday seeking an inquiry against the retired judge. A bench headed by Chief Justice of India, P Sathasivam, has agreed to take up the case on Wednesday.

In her plea, the young law intern said she also wants the Supreme Court to set up a mechanism to deal with cases of sexual harassment. Her plea follows an affidavit she had given to the Chief Justice of India in November which reportedly was not acted upon.

"There is a larger prayer: establish a permanent mechanism across the country in all judicial bodies so that any complaint against a judicial officer can find redress," the woman's lawyer Vrinda Grover said.

Justice Kumar has denied the charges and has sued newspapers who published the former intern's allegations against him. However, several senior advocates and activists have come out in support of the young woman. They say it's time the top court walked the talk.

"The Supreme Court is undermining itself and forcing women to go to the media. It is inflicting indignity on itself. Action is being taken only when there's public outrage and pressure. That must change and an internal mechanism must be set up," lawyer Madhu Mehra said.

Justice AK Ganguly, another former Supreme Court judge indicted of sexual harassment, stepped down as Chairman of the West Bengal Human Rights Commission. He had resisted giving up his post despite being indicted by a panel of serving top court judges.

After a decade or so, the times have changed, it is a globally growing economy, we are in the technological era, India 2020, the Super Power, and so on, and there is something still constant. Rape, gang rape, sexual assault,

Molestation and so on. Women and crime go hand in hand across the country and the globe. Women right to equality and satisfactory working condition as well as right to sexual freedom is jeopardized by sexual harassment at workplace, further curbing their right to equality of opportunities at work place. Some of the most common factors leading to sexual harassment at work place are job position, power, threat to job stability, performance etc. However an exact reason and extent of victims is not known, due to lack of data. Sexual harassment not only arises out of objective differences in the amount of power held in the workplace but also out of the "cultural power" which men exercise over women, in accordance with the predominant gender system which discriminates against women through the control, disposition and use of their sexuality and bodies.

The need for changing the status of CSR from a voluntary activity to a mandate with a wider scope and coverage has

given life to one of the most manipulated concept practiced by the corporate. The concept of CSR in absence of measurement yardstick and specified domain have practiced all the activities in their area of choice, but on practical grounds exploiting and violating human rights i.e. exploitation of women and children in their organisation. Since inception the domain of CSR was to reward back the society in all possible ways in return for use of resources, be it economic, social and environment. On the other hand the companies have only portrayed a fraudulent act of benefitting the society through CSR on various front and on other hand a constant protection to the ever since existing and breathing crime of violating the human rights. Thus the need to revise the norms for CSR or making it a requirement under the body or corporate governance or law, all the steps area in vain until and unless self implementation and morale of good conduct and practice, no mandate can be considered to be the best to make the organisation promote themselves to be the best in practicing CSR as a reward to society, since it the involved in heinous crime of violating "Human Rights".

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