*International Journal of Social Science and Economic Research*

ISSN: 2455-8834

Volume: 04, Issue:03 "March 2019"

# STATUTORY CORPORATE SOCIAL RESPONSIBILITY IN INDIA

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## ABSTRACT

Nowhere in the world is Corporate Social Responsibility enforced by law by requiring a certain percentage of profits of a company to be spent on specified activities such as eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation, making available safe drinking water etc. India has become the first country in the world to enforce CSR by making provisions in the Companies Act, 2013 which requires companies having specified net worth or turnover or net profit to spend in every financial year at least 2% of average net profits of the company on specified activities such as eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation, making available safe drinking water etc. Socialism by Government of India has not worked. Hence India adopts the experiment of Socialism by corporate.

**Keywords:** Socialism, Poverty, Malnutrition, Healthcare, CSR

Indian culture inherent values of the Universe *Artha* which are economic values. E a person must collect wealth. *Kama* means pleasure a person must enjoy pleasure. *Dharma* is the value *of* righteousness. One must always do what is right. If a person does his kama, Dharma and Artha well the person will attain Moksha. He will be liberated. This karma theory cautions the corporate that they ought to be accountable for their actions. These values made philantrophy a family run activiting in India for generations. CSR is not philanthropy. While philanthropy involves making a donation to an organisation engaged in charity, CSR, or corporate sustainability (CS), as it is sometimes called, has a symbiotic relationship with the environment in which a corporation operates. India is the first country which advocates that some firms spend a percentage of their profits on socially responsible activities (as designated by law), or explain why they do not.

Corporate social responsibility can be defined as ethical behaviour of a company towards society. It means engaging directly with the local community, identifying their basic needs and

  

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integrating their needs with business goals and strategic intent. The government perceives CSR as business contribution to national's sustainable development goals. CSR emerged from the sense of responsibility of polluting industries like oil, chemical, tobacco and mining. From an ethical point of view CSR can be viewed as philanthropy at other people's expense. The core responsibility of a business is to conduct business. The role of business is to develop investment so as to yield competitive return. The shareholders of the company have entrusted their money with the management of taking care of their assets. Shareholders are demanding responsibility and accountability from companies.

Several large companies pay lip service to CSR. They make the situation worse for companies in which they work. Coca Cola extracted large quantities of water in Plachimada, in the Palakkad district of Kerala, southern India affecting the quality and quantity of water and created water shortage.[i] Vedanta Resources, from mining bauxite in the Niyamgiri Hills of eastern Orissa state and halted the Lavasa city project in Maharashtra, both for flouting environmental laws.[ii] Poor people depend on forests for survival. Forests are cut down to accommodate new industries.[iii] Whether corporate social responsibility is moral or ethical imperative or simply a new factor in doing business profitably it is here to stay and must be managed carefully. There is a need for trained people in environmental and social issues. There is huge need of manpower. Companies like Vedanta Resources have created a group head to head CSR activities at all companies. Aditya Birla has created a post of educational officer to monitor CSractivites in educational institutions.

in India, one of the world's most vibrant democracies, it becomes imperative to examine the relationship between democracy and corporations. Companies need to be more responsible and accountable for the social and environmental consequences of their core operations. The way in which these profits are made, needs to be constantly examined and improved from a social, environmental and even financial lens. In a study of Fortune 500 companies , it was found that firms that engage in socially responsible behaviour towards their stakeholders are subsequently more likely to engage in socially irresponsible behaviour towards their same stakeholders at a later point.CSR enhances brand value and reputation. Branding of consumer goods through social messages gets a huge boost. Lifebuoy help a child reach 5.[iv]

**Law for CSR**

The Companies Act of 2013 was enacted on 29 August 2013, and came into effect for the 2015 fiscal year (i.e. the fiscal year ending on March 31, 2015). The bill underwent extensive discussion and debate over a number of years prior to final enactment. The notion that firms would be encouraged to voluntarily undertake CSR was first mooted in late 2009. The first

  

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announcement of a mandatory CSR requirement for firms above the thresholds noted above was made on August 6, 2010. A "comply-or-explain" CSR obligation was included as part of the Companies Bill in July 2011. The bill was passed by the lower house of Parliament on 18 December 2012 and by the upper house on 8 August 2013 (receiving the President's assent on 29 August 2013).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 (CRS Rules) which has come into effect from 1 April 2014.

**Rationale for compulsory CSR**

Part II of the Report of the Parliamentary Standing Committee on Finance on the Companies Bill, explains the rationale for mandatory CSR spends provisions of section 135 as under:

"………….. *corporates in general are expected to contribute to the welfare of the society in which they operate and wherefrom they draw their resources to generate profits*. Accordingly, the Committee recommend that Clause 135(5) of the Bill mandating Corporate Social Responsibility (CSR) be modified bysubstituting the words 'shall make every endeavour to ensure' with the words 'shall ensure'. Further, the Committee recommend that the said clause shall also provide that CSR activities of the companies are directed in and around the area they operate."

**Procedure to be followed in implementing CSR**

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. Every such company must have a CSR policy in place. The Board shall ensure that atleast 2% of average net profits of the company made during three immediately preceding financial years shall be spent on such policy in every financial year.[v] The government through its two per cent legislation and the increased demand on corporations to fund its various schemes ranging from cleaning of the Ganga to funding of health schemes. The National Health Policy 2017, for example, makes a reference to CSR for financing public health.

The net profit of the company is the financial statement prepared by the company. Which could include any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and any dividend received from other companies in India, which are covered under and complying with the provisions of section135 of the Act.[vi] In India it is mandatory for every company to fulfil requirements of Section 135 of Companies Act, 2013.

  

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If a firm crosses any of the thresholds specified then: (i) it must constitute a "Corporate Social Responsibility" (CSR) committee with 3 directors, of which one must be independent, 11 (ii) it must disclose the composition of the CSR committee, iii) the CSR committee must formulate a CSR policy recommending the kinds and amounts of CSR spending the firm is to pursue and the committee must monitor that policy,13 (iv) the Board is to approve and publicize the firm's CSR policy (after taking into account the CSR committee's recommendations) and to ensure that the policy is followed. The Board is to ensure that the firm spends at least 2% of the firm's average net profits (over the last 3 years) on activities listed in the firm's CSR Policy or provide reasons for why this spending level was not achieved (i.e., a "comply-or-explain" rule)

Failure to meet the 2% spending requirement would not trigger liability if an acceptable explanation for failing to meet it was provided (although it is not entirely clear to whom such an explanation must be provided and what the standard of "acceptability" is). If such an explanation is not provided and the firm failed to spend at least 2% of average net profits on CSR activities then liability would be triggered here too. The penalty on the firm and every officer of the firm who violates Section 135 is INR 10,000 for the first day of the violation plus an additional INR 1,000 a day if the violation continues.[vii]

**Mandatory Activities under Corporate Social Responsibility**

TATA is one prominent Indian company which was involved in philanthropy since its inception in the 1868. TATA still continues to top the global list on reporting CSR.[viii] The activities which a company may undertake should be different other than those undertaken in the normal course of business.[ix] The activities to be undertaken by the Board of the company must be approved by the CSR committee. The company should pick local geographic where the company is situated to conduct its Corporate Social Responsibility activities. The activities may be completed with the help of a registered trust, society or a company. The Company may also collaborate with other companies for undertaking.

It is mandatory to undertake CSR activities within the territory of India. The activities must benefit the employees of the company and their families. Any amount spent towards contribution in a political party is excluded from CSR activity. Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:(*i*) eradicating extreme hunger and poverty;(*ii*) promotion of education;(*iii*) promoting gender equality and empowering women;(*iv*) reducing child mortality and improving maternal health;(*v*) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;(*vi*) ensuring environmental sustainability;(*vii*) employment enhancing vocational skills;(*viii*) social business projects;(*ix*) contribution to the Prime Minister's National Relief Fund

  

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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.[x]

Companies adopt social good techniques like planting of trees or giving away in charity to the needy. Such activities are not sufficient. For example if a corporate takes up the activity of building schools. It cannot be ensured that the school is built with excellent facilities.

**Reporting CSR Activites**

Reporting The new Act requires that the board of the company shall, after taking into account the recommendations made by the CSR committee, approve the CSR policy for the company and disclose its contents in their report and also publish the details on the company's official website, if any, in such manner as may be prescribed. If the company fails to spend the prescribed amount, the board, in its report, shall specify the reasons.

Business responsibility reporting The other reporting requirement mandated by the government of India, including CSR is by the SEBI which issued a circular on 13 August 2012 mandating the top 100 listed companies to report their ESG initiatives. These are to be reported in the form of a BRR as a part of the annual report. SEBI has provided a template for filing the BRR. Business responsibility reporting is in line with the NVG published by the Ministry of Corporate Affairs in July 2011. Provisions have also been made in the listing agreement to incorporate the submission of BRR by the relevant companies. The listing agreement also provides the format of the BRR. The BRR requires companies to report their performance on the nine NVG principles. Other listed companies have also been encouraged by SEBI to voluntarily disclose information on their ESG performance in the BRR format.

**From corporate social responsibility to corporate responsibility**

CSR is understood from three words. Corporate which covers a large spectrum of businesses. "Social" refers to the local community with which they interact by finally incorporating "Responsibilites" that are intrinsic on both sides of the relationship. Corporate responsibilities refers to responsibilities of corporations as social institutions. The 'social' in Corporate Social Responsibility waters down, to a large extent, this idea of accountability shifting focus to 'what corporates can do for society' from what its business does to society. Businesses can therefore focus their attention towards two areas simultaneously: (a) drive their respective CSR programs with greater impact; (b) build an organization capable of transitioning from the bylanes of corporate social responsibility to a wider, well-paved highway of corporate responsibility. Corporate responsibility (CR) includes social as well as environmental and financial

  

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responsibility. It encapsulates actions companies take to build an environment friendly, people-sensitive, safe business capable of generating socially responsible profits. A responsible corporation, while generating viable livelihood opportunities, will also be conscious about the impact of such actions on natural resource systems where communities reside; it will also think about ways of preserving the community's heritage and culture; and if required it will even create the necessary community 1infrastructure, thereby delivering more holistic and harmonious change leading to better financial sustainability of the organization. Commitment to environment, ethics and governance no longer remain a compliance issue for a responsible corporation, they become a part of its DNA. The key question therefore is how can companies organize themselves to conceptualize, design and deliver CSR and simultaneously start readying themselves to seamlessly transition from CSR to CR.[xi] Companies are beginning to realize the importance of adopting socially responsible.

**Challenges of Corporate Social Responsbility**

Corporations deal with issues social and environmental like global warming, human rights, economic growth, poverty reduction and animal rights. Common responsibilities include sustainability, sustainable development ,. management, business ethics, philantrophy, community investment, workers rights and welfare, human rights, corruption, corporate governance, legal compliance and animal rights. It is common to look at society through economics. Here corporations are required to work in coalition with the government or civil society as well as educational and other institutions. In such actions there is inability to follow outcome which come from responsible actions Companies may have in place environmental policies but the actual outcome is not known.

The second problem is possible economic benefit related to social and environmental environmental performance .Viewing corporate responsibility as voluntarily does not impose any liability on the corporation as to which business should take responsibility. The purpose of business is to advance public good. What changes over the years is what is public good and how it is to be achieved. In the oldern days public good was buiding cathedrals. The second problem is social responsibility. Corporations are seen as agents of positive change. Corporations instead of seeking new profit opportunities would have to act in public interest. No corporation will be willing to sacrifice profit for ethics. The only possible solution to regulate corporations will be regulation by a world government.[xii] The challenge is to whom the corporation is responsible and how to include different constituencies in the governing process.

One mandatory requirement is corporates have to report their annual CSR activity at the company's website. The Report is self reporting and a self declaration which is visible to all who

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view the website. In most cases the corporates associate with NGO's and allot the work to them. According to an Economic Times investigation, a few companies in India have resolved to a cheating. They give donations to charitable foundations , these charitable institution then return the money to the company after deducting a commission. CSR in India originated from family-led traditions of philanthropy. This built the reputation of a company. With the compulsory statutory obligation this tradition has turned into a legal obligation. Companies that were giving more than 2% have scaled back their charitable spend.

One of the challenges for the corporate sector is finding credible partners and good projects that they can support. So what's happening is that the bigger charities that are more well known are being flooded with money. Compounding the problem is that smaller charities often lack the capacity to cope with companies' bureaucratic and operational demands.

Companies project their marketing results, Human Resource results, Financial results every three months. However companies are not willing to project CSR results for the financial year across the public space. Companies do not disclose how much they spent in terms of Indian rupee and what results they achieved. Companies claim they have been indulging in CSR activities for ages but the reality is such activities are occasional. A common tern used is companies are doing a 'project'. Like any research project companies are not able to tell '*What the project is all about?*'. *When did it start? When did it end? How much money was allocated for the project? What were the results of the pilot survey? What was the documentation? Who was monitoring the project? How was the project evaluated and accessed?'* Companies will never disclose who is in the company is accountable for the project.[xiii] Companies usually hire a POP or the *'Percentage of Profit'* man to indulge in CSR activities. CSR in any form is not linked with the developmental agenda of the nation. The people selected for CSR must be the poor, downtrodden, marginalized. Companies do not maintain CASR accounts. There are no balance sheets.

**Is CSR Successful India ?**

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

  

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spending leads to brand building and employee engagement. In that case, firms would have carried out these activities with or without the law.

Even if we take the CSR expenditure at face value and assume these are valid numbers, there are still major problems with the CSR law. A required expenditure that does not lead to higher profits is essentially a tax. The CSR law can be viewed as a 2% tax, albeit spent by the firms rather than given to the government. This is a back-door way to increase corporate taxes without a transparent political debate. The corporate tax rate in India is 34.61% already one of the highest, compared to a global average of 24.09%, according to KPMG, an audit and consulting company. Given the emphasis on liberalization and economic growth, it is unlikely that the Indian polity desires an increase in the corporate tax rate. This certainly will not help to make Indian firms more globally competitive nor attract more foreign investment into India.

Even to the extent that there has been a real increase in socially beneficial activities, the spending has not gone to democratically determined priorities, but rather to whatever the companies prefer to emphasize. Of the nine different schedules prescribed by The Companies Act, two schedules: combating various diseases and promotion of education accounted for 44% of the total CSR expenditure, while reducing child mortality received no funding and eradicating extreme hunger and poverty received only 6% of the total CSR expenditure. Given that about 50% of children in India are malnourished due to pervasive poverty, it is unlikely that the above allocation of resources reflects the democratic will of the Indian people. It is the government's responsibility to determine high-priority needs of society and target public expenditure in these areas. With the CSR law, the government has abdicated one of its primary functions.

There is also an issue of geographic equity. Five states: Maharashtra, Gujarat, Andhra Pradesh, Rajasthan and Tamil Nadu account for well over one-quarter of all CSR spending. Towards the bottom of the list are Nagaland, Mizoram, Tripura, Sikkim and Meghalaya all from the North East. This, of course, reflects the inclinations, interests, and priorities of the business sector. But, it is the responsibility of the government to help achieve a more egalitarian society.[xiv]

Indian companies spent Rs9,309 crore on CSR projects in 2015-16, which was Rs163 crore more than the amount required by law, and Rs703 crore more than the previous year. 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

  

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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.

**Conclusion**

CSR is fundamentally an inspirational exercise, and it is very difficult to legislate aspirations. Laws only set minimum standards, but do not create an impetus for positive action. For example, it would be difficult to require that companies build "excellent" schools; the legal requirement can be met merely by spending money on education. The law lists only a few genres of CSR activities: "eradicating extreme hunger and poverty", "promotion of education", and "social business projects". This is too vague to work as a legal definition. It is not surprising that the law does not even discuss, let alone define, an enforcement mechanism or penalties for non-compliance.[xv] Accountability and third party evaluation of CSR activities can do wonders for India.

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[i] *Case against Coca-Cola Kerala State: India* available at http://www.righttowater.info/rights-in-practice/legal-approach-case-studies/case-against-coca-cola-kerala-state-india/accessed on 12/6/2018

[ii] It's time for Indian companies to act more ethically https://www.theguardian.com/global-development/poverty- matters/2011/feb/01/india-companies-corporate-social-responsibility

[iii] S. Agarwal, *Corproate Social Responsibility in India*, Sage publications,

due to infections from unhealthy living practices, millions of children die every year before reaching the age of

[iv] The social message of importance of cleanliness and a healthy lifestyle are highlighted in this advertisement. In the advertisement, a man is walking on his hands, followed by his son Muthu. Slowly, they are accompanied by a big mob. The man, after walking for miles finally reaches a temple only to thank god and priest as his son has turned 5. There are no children in the village who have lived till the age of five. Visit Muthu and his village by clicking below

[v] See Section 135 (5) Companies Act, 2013

[vi] See Rule 2(f) of the Companies (Corporate Social Responsibility Policy) Rules, 2014

[vii] Section 450, Companies Act 2013 (also attaching liability to other persons who are in default). Although it is not clear who is to enforce Section 135 from its wording, one can assume that it is the Ministry of Corporate Affairs. Note that if the violation is repeated within a 3 year period the fine can be doubled – Section 451, Companies Act 2013

[viii] https://www.futurescape.in/insights/responsible-business-rankings/

[ix] See Rule 4 Companies (Corporate Social Responsibility Policy) Rules, 2014

[x] The activities are mentioned in the Schedule VII of the Companies Act, 2013

[xi]https://www.pwc.in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-

  

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[xiii] N.Mitra, R. Schmidpeter, *The Genesis of CSR Mandate in India: Demystifying the Chatterjee Model* , Bhaskar Chatarjee and Nayan Mitra pp. 11-14 *Corporate Social Responsibility in India Cases and Developments after the Legal Mandate*, Springer International Publishing, Switzerland, 2017

[xiv] Indian law requires companies to give 2% of profits to charity. Is it working?https://www.theguardian.com/sustainable-business/2016/apr/05/india-csr-law-requires-companies- profits-to-charity-is-it-working

[xv] Why the CSR law is not a success AneelKArnanihttps://www.livemint.com/Opinion/1wIQwFPRyRckBMg5IugW1K/Why-the-CSR-law-is-not-a- success.html