

Corporate Social Responsibility: The New Game Changer

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Abstract

Corporate social responsibility is not a new concept in India. Mahatma Gandhi Introduced the notion of “trusteeship”, according to which the industry leader had to manage their wealth so as to benefit the common man. Ghandhi’s influence put pressure on various industrialist to act towards building the nation and its socio economic development. CSR concern organization serve and fulfill the verity of social needs and improve quality of life around the globe. This paper attempt to examine the concept of CSR, the various opportunity associated with it, as well as various guidelines for central public enterprises. In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013, which was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013.

Introduction

The 21st century is characterized by unprecedented challenges and opportunities, arising from globalization. Indian business, which is today viewed globally as a responsible component of the ascendancy of India, is poised now to take on a leadership role in the challenges of our times. It is recognized the world over that integrating social, environmental and ethical responsibilities into the governance of businesses ensures their long term success, competitiveness and sustainability. CSR in India has traditionally been seen as a philanthropic activity. And in keeping with the Indian tradition, it was an activity that was performed but not deliberated.

Indian entrepreneurs and business enterprises have a long tradition of working within the values that have defined our nation's character for millennia. India's ancient wisdom, which is still relevant today, inspires people to work for the larger objective of the well-being of all stakeholders.

According to Companies Act, 2013, by clause 135 the mandate for corporate social responsibility (CSR) has been formally introduced to the dashboard of the Boards of Indian companies. The industry has responded positively to the reform measure undertaken by the government with a wide interest across the public and private sector, Indian and multinational companies

As per the Clause 135 of the Companies Act, 2013 requires a CSR committee to be constituted by the board of directors. They will be responsible for preparing a detailed plan of the CSR activities including, decisions regarding the expenditure, the type of activities to be undertaken, roles and responsibilities of the concerned individuals and a monitoring and reporting mechanism

These Act encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities. The ministry’s draft rules, that have been put up for public comment, define net profit as the profit before tax as per the books of accounts, excluding profits arising from branches outside India.

The draft rules (as of September 2013) provide highlights as follows:

- ❖ Surplus arising out of CSR activities will have to be reinvested into CSR initiatives, and this will be over and above the 2% figure
- ❖ The company can implement its CSR activities through the following methods:
 - Directly on its own
 - Through its own non-profit foundation set- up so as to facilitate this initiative

- Through independently registered non-profit organisations that have a record of at least three years in similar such related activities
 - ❖ Only CSR activities undertaken in India will be taken into consideration
 - ❖ Activities meant exclusively for employees and their families will not qualify
- A format for the board report on CSR has been provided which includes amongst others, activity-wise , reasons for spends under 2% of the average net profits of the previous three years and a responsibility statement that the CSR policy, implementation and monitoring process is in compliance with the CSR objectives, in letter and in spirit. This has to be signed by either the CEO, or the MD or a director of the company

OBJECTIVES AND METHODOLOGY

Considering the above explanation we had following objectives of the study

- To understand the concept of CSR
- To find out benefits of CSR
- To know about section 135 of companies act 2013 about CSR
- To know about the guidelines of CSR for central public enterprises.

Primarily, the study is based on secondary data. We have done the study through the review of books, journals, articles, and news papers and also used internet for collection of data. It is our little bit attempt to focus on concept of CSR.

Definition of CSR:

The EC1 defines CSR as “the responsibility of enterprises for their impacts on society”. To completely meet their social responsibility, enterprises “should have in place a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders”

According to WBCSD CSR as2 “the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.”

Benefit of CSR:

As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits, some of which are as follows:

1. Care for all Stakeholders:

The companies should respect the interests of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.

2. Ethical functioning:

Their governance systems should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.

3. Respect for Workers' Rights and Welfare:

Companies should provide a workplace environment that is safe, hygienic and humane and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on an equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressal system, should not employ child or forced labour and

provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.

4. Respect for Human Rights:

Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third party.

5. Respect for Environment:

Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.

6. Activities for Social and Inclusive Development:

Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: -

ROLE OF THE BOARD AND THE CSR COMMITTEE

Role of the Board:-

1. Forms a CSR committee
2. Approve the CSR policy
3. Ensure implementation of activities under CSR
4. Ensure 2% spend
5. Disclose reason for not spending the amt(if Applicable)

Role of CSR Committee

1. Three or more directives with at least one independent directors
2. Formulate & recommended a CSR Policy to the board
3. Recommend activities & amt of expenditure to be incurred
4. Monitor the CSR Policy from time to time

CLAUSE 135, COMPANY ACT 2013

After years of debate, the Indian Parliament passed its first update of the country's corporate law in more than 50 years, which includes several important provisions that modernize India's corporate governance rules. The Companies Act 2013 requires that one-third of a company's board comprise independent directors, and that at least one board member be a woman. It also requires companies to disclose executive salaries as a ratio to the average employee's salary, and it allows shareholders to file class-action law suits. The provision that has gotten the most attention is the so-called "2 per cent" requirement, which made India the first country to mandate CSR.

Act: Five essential elements :

1. What is the 2 per cent requirement?

The act requires that companies set up a CSR board committee, which must consist of at least three directors, one of whom must be independent. That committee must ensure that the company spends "at least 2 per cent of the average net profits of the company made during the three immediately preceding financial years" on "CSR" activities. If the company fails to spend this amount on CSR, the board must disclose why in its annual report.

2. Who must follow this requirement?

The requirement will apply to any company that is incorporated in India, whether it is domestic or a subsidiary of a foreign company, and which has (1) net worth of Rs. 5 billion or more (US\$83 million), (2)

turnover of Rs. 10 billion or more (US\$160 million), or (3) net profit of Rs. 50 million or more (US\$830,000) during any of the previous three financial years.

3. How will the requirement be enforced?

The board committee is responsible for reviewing, approving, and validating the company's investments in CSR. Prior to each annual meeting, the board must submit a report that includes details about the CSR initiatives undertaken during the previous financial year. The board's independent director helps ensure the credibility of this process. However, the act does not provide any guidance on what constitutes acceptable reasons for which a company may avoid spending 2 per cent on CSR.

4. How does the act define "CSR"?

The act defines CSR promotes following activities

1. Promotion of education
2. Destruction of hunger and poverty.
3. Gender equity and women empowerment.
4. Reducing child mortality and improving mental health.
5. Combating HIV-AIDS, malaria and other disease.
6. Contributing to prime minister relief fund and other such state and central fund.
7. Social business project.

5. Will this positively or negatively impact CSR in India?

In a country such as India, where one-third of the population is illiterate, two-thirds lack access to proper sanitation, and 400 million people still live on less than US\$2 a day, the passage of the Companies Act should be hailed as a positive step forward in ensuring that business contributes to equitable and sustainable economic development.

But there are also a number of reasons to think it may not greatly improve CSR. Indian companies still equate CSR with corporate philanthropy rather than considering CSR as a holistic view of the impacts business has on society and the environment through its operations.

CSR Guidelines for central Public enterprises

The Department of Public Enterprises had issued Guidelines on Corporate Social Responsibility (CSR) for CPSEs in April, 2010 which have been issued formally to the Ministries/Departments for compliance in the Central Public Sector Enterprises (CPSEs) under their administrative control.

Following are the features of guidelines on CSR & Sustainability:

1. Corporate Social Responsibility and Sustainability is a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical.
2. Public Sector enterprises are required to have a CSR and Sustainability policy approved by their respective Boards of Director.
3. The financial component/budgetary spend on CSR and Sustainability will be based on the profitability of the company and shall be determined by the Profit After Tax (PAT) on the company in the previous year.
4. Loss making companies are not mandated to earmark specific funding for CSR and Sustainability activities. However, they must pursue CSR and Sustainability policies by integrating them with their business plans, strategies and processes, which do not involve any financial expenditure.
5. The unutilized budget for CSR activities planned for a year will not lapse and will, instead, be carried forward to the next year. However, the CPSEs will have to disclose the reasons for not fully utilising the budget allocated for CSR and Sustainability activities planned for each year.
6. CPSEs are expected to take initiative to promote welfare of employees and labour by addressing their concerns of safety, security, professional enrichment and healthy working conditions, whether mandated or otherwise

7. It is mandatory for CPSEs to take up at least one major project for development of a backward district as identified by the Planning Commission for its Backward Region Grand Fund (BRGF) Scheme, and one major project for environment sustainability
8. 5 per cent of the annual budget for CSR and Sustainability activities has to be earmarked for Emergency needs, which would include relief work undertaken during natural calamities/disasters, and contributions towards Prime Minister's / Chief Minister's Relief Funds.

Examples of companies which are implementing CSR:

Ashok Leyland

Operates a FunBus in Chennai and New Delhi. This bus, equipped with a hydraulic lift, takes differently abled children and those from orphanages and corporation primary schools on a day's picnic. The company also runs AIDS awareness and prevention programmes in its Hosur factories for about 3.5 lakh drivers.

Bharat Petroleum Corporation

Its rain water harvesting project Boond, in association with the Oil Industries Development Board, selects draught-stricken villages to turn them from „water-scarce to water-positive“. Some of BPCL's other social programmes include adoption of villages, prevention and care for HIV/AIDS and rural health care.

Hindalco Industries

Its CSR activities are concentrated in 692 villages and 12 urban slums, where it reaches out to about 26 lakh people. It has constructed check dams, ponds and bore wells to provide safe drinking water. In education, it awards scholarships to students from the rural schools it support. Its other interests include women's empowerment and health care, in which it treats patients in hospitals, runs medical camps and operates rural mobile medical van services.

Indian Oil Corporation

It runs the Indian Oil Foundation (IOF), a non-profit trust, which works for the preservation and promotion of the country's heritage. IOCL also offers 150 sports scholarships every year to promising youngsters. Some of its other initiatives lie in the domains of clean drinking water, education, hospitals and health care. **Infosys**

The Infosys Science Foundation, set up in 2009, gives away the annual Infosys Prize to honour outstanding achievements in the fields of science and engineering. The company supports causes in health care, culture and rural development. In an interesting initiative undertaken by it, 100 school teachers in Karnataka, who were suffering from arthritis, underwent free surgery as a part of a week-long programme.

Mahindra & Mahindra

Nanhi Kali, a programme run by the KC Mahindra Education Trust, supports education of over 75,000 underprivileged girls. The trust has awarded grants and scholarships to 83,245 students so far. In vocational training, the Mahindra Pride School provides livelihood training to youth from socially and economically disadvantaged communities. M&M also works for causes related to environment, health care, sports and culture.

Oil & Natural Gas Corporation

It offers community-based health care services in rural areas through 30 Mobile Medicare Units (MMUs). The ONGC-Eastern Swamp Deer Conservation Project works to protect the rare species of Eastern Swamp Deer at the Kaziranga National Park in Assam. ONGC also supports education and women empowerment.

Tata Consultancy Services

Its Computer Based Functional Literacy (CBFL) initiative for providing adult literacy has already benefitted 1.2 lakh people. The programme is available in nine Indian languages. Besides adult education, TCS also works in the areas of skill development, health care and agriculture.

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CONCLUSION

CSR is anything that immense and ever increases challenges of globalization and corporate capitalization for the foreseeable future. Governments as well as regulators have responded to this unrest and the National Voluntary Guidelines for Social, Environmental and Economic Responsibilities of Business or the NVGs (accompanied by the Business Responsibility Reports mandated by the SEBI for the top 100 companies) and the CSR clause within the Companies Act, 2013 are two such instances of the steps taken.

In case of public sectors, revised guidelines on CSR and sustainability are being implemented from 1 April 2013, as a commitment of the CPSEs to their stakeholders to conduct business in an economically, socially and environmentally sustainable manner.

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Legal Framework for Corporate Governance: Need for Urgent & Rational Reforms in Conformity with Fundamental Socio-Economic Principles and Reasonable Expectations of a Global Society

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Abstract:

A Legal Framework comprises of 'International' & 'Municipal' Laws (including International Conventions, bilateral/multi-lateral Treaties etc), Customs (followed by a local Community or by a particular Trade) and mutually negotiated Contracts that are enforceable through the 'prescribed' Courts, Tribunals or Arbitrators. And 'prescribed' means specified in the relevant Law itself.

Which Written Code, however, ensures that these Laws are equitable, rational and in conformity with morality -- especially in the sphere of International Laws? None! The outcome of International Treaties & Conventions depends upon the 'bargaining power' of Parties to the Treaty -- in an unlevel playing field. For example, General Agreement on Tariffs & Trade (GATT).

In respect of Municipal (domestic) Laws the written or unwritten Constitutions of certain countries do provide for a challenge to particular Law on ground of equitability; and, in some cases, the local Courts (that are empowered to interpret statutes, including the Constitution itself) have added a ground for challenge to 'unconscionable' Terms of Contract. Yet, we witness an unlevel playing field that forces the brightest students of specific Castes to go abroad for higher/professional studies and merit-based jobs, if their families can afford the initial financial burden to send them out of India. The Nation, in turn, loses the best of its Human Resources! Local unethical practices are also partly responsible for this exodus.

Moreso, Laws of Morality cannot be enforced through a legally prescribed Court, Tribunal or Arbitrator! One such Socio-Cannonical (Moral) Law is the basic framework of 'Trust' in inter-personal relations between/amongst Homo Sapiens. The increasing incidence of rape, inspite of mass public anger and amendments to Laws, is the falling moral values that have eroded the Trust or Expectation that a fellow human being would not outrage the modesty of someone else's mother, wife, daughter or sister. It is common knowledge amongst intellectuals & jurists that many a Laws are irrational and/or full of loopholes; moreso, the implementation of Laws in certain States (countries) is dishonest -- to say the least. In India it is a whispered fact that the most corrupt Organ of the State, today, is the Judiciary -- but none dares to say it openly due to laws on Contempt and Protection (sans Accountability) of Judiciary.

Hence the need for honestly re-visiting our Corporate Laws so that the 40-50 percent of the expenses of running a Company in India (that is taken away by the Government to spend on wasteful consumption or irrational doles, or is pocketed by its officials as bribes) is either re-invested into the Company or is used to lower the prices paid by the Consumers of its products/services, or is gainfully spent on its employees.

Keywords: *Corporate Legal Environment, Reforms in Economic Laws, Honest Implementation of Laws.*