

Corporate Social Responsibility and Sustainable Development: A legal perspective

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Abstract: The goal of the Corporates are to maximise their profit and its there only focus. But the realities there are other thing have to be looked upon. The social issues also place an important role in corporate world. This ensures that there will be a balancing impact between the company's reputation value and the social benefits through the corporates. Corporate Social Responsibility was used as the tool to bring the harmonious relationship between the Company and the stakeholders. It denotes that even the company have the responsibility towards the society. Corporate Social Responsibility (CSR) and Sustainable development are complementary to each other. The emerging trends of CSR increase the importance of social responsibilities towards the society and which preserve the resources for the future generation. But there are lot of challenges faced which results in the ineffectiveness of CSR in India. This paper follows the descriptive method and doctrinal research in order to describe the Corporate Social Responsibility and its impact towards the society and the company's social responsibilities towards the citizens of India. The paper combines few goals to be achieved there are in order to know about the Fixation of CSR percentage is a boon or bane and fixation of CSR will affect the sustainable development are not. Hence such issues are discussed in the paper and according to the provision of law. The respective enactment i.e The Companies Act, 2013 states about the CSR and its related provisions. This paper focuses on the concept of CSR and its emerging trends which helps for the sustainable development and how it legally work out in our society.

Keywords: CSR, Sustainable Development, Emerging trends in CSR, Social Benefits, Strategy

I. Introduction

Corporate Social Responsibility (CSR) was the concept emerged long back in our society. The concept explains about the social responsibilities of the companies in our country. Through a legal enactment this concept was done in a systematic manner. In general, CSR does not have any clear cut definition which completely denotes the term. But in later stage CSR was legally enforceable. It was stated under the Section 135 of Companies Act, 2013. Under the general prudence it clearly enhances that CSR and Sustainable development are complementary to each other. In nutshell, CSR means those activities taken by corporate with the aim of welfare of the society and the sustainable development refers to the resources utilised in a better way which can be saved for the future generation. In this era, the concept of CSR was linked with the corporate citizenship, sustainable business, environmental and corporate accountability, business ethics.

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CSR acts as a link to connect both corporate and the stakeholders. Here stakeholders refer to the shareholders, employees, private sector, local communities, the government and the society.

Before the Companies Act, 2013 itself there were lot of other enactments which highlighted about Corporate Social Responsibility (CSR) and its applicability such as Article 48A and 51A of Indian Constitution delays with protection of environment.

The citizens of the country have a fundamental right to a wholesome, clean and decent environment. The Constitution of India, in terms of Article 48A, mandates that the State is under a Constitutional obligation to protect and improve the environment and to safeguard the forest and wild life in the country. By 42nd Amendment to the Constitution, the Parliament, with an object of sensitising the citizens of their duty, incorporated Article 51A in the Constitution, inter alia, requiring a citizen to protect and improve the natural environment including the forests, lakes, rivers and wild life and to have a compassion for living creatures. The legislative intent and spirit under Articles 48A and 51A (g) of the Constitution find their place in the definition of 'environment' under the Environment (Protection) Act, 1986 (for short the 'Act of 1986').³ For this case it clearly shows that the every citizen in our nation has the responsibilities to protect the environment. Even it's applicable to corporate firms in our nation. Our society deals with lot of issues which not only deals with the environmental matters also deals with the societal matters. Under Factories Act, 1948, the specified provisions deals with the health and welfare of the workers and many other provisions also indirectly specifies about the CSR.

The Act provides that the Company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility. The Company will thus give preference to conducting CSR activities in the state of Bihar herein the Company has/will have its operations. However, the Committee may identify such areas other than stated above, as it may deem fit, and recommend it to the Board for undertaking CSR activities.⁴

Corporate social responsibility policy) Rules, 2014 has defined the term "corporate social responsibility (CSR)" as follows: "corporate social responsibility means and includes but is not limited to:

1. projects or programs relating to activities specified in schedule VII to the Act; or
2. projects or programs relating to activities undertaken by the board of directors of a company (board) in pursuance of recommendations of the CSR committee of the board as per declared CSR policy of the company subject to the condition that such policy will cover subjects enumerated in schedule VII of the Act.⁵

Under the Companies Act, 2013, any company having a net worth of rupees 500 crore or more or a turnover of rupees 10, 000 crore or more or a net profit of rupees 5 crore or more has to spend at least 2% of last 3

³Sher Singh vs State of HP, Criminal Appeal No. 249 of 2008

⁴ <http://finance.bih.nic.in/documents/csr-policy.pdf>

⁵ Rule 2(c) of (corporate social responsibility policy) rules 2014

years average net profits on CSR activities as specified in Schedule VII of the Companies Act, 2013 and as amended from time to time. The rules came into effect from 1 April 2014.⁶

Objectives:

- To study about the Fixation of CSR percentage is a boon or bane
- To analyse about the CSR and Sustainable Development.

Research gap:

Expenditure on CSR projects is not a good metric of societal welfare. It is not clear whether firms have really increased their CSR spending after the law compared to what they were spending voluntarily before the law, because CSR spending was not well reported historically. There is some evidence that while firms that were initially spending less than 2% increased their CSR activity, but those that were initially spending more than 2% reduced their CSR expenditure.

II. Emergence of CSR

India has a long tradition of paternalistic philanthropy. The process, though acclaimed recently, has been followed since ancient times albeit informally. Philosophers such as Kautilya from India and pre-Christian era philosophers in the West preached and promoted ethical principles while doing business. The concept of helping the poor and disadvantaged was cited in several ancient literatures. In the pre-industrialised period philanthropy, religion and charity were the key drivers of CSR. The industrial families of the 19th century had a strong inclination toward charity and other social considerations. However, the donations, either monetary or otherwise, were sporadic activities of charity or philanthropy that were taken out of personal savings, which neither belonged to the shareholders nor did it constitute an integral part of business. During this period, the industrial families also established temples, schools, higher education institutions and other infrastructure of public use.

The term CSR itself came into common use in the early 1970s. The last decade of the twentieth century witnessed a shift in focus from charity and traditional philanthropy toward more direct engagement of business in mainstream development and concern for disadvantaged groups in the society. In India, there is a growing realisation that business cannot succeed in isolation and social progress is necessary for sustainable growth. An ideal CSR practice has both ethical and philosophical dimensions, particularly in India where there exists a wide gap between sections of people in terms of income and standards as well socio-economic status.⁷

⁶ Corporate Social Responsibility-Emerging trends in India:A descriptive study by Varun Kumar Kadambala and Prabhat Chalmeti, International Journal of Management Research and Review, Vol. 6, Issue 7, July 2016

⁷ Bajpai, G.N. , Corporate Social Responsibility in India and Europe: Cross Cultural Perspective, 2001

Currently, there is an increased focus and a changing policy environment to enable sustainable practices and increased participation in the socially inclusive practices.⁸

III. Corporate Social Responsibility and Sustainable Development

The neoliberal development model essentially refers to liberalisation, privatisation and globalisation of the earth's resources for the greater benefit of the people. The emergence of big corporate and their ambition for the optimisation of individual profits has not only divided the world between the rich and poor but have also led to an imbalance between development and environmental sustainability. Recent studies and surveys have shown that the earth is gradually becoming a dangerous place to live due to unsustainable human induced activities. Given that, the governments of many countries have stood up firmly to ensure that the ongoing developmental practices remain in optimal harmony with environmental sustainability as well as human security. Hence, the idea that environmental and social security are not only the responsibility of government but demands an effective participation from the corporate and business world. Although, much have been done in the theoretical domain to make Indian corporate aware of social responsibility and environmental ethic as an important segment of their business activity but very little has been achieved as yet. The importance of Corporate Social Responsibility acts as a tool to ensure greater participation of business entrepreneurs toward protecting the natural eco-system and enhancing the quality of life while undertaking a developmental activity. CSR gives both theoretical and practical contributions toward achieving the goal of sustainable development in India. More importantly, the behavioural limitations towards evolving a culture of business ethic and social responsibility in the country were also looked upon. Finally, actions will be made to develop a strategy to ensure greater responsibilities and participation from the corporate sector to ensure greater harmony between economic development, environmental sustainability and public safety.⁹

CSR in India

Companies conduct events like health camps, population control measures, support a few sick persons, give some scholarships, organise a few SHGs, a few sports events, impart trainings for some livelihood practices without linking them to further growth in the process of conducting CSR. Some corporates found to work on disability, some on elderly issues, some work on street children. All these are either time bound projects or institution run activities or supports to some NGOs. They also meet the deficiencies of Government run schemes or programs with an aim to enhance the quality of the programme. Short term activities are mostly eye washing efforts by corporates where sustainable development approaches are usually missed. Government authorities and people's representatives are mostly invited in such programs to grace the occasions and their visibility in the public are taken care in such a way that the corporates get continuous

⁸ Ernst & Young and PHD chamber, published in Global CSR Summit-2013

⁹ Corporate Social Responsibility and Sustainable Development in India by Pankaj Dodh, Sarabjeet Singh, Ravita, Global Journal of Management and Business Studies, Vol. 3, No. 6, 2013

illegal and quick legal favours and ultimately the profit multiplies.

In India several companies have started realising that it is a rational move to take up CSR activities and integrate it with their business process. Corporations are becoming increasingly aware of their role towards the society. They are responsible bodies that feel a sense of duty towards the common welfare and the environment. This comes with a growing realisation that they, as an integral part of this society themselves, can contribute to its upliftment and empower of the entire country in turn. Thus Companies now are setting up specific departments and teams that develop policies, strategies and goals which are for their CSR programs and allocate separate budgets to support them. In the modern era, the new generation of corporate leaders considers optimisation of profits as the key, rather than the maximisation of profit.¹⁰ Although proper implementation of CSR will definitely add to the grandeur of the nation, detractors have questioned the need of such obligations in a nation such as India where generally all the policies of the government focus on striving socio-economic equality and development. The reason for imposing such obligations appears to be twofold, firstly, that the protracted problems of socio-economic equality and environmental concerns have proved to be chronic and secondly, the past endeavours demonstrate clearly that a greater extent of participation is needed for reaching the roots of such problems. Bringing the corporate world into the fold of socio-economic obligations would prove to be beneficial for the masses as well as the corporate world.¹¹

V. Negligence of CSR by the companies in India

CSR was made mandatory and if any company doesn't bond the rules it may have to face many consequences. Few companies were lethargic about CSR and polluting the environment. Lot of environment issues arises due the irresponsible behaviour of the companies and the irregularities in their actions. To substantiate such issues there are many cases filed before the honourable court and various landmark judgements favoured the environment and the employees and it benefited them.

In *M.C.Mehta vs Union of India*, famously known as Yamuna River case, the negligence of industries leads to environmental pollution.

In *M.C. Mehta vs Union of India*, it was held that Industrial wastes also find their way into the river from large industrial units (22 in Haryana, 42 in Delhi and 17 in Uttar Pradesh) and many small industrial units. Surprisingly, though Delhi constitutes only 2% of the catchment area, it is responsible for 80% of the pollution of the river.¹²

Similarly in *M.C. Mehta vs State of Tamil Nadu (Sivakasi fireworks case)*, in this case The judgement is one of the historic judgement with respect to the issue of child labour. It elaborates in detail about the situation

¹⁰ Emerging trends in Corporate Social Responsibility in India-A descriptive study by Swathi, Reshu Sharma, Jugal Kishore, Global Institute of Research and Education, Vol.2(2) 2013, pp:58-62

¹¹ <https://singhania.in/a-conceptual-framework-of-corporate-social-responsibility-in-india/>

¹² *M.C.Mehta vs Union of India*, [(2004) 12 SCC 118]

of child labour in India. It outlines the vision of constitution with respect to children. The judgement highlight the relation of poverty and child labour. It also shows light on the fact that how the state has failed to eradicate the child labours in the country as well as lack the zeal to deal with it. The judgment also deliberates about the possible solutions to eradicate the child labour.¹³

By deleting ‘social business projects’ through the notification, the central government seems to have exceeded its legislative mandate and the same may be subject to judicial review in future. This was observed in the case of *J.K. Industries Ltd. v Union of India and Ors.*¹⁴

Shareholders are owners of the company. Management is entrusted to Board of Directors. By virtue of introduction of CSR, board of directors is given unrestricted power to decide the CSR expenditure, the CSR activity to be undertaken. Board of directors can spend company’s money in a CSR activity for their own personal benefit. For Example: A director can approve CSR activity, relating to construction of building in a school/or college where he need to get admission for his son. In such case, shareholders cannot prevent the action of director, to use company’s fund for his personal benefit, as shareholders do not have say relating to CSR activity. Moreover, each area has certain needs to be fulfilled if the nature of CSR activity is left to the board to be decided ,it will neither benefit the society and shareholders fund will be misused thereby shareholders right is affected. Since shareholder do not have a say in CSR and board of directors have unrestricted power and there in no check and Balance .Therefore Shareholders rights are affected.¹⁵

VI.Importance of CSR

CSR helps in strengthening the relationship between companies and stakeholders.

- It enables continuous improvement and encourages innovations.
- Attracts the best industry talent as a socially responsible company.
- Provides additional motivation to employees.
- Mitigates risk as a result of its executive corporate governance framework.
- Enhances ability to manage stakeholder expectations.¹⁶

VII.CSR percentage and its impact

2014 saw the Companies Act with the mandatory CSR provision coming into effect. The Act makes it mandatory for companies meeting certain thresholds to spend 2% of their net profits on CSR. India is the first country in the world to enshrine corporate giving into law. Following a change in company law in April 2014, businesses with annual revenues of more than 10bn rupees (£105m) must give away 2% of their net profit to charity. Areas they can invest this money in include education, poverty, gender equality and

¹³ AIR1997SC699

¹⁴ *J.K. Industries Ltd. v Union of India and Ors*, 2005(103)ECC152

¹⁵ <http://journal.lawmantra.co.in/?p=141>

¹⁶ Ernst & Young and PHD chamber, published in Global CSR Summit-2013

hunger¹⁷. The Indian act largely focuses on philanthropy and certain key areas. The focus being on giving back to society over and above the ordinary course of business. Even as the Indian law looks at a philanthropic, community-centred approach, it is also true that smart strategies have been developed by industry leaders that look at CSR while creating far-reaching positive business impact.¹⁸

But in later stage it slowly started to create an both positive and negative impact because on one hand fixation of such percentage leads to ringing of an alert bell to the companies which to be held responsible for the societal needs and make sure such activities are done to attain dual benefits for both companies and the society and on another hand, Companies which are already doing its responsibilities well and such percentage may reduce the effectiveness of the companies towards the social responsibilities. It happens because that two percentage of CSR may fix a prescribed limit which may minimise the responsibilities. It may lead to lack of development in the society and environment by the companies.

The problem is that reported expenditure on CSR projects is not a good metric of societal welfare. These numbers overstate the effect of the law. It is not clear whether firms have really increased their CSR spending after the law compared to what they were spending voluntarily before the law, because CSR spending was not well reported historically. There is some evidence that while firms that were initially spending less than 2% increased their CSR activity, but those that were initially spending more than 2% reduced their CSR expenditure. Another possibility is that firms spent money on CSR activities that also lead to increasing firm profits, such as inculcating goodwill and good public relations. There is evidence indicating CSR spending leads to brand building and employee engagement. In that case, firms would have carried out these activities with or without the law.¹⁹

VIII.Challenges for Indian Corporates

The Times survey pointed few of the following challenges/responses from participating organisations.

- Lack of community participation in CSR activities
- Need to build local capacities
- Issues of transparency
- Non-availability of well organised non-governmental organisations
- Visibility factor
- Narrow perception towards CSR initiatives
- Non-availability of clear CSR guidelines
- Lack of consensus on implementing CSR issues²⁰

¹⁷ <https://www.theguardian.com/sustainable-business/2016/apr/05/india-csr-law-requires-companies-profits-to-charity-is-it-working>

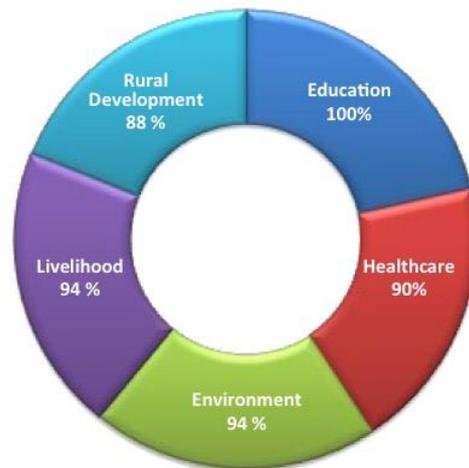
¹⁸ https://www.iimu.ac.in/upload_data/main_containts/about/Social-Responsibility/IIMU_CSR_REPORT.pdf

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²⁰ Corporate Social Responsibility:Issues, challenges and Strategies for Indian Firms by Yasmin Begum.R.Nadaf, Shamshuddin.M. Nadaf, IOSR Journal of Business and Management(IOSR-JBM), Vol. 16,Issue.5, Ver.III,May,2014, pp. 51-56

IX. Activities of CSR in India.

As presented in the chart, the most common thematic areas covered by the companies include health, education on, livelihood, environment and rural development. Of these, education is the most common and 100% of the companies included in the research were found to have undertaken some initiative on education; this was followed by livelihood and environment, and then healthcare and rural development.



9.1. EDUCATION

The study indicates that providing infrastructure support is the most common activity in the education domain, undertaken by approximately 88% or 44 out of a total of 50 companies focusing on education.

9.2. HEALTHCARE

In the healthcare domain, organising health camps to offer curative services and raising awareness on health issues are the most common activities implemented by nearly 74% of the companies.

9.3. ENVIRONMENT

CSR initiatives aimed towards the betterment of the environment include green initiatives such as tree plantation on drives to promote afforestation, as well as efforts to conserve water, and to manage and dispose of waste responsibly. Green initiatives garner the highest attention with 76% of all companies undertaking specific initiatives to improve the environment and approximately 64% taking measures to conserve water.

9.4. LIVELIHOOD

Out of the 50 companies approximately 88% support skill development through vocational training, and 78% support income generation activities.

9.5. RURAL DEVELOPMENT

In rural development, 68% of companies have been working towards betterment of rural areas by providing infrastructure support.²¹

X. Conclusion

The success of CSR lies in practicing it as a core part of a company's development strategy. It is important for the corporate sector to identify, promote and implement successful policies and practices that achieve triple bottom line results. It is a joint and shared responsibility of civil society, activist groups, Government and corporate sector to create appropriate means and avenues for the marginalised and bring them to the mainstream.

The CSR survey revealed, not surprisingly, those organisations targeted most of their activities close to home providing services for people who live in villages, towns, and districts near where the organisation operates. Education, health, and the environment are the top priorities. More than likely, these priorities will continue. To create a win-win situation, it is essential for all of us to work together to eradicate poverty and improve miserable living conditions that exist in rural India.²²

India needs is large-scale social innovation and systems change and mandatory spending achieves a little in this direction. It also deflects pressure on companies to change their business practices. CSR should be more inclusive by which an organization should think about and evolve its relationships with stakeholders for the common good, and demonstrate its commitment by adopting appropriate business processes and strategies. A set of national voluntary guidelines to spell out what responsible business should look like and set out that CSR is more than just charitable giving should be formalised.²³

The CSR acts a tool to connect the companies and shareholders and keep them a harmonious relationship which enables both the parties to attain benefit. CSR definitely needed to be taken more care to ensure its effectiveness and collaborate its service with sustainable development. The fixation may be the prescribed limit which have both positive and negative aspects. Hence it have a neutral effect in few cases. The CSR also helps to attain the economic growth by through the aim of eradicating poverty, increasing the employment opportunities and so on. It was made to follow mandatory under law which enables the companies to be more Responsibility in matters of then social issues. It also covers the law relating the employees and benefit them. Section 135 of Company Act, 2013 mandates every company to follow its social ethics more than it's professional and business ethics. CSR will be used as the strategy to expand the companies business rather than rendering service to the society. At least the Corporates mind interprets CSR in different dimension. Finally, it helps them to increase in their reputation and goodwill from which the money can be gained.

²¹ Ernst & Young and PHD chamber, published in Global CSR Summit-2013

²² Corporate Social Responsibility: Issues, challenges and Strategies for Indian Firms by Yasmin Begum. R. Nadaf, Shamshuddin. M. Nadaf, IOSR Journal of Business and Management (IOSR-JBM), Vol. 16, Issue. 5, Ver. III, May, 2014, pp. 51-56

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