

CORPORATE SOCIAL RESPONSIBILITY IN INDIA: A LEGAL PERSPECTIVE

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The constitutional mandate and every policy initiative in this country has been driven with a perspective that an overwhelming concern for the disadvantaged and marginalised. The inclusion of the Corporate Social Responsibility CSR mandate under the Companies Act, 2013 is an attempt to supplement the government's efforts of equitably delivering the benefits of growth and to engage the Corporate World with the country's development agenda. The concept of CSR rests on the ideology of give and take. Although CSR is not a new concept in India but it has found its place in the statute books lately. This paper is an endeavour to put some light on different aspects of CSR policy in India through a legal perspective. It also focuses on some recent data analysis covering the present status of CSR in India. The paper examines the CSR work done by few of the renowned companies in India. Besides it also chalks out the loopholes in the existing system and certain suggestive measures have also been drawn out to overcome these drawbacks so that companies are able to live up to the true meaning of CSR in India.

Keywords: Corporate Social Responsibility, CSR.

INTRODUCTION

The constitutional structure of India guarantees equality for all. However the socio-economic realities of the country still have a long way to go to match this vision of independent India. The country presently is under intense debate of developmental growth versus welfare based development. Our political realities and our economic senses are at cross-roads. Every single major policy initiative in this country has been driven with a perspective that an overwhelming concern for the disadvantaged and marginalised, a multidimensional view of poverty and human deprivation, the focus on our fundamental rights and the need to expand opportunities while ensuring its equal distribution are fundamental for achieving strong human development. The inclusion of the Corporate Social Responsibility CSR mandate under the Companies Act, 2013 is an attempt to supplement the government's efforts of equitably delivering the benefits of growth and to engage the Corporate World with the country's development agenda. "Like for all good things, corporate India had to wait a long time for a corporate reporting framework that is current, and with some work, can be considered visionary. Introduction of compliance of CSR rule is one such example."

Meaning and Definition of CSR

Corporate Social Responsibility i.e. CSR is a concept with many definitions and practices. The way it is understood and implemented differs greatly for each company and country. Moreover, CSR is a very broad concept that addresses many and various topics such as human rights, corporate governance, health and safety, environmental effects, working conditions and contribution to economic development. Whatever the definition is, the purpose of CSR is to drive change towards sustainability.

Movement aimed at encouraging companies to be more aware of the impact of their business on the rest of society, including their own stakeholders and the environment. CSR is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders. World Business Council for Sustainable Development defined CSR as “Corporate social responsibility is the commitment of business to contribute to sustainable Economic development, working with employees, their families, the local community and society at large to improve their quality of life.”

According to Friedmann, “in a “free society, there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.”

According to the World Bank, “CSR refers to how business takes account of its economic, social and environmental impacts in the way it operates . maximizing the benefits and minimizing the downsides. CSR undertakings are the voluntary actions that business can take, over and above compliance with minimum legal requirements, to address both its own competitive interests and the Interests of wider society..”

The term CSR has been defined under the CSR Rules which includes but is not limited to:

- a) Projects or programs relating to activities specified in the Schedule; or
- b) Projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in the Schedule.

This definition of CSR assumes significance as it allows companies to engage in projects or programs relating to activities enlisted under the Schedule. Flexibility is also permitted to the companies by allowing them to choose their preferred CSR engagements that are in conformity with the CSR policy

Historical Backdrop

Corporate Social Responsibility as a concept has existed in India since ages and plays an important role in a developing country like ours. The organizations have realized that besides profit making, a corporation must involve in trust building by working upon its societal relationships and environmental issues. Also, companies which genuinely adopt the principles of socially responsible behaviour are preferred and favoured by the society at large, of which the company forms an integral part. Hence, one can say that CSR is basically an act of moral, social and business responsibility with the aim to protect, preserve and nurture human values and promote socio-economic welfare.

CSR evolved over a period of time when in the 19th century, the industrial families like Tata, Birla, Godrej, etc. had an inclination towards such activities. These giant corporates involved themselves in a variety of CSR activities without any legal requirements and view it in the context of building goodwill, reputation and brand building. Later, during the time of Independence, Mahatma Gandhi influenced various industrialists to adopt the practices with respect to socio-economic development due to which various companies had set up training centres and educational institutions like schools and colleges. Eventually, CSR got a push by way of introduction of the labour and environment protection laws in India and the Public Sector Undertakings were asked to take up the CSR initiatives. This is how this practice developed and has now evolved as a sustainable business strategy.

According to the founder of Infosys Mr. Narayan Murthy, “social responsibility is to create maximum shareholders value working under the circumstances, where it is fair to all its stakeholders, workers, consumers, the community, government and the environment.” Hence one can say that social responsibility would mean asking businesses to be more practical and analyze the positive as well as negative effects of their activities and decisions on the people and society at large.

Like many other countries, Indian Corporations have had a long tradition of being engaged in Social activities that have gone beyond meeting a corporation’s immediate financial objectives. However, since the late nineties, CSR activities have increasingly come under the lens both of policy makers as well as of corporations’ stakeholders as governance issues acquired increasing prominence.

Legal Framework of CSR in India

The first formal attempt by the Government of India to put the CSR issue on the table was in the issuance of Corporate Social Responsibility Voluntary Guidelines in 2009 by the Ministry

of Corporate Affairs (MCA, 2009). Prior to this, the importance of CSR was discussed in the context of corporate governance reforms, such as in the Report of the Task Force on Corporate Excellence by the Ministry of Corporate Affairs (MCA, 2000). While the report made a business case for CSR as well as highlighted the social benefits stemming from it, the discussion was recommendatory in nature and there were little actionable points. It is in the Voluntary Guidelines of 2009 that the core elements of a CSR policy was spelt out that included care for all stakeholders, ethical functioning, respect for workers' rights and welfare, respect for human rights, respect for the environment and activities to promote social and inclusive development.

The Guidelines specifically drew a distinction between philanthropy and CSR activities, and highlighted the voluntary nature of CSR activities that go beyond any statutory or legal obligation. The Guidelines of 2009 were followed in 2011 by the National Voluntary Guidelines of Social, Environmental & Economic Responsibilities of Business, also issued by the MCA (MCA, 2011). These guidelines were reportedly based on the inputs received from 'vital stakeholders' across the country and laid down nine principles for businesses to function in a responsible manner to promote inclusive economic growth at the national level. As in the case of the 2009 Guidelines, the 2011 Guidelines were voluntary in scope wherein corporate were urged to adopt all the nine principles, and to report their adherence to the guidelines based on an 'apply-or-explain' principle. Interestingly, while one of the implementation strategies suggested in the 2009 Guidelines was to earmark "specific amount related to profits after tax, cost of planned CSR activities, or any other suitable parameter," no such suggestion was included in the 2011 Guidelines.

The transition from a voluntary CSR regime to a regulated regime came when the Securities Exchange Board of India (SEBI) required the top listed 100 companies, as part of Clause 55 of the Listing Agreement, to mandatorily disclose their CSR activities in the Business Responsibility Reports (BR Reports) accompanying the Annual Reports. The most ambitious attempt at mandated CSR activities for companies came with the enactment of Section 135 of the Companies Act 2013 (MCA, 2013).

India's new Companies Act 2013 has introduced several new provisions which change the face of Indian corporate business" Companies Act 2013 has introduced several new provisions which change the face of Indian corporate business. One of such new provisions is Corporate Social Responsibility (CSR). The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc from the

society. By performing the task of CSR activities, the companies are giving something back to the society.

Ministry of Corporate Affairs has recently notified Section 135 and Schedule VII of the Companies Act as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules) which has come into effect from 1 April 2014.

Section 135 of the Companies Act provides the threshold limit for applicability of the CSR to a Company i.e. (a) net worth of the company to be Rs 500 crore or more; (b) turnover of the company to be Rs 1000 crore or more; (c) net profit of the company to be Rs 5 crore or more. Further as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies, but also applicable to branch and project offices of a foreign company in India.

Every qualifying company requires spending of at least 2% of its average net profit for the immediately preceding 3 financial years on CSR activities. Further, the qualifying company will be required to constitute a committee (CSR Committee) of the Board of Directors (Board) consisting of 3 or more directors. The CSR Committee shall formulate and recommend to the Board, a policy which shall indicate the activities to be undertaken (CSR Policy); recommend the amount of expenditure to be incurred on the activities referred and monitor the CSR Policy of the company. The Board shall take into account the recommendations made by the CSR Committee and approve the CSR Policy of the company.

The activities that can be done by the company to achieve its CSR obligations include eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired, immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women and such other matters as may be prescribed.

Under the Companies Act, preference should be given to local areas and the areas where the company operates. Company may also choose to associate with 2 or more companies for fulfilling the CSR activities provided that they are able to report individually. The CSR Committee shall also prepare the CSR Policy in which it includes the projects and programmes which is to be undertaken, prepare a list of projects and programmes which a

company plans to undertake during the implementation year and also focus on integrating business models with social and environmental priorities and process in order to create share value.

The company can also make the annual report of CSR activities in which they mention the average net profit for the 3 financial years and also prescribed CSR expenditure but if the company is unable to spend the minimum required expenditure the company has to give the reasons in the Board Report for non compliance so that there are no penal provisions are attracted by it.

The Companies (Corporate Social Responsibility Policy) Rules, 2014

The company can implement its CSR activities through the following methods

1. Directly on its own.
2. Through its own non-profit foundation set- up so as to facilitate this initiative.
3. Through independently registered non-profit organizations that have a record of at least three years in similar such related activities.
4. Collaborating or pooling their resources with other companies. Only CSR activities undertaken in India will be taken into consideration
5. Activities meant exclusively for employees and their families will not be considered as CSR.

While reviewing the studies on CSR spending pattern by Indian Companies after the amendment of the Law, it is observed that the impact of the amendment is not very strong on CSR spending by Indian Corporate, although there is some improvement in spending.

Statistical Analysis of CSR spending after 2013 by Indian companies

According to a press note (Business Today 5th Jan 2016), the CSR spending of the BSE 100 companies have gone up by almost 75 per cent that is to Rs 5,240 crores in 2014-15 compared to Rs 3,000 crores in the previous year.

However, in a report released by Corporate Governance Advisory firm Institutional Investor Advisory Services India Limited, the total spending in 2014/15 is still 26 per cent below the prescribed limit of 2 per cent spending of the three-year average pre-tax profits of the company.

In a study of the pattern of spending by these companies, it is found that most of the money is being spent in projects related to hunger, poverty and health care (Rs 1,497 crore) and

education (Rs 1,466 crore). Environmental sustainability and rural development-related projects attracted funds to the tune of Rs 540 crore and Rs 470 crore, respectively. Many companies chose to contribute towards Prime Minister's relief fund (Rs 61 crore) and some also contributed towards Swachh Bharat Kosh (Rs 47 crore).

Though the companies are supposed to spend 2 per cent of their average three-year net profit on CSR activities, the government has decided not to take any action against those which fail to do so. Instead, it had asked the companies to explain why they have failed to spend the stipulated amount.

A few companies in India that have successfully integrated sustainability into their business processes are discussed below:

Vodafone India: The use of mobile technology for socio-economic issues like banking, health, education and rural entrepreneurship has brought a phenomenal change in the functioning of society. In a short time, it has transformed the lives of over 850 million people in India. For example, Vodafone India announced a unique initiative to help lakhs of pilgrims undertaking the annual Padyatra from Delhi to Pandharpur. It deployed two 'Vodafone Mobile Trucks' that travelled with them through their journey to help them connected as the trucks were equipped with mobile charging points, vouchers for recharge and free calling facilities.

Tata Steel: Tata Steel Limited spent Rs 170.76 Crores towards CSR during financial year 2012-13 which is 3.37% of Company's profit after tax excluding spend on environmental sustainability which was about Rs. 300 Crores. The amount was spent under the broad categories such as infrastructure development to improvement of quality of life of community.

ICICI Bank: In June 2013, ICICI Bank Limited organised 'Kisan Sampark Programme' in the parts of a Punjab and Haryana, as part of its financial inclusion plan that aims at providing banking services in unbanked villages. It has always recognised the potential of rural India and the importance of inclusive growth especially for the farming community by offering them the benefits of safe and secure banking.

More recently, a workshop of CSR Practitioners Series was conducted by the Economic Times Group and Nexten in partnership with Bennett University in February 2017 in Delhi which aimed at decoding CSR for corporations and helping them understand and explore the ways in which they can integrate their CSR activities and programmes with their business itself.

Apart from these commendable initiatives, ITC Limited is involved in facilitating livelihood of the Indian farmers by partnering with them and came up with 'e-Choupal' initiative by leveraging information technology, along with making investments in rain water harvesting to improve irrigation facility, empowering the rural women and providing infrastructural support in the villages. Also, the financial service sector in India has backed the Green Movement in the country and companies like HSBC India, Max New York Life and Standard Chartered Bank have contributed to it by asking the customers to adopt paperless measures and recognize the environment standards.

Therefore, the compulsion to undertake CSR activities under Section 135 of the new Companies Act has been questioned primarily on this ground that it is inherently contradictory and shall be ineffective on the basis of practical application. Also, the law lays absolutely no provision with respect to enforcement or any penalties for non-compliance.

Apart from this, the provision, along with Rules has several loopholes which have raised concerns. Many Indian Companies and Businesses see this provision as impractical and unnecessary as the Government has failed to show any specific purpose or objective for adoption of this model for which such expenditure must be made by any Company. The companies wish such initiatives to remain a voluntary step since it is believed that mandating CSR would lead to meddling by the implementing officers in the operations of the company and would ultimately defeat the very purpose of CSR initiatives with which these are actually adopted.

No clear guidelines or instructions have been put in place which shows how vague this model/provision seems to be. A valid point has been made in this regard that when a tobacco company would comply with section 135 it would be at the same footing as any company which produces eco-friendly products for the society, with respect to corporate social responsibility. Such questions remain unanswered by this new provision.

It also affects the fundamental right guaranteed under Article 19(1) (g) of the Indian Constitution which provides the right to freely practice any profession, or to carry on any occupation, trade or business. However, the Government may argue that clause (6) of the very same article of the Constitution allows the Government to impose reasonable restrictions for the benefit of the general public. Here, it is questioned whether such a restriction is reasonable at all because this would mean imposing the burden of charity by the Government on the Indian companies.

Another major concern for several industrialists is with respect to the allowance of deductibility of CSR expenditure under the Income Tax Act. This would lead to a voluntary increase in the funds which are allocated by the companies for social development and this would lead to a necessary requirement for a regulatory and mandatory provision. Absence of any prescribed penalties in case any company fails to comply or set aside 2 per cent of Net profits for CSR is another grey area since it is not clear whether any company can get away from non-compliance simply by disclosing reasons for not spending mandatory amount or would they be liable to pay any sort of penalties. This is said to be a major setback due to an absence of a deterrent force to curb fraudulent practices. Similarly, there is an absence of clearly laid down powers, duties and responsibilities of the Committee entrusted to carry out the CSR policy and this leads to the failure of purpose with which the framework was set up by any company.

This seems to be a contentious issue because it is rightly argued by the critics that the companies may try to adopt camouflaging activities to meet these regulations, particularly during an economic downturn. Also, some have stated this to be an act of outsourcing governance wherein the government has shouldered their responsibility to the companies.

This calls for a comparison with the West where no laws stipulate any mandatory CSR activities, making India the first country in the World to have a CSR spending mandated by the law. This has also been criticized by the Planning Commission of India, which holds the view that companies must take CSR as a voluntary measure and it must not be made mandatory since these will lead to a rise in corrupt practices.

It must be ensured by the government that the CSR funds of any company must be invested wisely in such projects which bring socio-economic benefits in the long-run with the aim of social justice and social development.

Conclusion and Suggestions

The introduction of CSR provision in the Companies Act is a welcome step and all companies which satisfy the CSR criteria will have to undertake CSR activities under the new CSR regime during current financial year. This step will boost much required social projects with some professional management of the private sector.

Therefore, it can be concluded that the recent CSR provision in the new Companies Act has the potential to bring novelty in the corporate field and institutional philanthropy in India. Despite of the various practical difficulties with respect to the implementation of the new CSR provisions, the initiative by the government has been appreciated by many on the

ground that it entrusts responsibility on giant corporates to contribute towards social welfare of the society. However, due consideration must be given to the fact that when CSR is seen in a broader context, it should mean bringing sustainable changes around a company's ecosystem and CSR should be seen as a mix of good governance and corporate philanthropy for a company but with a business and financial side to it as well.

It is suggested that though this new provision and the Rules bring no clarity regarding the implementation of such a socially inclined initiative, an effort must be made to resolve the ambiguities in the statute to ensure adoption of healthy practices by companies. Proper regulatory system for management and allocation of funds must be developed to ensure compliance with the 2% mandatory spending rule. Also, proper mechanism must be devised to gauge the effect of CSR initiatives adopted by the companies and a penalty must be included in section 135. Another suggestion that has been put forth by experts is this that a trained and well-organized team must be formed by every company to ensure that the law is followed in its true letter and spirit. One step forward has been put forward by Indian Institute of Corporate Affairs (IICA) in this regard since the Institute plans to initiate a certificate programme on Corporate Social Responsibilities activities for working executives.

An organized and critical plan of action shall help the companies in meeting their development challenges of economic growth as well as combating social evils. The government must issue clarifications with respect to the grey areas in the Statute which makes effective and efficient adoption and implementation of the Law impossible.

This shall ensure that the provision is accepted by the companies across the country and the objective with which it was incorporated is successfully achieved and the companies are able to involve themselves in wholesome development of the society, living up to the true meaning of the concept of Corporate Social Responsibility and become a responsible entity.

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