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ANALYTICAL STUDY ON CORPORATE SOCIAL RESPONSIBILITY (CSR) & LEGAL IMPLICATIONS

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ABSTRACT

Definition, characteristics, key drivers, strategies, advantages and disadvantages principles and legal framework of CSR along with legal framework, Companies Act, Corporate social responsibility committee, voluntary guidelines, policy rules and current scenario have been discussed in this paper.

Keywords: Corporate Social Responsibility, Companies Act (2013) & Amendment (2021), Legal implications, CSR mechanism

1. INTRODUCTION

Corporate social responsibility refers to ethical obligation of businesses to contribute positively to society and environment beyond their profit-driven motives. This concept is most important provisions as given in Section-135 of Companies Act (2013) read with Corporate Social Responsibility Policy Rules (2014). In India, it mandates companies with specific net worth or turnover to annually spend at least two per cent of their average net profits of the last three financial years on CSR. The law reflects our country's commitment to operate in manner that is economically, socially and environmentally sustainable. It involves taking into account the impact of actions of a company on its various stakeholders viz., its employees, customers, community and the environment. Its goal is to go beyond financial success and contribute positively to society and environment. Aforesaid section of Companies Act mandates constitution of Corporate Social Responsibility Committee (CSRC) of the Board, its obligations and contribution that must be made by the specified entities towards its CSR policy.¹

¹ Available at: <https://blog.ipleaders.in/csr-laws-india/>

ISO 26000 defines CSR as responsibilities of organization for impacts of its decision and activities on society and environment, through transparency and ethical behaviour that contribute to sustainable development including health and welfare of society. This definition correlates CSR with the social and environmental dimensions of sustainable development.

Characteristics of CSR are kind of positive responsibility of relations; takes concerns with non-shareholding interests as concern party of obligations; as integration of legal and moral obligation of corporate and amendment / compliment to conventional principle of exploited profits for shareholders.

Key drives of CSR are core value systems by which corporate feel responsible not only for wealth creation but also for social and environmental good; considered as top strategic development of corporate and public pressure from customers media states pressure groups pressing corporation to be more socially responsible.

CSR as strategy is becoming more and more important for businesses today. Consumers and Society at large has increased expectations from the companies whose product they buy in light of recent corporate scandals which has reduced public trust in corporations. Affluent consumers can afford to pick and choose the products they buy. Society in need of work and investment is less likely to enforce strict regulations and penalize organization that might take their business & money elsewhere. Growing influence of the media brought immediately to the attention of the public if it sees any mistakes by corporations and this is further ignited by Internet which fuels communication among likeminded groups and consumers- empowering them to spread their message, while giving those means to coordinate collective action of product boycott. CSR constitutes the aspects like human rights, labor welfare, consumer protection to local communities, environment protection, respect for national sovereignty etc.

2. CSR: ADVANTAGES AND DISADVANTAGES

- i. Advantages: Consumers become more aware about environment and social issues; the communities becomes aware of fact that corporations are also responsible for development of community and stakeholders also exerts pressure on corporations through socially responsible investment; laws and regulations framed prevent corporations in damaging or harming social good that includes people and environment; large corporations recognizing need of corporate- social action in the wake of consumer

movements and demands of civil society by which socially responsible companies enjoy enhanced brand image and reputation; stakeholders bear costs of corporate social action; organization that adopt corporate social responsibility principles gets more transparent with less risk of bribery and corruption etc.

- ii. Disadvantages: Incurs heavy cost (*e.g.* purchase of environment friendly equipment / strict quality control implementation); lack of seriousness (due to want of skills, knowledge and attitude required for planning CSR approaches, implementation and evaluation); mismatch of the roles and expectations between the organization and society etc.²

3. PRINCIPLES OF CSR

Basic idea of corporate social responsibility is that business and society are interlinked rather than the distinct entities. There are three basic principles *viz.*, Legitimacy, Public responsibility and Managerial discretion. Legitimacy is society allowing power to energy to business for proper utilization. Public-responsibility infers business is in charge of results identified with its regions of association with society. Managerial discretion refers to supervisors as good performers who are obliged to exercise such discretion as is accessible to them to accomplish socially capable results.³

4. LEGAL FRAMEWORK

CSR is primarily seen as voluntary commitment; these can arise from sources like national laws, international regulations and emerging soft laws. UN Human Rights Council (2011) outlines responsibilities of businesses in respecting human rights. They are not legally binding however have influenced national laws and corporate policies worldwide. OECD guidelines for multinational enterprises provide recommendations on responsible business conduct. They are also not legally binding but are endorsed by governments and serve as reference point for businesses to align their operations with international standards.

² Kundu, B. (2018). Empirical study of corporate social responsibility practices in India. PhD thesis submitted to Dayalbagh educational institute, Agra.

³ Wood D. J. (1991). Social issues in management: theory and research in corporate social performance. *J. of Management* 17(2), Pp. 383-406.

5. INDIAN COMPANIES ACT (2013)

The Act mandates companies to spend at least 2 per cent of their average net profits over three years on CSR activities. Rigid environmental and labor laws that indirectly enforce CSR by holding companies accountable for environmental degradation, workplace safety and fair labor practices; failure to comply can lead to legal actions, fines and reputational damage. Soft laws and voluntary standards comprises of ISO 26000 and GRI. Former is voluntary international standard that provides guidelines for social responsibility which is not certification but tool for companies to integrate CSR into their operations. Global Reporting Initiative (GRI) standards are widely used by companies to report on their environmental, social and governance (ESG) performance. Adherence to these standards is voluntary. They are increasingly being used by investors and regulators to assess corporate performance.

With enactment of Company Act (2013) made compulsory for each and every company that fulfills certain specified conditions to frame CSR policy and create social responsibility committee and also have to spend 2 per cent of their profits on CSR. These provisions set a path for uniform pattern of spending in field of CSR because now corporations have to form uniform and compulsory policy regarding the CSR.

6. CORPORATE SOCIAL RESPONSIBILITY COMMITTEE (CSRC)

Sub-section 1 of Section-135 states that every company that has net worth equal to or more than Rs. 500 crore or turnover equal to or more than Rs. 1000 crore or net profit equal to or more than Rs. 5 crore during any financial year is required to constitute CSR Committee Board which shall consist of three or more directors, amongst whom at least one director should be an independent director. Board must disclose composition of such committee under its report to be laid before company in its general meeting as mandated by Section-134(3). Section-35(3) specifies to formulate and recommend CSRC policy for the activities which are to be undertaken by company as specified in Schedule VII of the Act, endorse expenditure amount to be spent on these activities and monitor the policy from time to time. Recommendations of committee have to be approved by Board, disclose policy contents in its report and placed on the company's website. If the company fails in spending such amount towards CSR activities as laid down in its policy, the Board has to specify the reasons in its report as mentioned u/s 134(3)(o).

Activities of CSRC motivates companies to fund socially, economically and environmentally by engaging in acts such as engaging local community members; developing cordial relationship with employees and consumers; engaging in activities for sustainable protection of environment through chain of sustainable manufacturing practices therein; paying fair wages to workers engaged; supporting reforms in social justice policy; innovating its products to solve environmental or social issue, if any; task to reduce carbon footprint and contributing appreciable profits to any charitable cause.

7. CSR VOLUNTARY GUIDELINES (2009)

The voluntary guidelines were issued by Ministry of Corporate Affairs as fundamental principal wherein, each business entity should formulate CSR policy to guide its strategic planning and provide road map for its CSR initiatives which should be integral part of overall business policy and aligned with business goals; policy should be framed with participation of various level executives and should be approved by the Board; and policy should cover issues such as care for all stakeholders ethical functioning respect for worker's right human rights and their environment and activities to promote social and inclusive development.

8. CSR POLICY RULES (2014)

Rule-2(c) states that corporate social responsibility not limited to projects related to activities, areas or subjects specified in Schedule-VII of the Act OR programmes related to activities undertaken by company's board of directors pursuant to recommendations of committee of Board as per the company's declared CSR Policy subject to condition that such policy will include activities, areas or subjects specified in Schedule VII of the Act.

Rule-3 states that every company inclusive of its holding or subsidiary and foreign company defined u/s 2(42) of Companies Act (2013) having its branch office or project office in India that fulfills criteria specified in Section 135(1) of the Act has also to comply these rules. Provision under this rule states that net worth, turnover or net profit of foreign company as stated shall be in accordance with balance sheet and profit and loss account of such company prepared according to Section-381(1)(a) and Section-198 of the Act.

9. CSR POLICY AMENDMENT RULES (2021)

In order to determine effectiveness and results of CSR initiatives, Ministry of Corporate Affairs (MCA) has notified Companies (CSR Policy) Amendment Rules of 2021. It requires specified companies to undertake impact assessment through independent agency. Rule-5 of this Amendment says that CSR Committee has to schedule annual action plan to Board that should include approved list of CSR programmes to be undertaken in areas specified in Schedule VII of the Act; manner of execution of the programmes; mandates funding for the implementation of the programmes; monitoring-reporting mechanism for programmes and furnishing details of need and impact assessment for the programmes. Annual action plan can be altered at any time during the financial year however, reasonable justification must be provided while altering annual action plan.

10. CURRENT SCENARIO OF CSR

After opening up of Indian economy in 1990, corporate houses were exposed to threat of external competitors. Global competitors had deep pockets and were able to pay high. Thus concern of employee's satisfaction and happiness increased among Indian corporate houses. Their CSR activities were more concentrated towards creation employable population in society and retaining them from switching to other competing companies. After that the phase came in which CSR activities in Indian scenario were directed towards creation of market for goods and services that were delivered to the society as a whole. Indian industry then started competing in developed markets of Europe and America which posed implication for them to comply with entry level norms like certification for responsible corporate practices like ISO 14000, SA8000, AA100 as well as compliance codes formulated by OECD and UN global compact. They had to adapt new corporate social responsibility standards. CSR activities today also are used to build and maintain brand image of the corporate and invariably used across by Indian corporate today.

Corporate giants are deep pocketed groups and own huge market share in industry they exist, e.g. TATA seems to be highest contributor to CSR activities. Tata consultancy services (TCS) has set up fully equipped computer training laboratory for welfare of physically handicapped children in Pune for imparting basic computer knowledge. Tata chemicals set up Tata chemicals society for rural development in 1980 to promote social uplift projects for communities in Mithapur (Gujarat), Babrala (MP) and Haldia (WB). ITC have made farmer

development vital part of its business strategy and made major efforts to improve the livelihood standards of rural communities. In 2008, Coca-cola, India was awarded golden peacock award for corporate social responsibility for several community initiatives, it had taken and its efforts towards for conservation of water. Infosys support activities to institutes and non- government organizations dedicated to healthcare and education and campaigns for skill development and community welfare.

Globalization of Indian economy has led to paradigm shift in the way corporate social responsibilities were performed in India. It has drifted away from the domain of state owned public sector giants to players of private sector. The way companies used to look at CSR activities has also changed from charitable activity to more professional activity and activity has become more of responsibility and compulsion to corporate from all perspective of their existence. Indian CSR activities will keep moving towards more holistic upliftment of Indian society and business of 21st century will have no choice but to implement CSR. Appropriate authorities and organization needs to take necessary steps to make CSR activities contribute to all round development of Indian society.

11. CSR SPENDING IN INDIA IN RECENT YEARS

Data from MCA (2023)⁴ indicates top three developmental sectors receiving CSR funds are education, healthcare and rural development. These sectors have attracted major funds owing to their necessity, possible results on society as well as their alignment with country's SDGs. Analyzing the numbers from 2014-15 till 2020-21, it can be deduced that these sectors together comprised nearly 76.6 per cent of the total CSR expenditure.

Sector	Areas	Funds received (in crores)	Share of Expenditure (%)
Education	Education, livelihood enhancement projects, special education and vocational skills	47,188	37
Health	Health care, poverty, sanitation and Swachh Bharat Kosh	38,012	30
Rural developm.	Rural roads, sanitation, etc.	12,300	9.6
The data is based on the filings made by corporates in the MCA-21 registry			

⁴ Available at: <https://blog.ipleaders.in/csr-laws-india/> Last seen on 3-8-2024.

12. JUDICIAL DECISION

Case law pertaining to Indian Companies Act: Keshub Mahindra & Ors v. State of MP & Anr (2014), case involved discussion around CSR obligations under Companies Act. The law mandates that companies meeting certain criteria must spend at least 2 per cent of their average net profits on CSR activities; failure to comply can lead to penalties, although the law focuses more on ensuring compliance than on penal measures. Case highlighted the enforceability of CSR obligations under Indian law and need for companies to adhere strictly to their statutory CSR responsibilities.

CONCLUSION

In globalization, corporate social responsibility can't be ignored since the social responsibility is an important feature of every business in modern times. Economic criteria alone can't justify the existence of business organizations. CSR is concept that has become dominant in the business reporting. Every corporate has policy concerning social responsibility and produces report annually detailing its activity. It is an integral part of sustainable development. It can be conceived broadly as practice of incorporating stakeholder and shareholder interest in firm decision making with an eye to increasing societal and shareholder value. It is the firms' consideration and response to issues beyond the narrow economic, technical and legal requirements of the firm. In reality, it is alignment of business operations with social values and takes into account the interests of stakeholders in the company's business policies and actions. CSR can be competitive advantage of corporate if it is practiced in efficient manner. Practical implementation of CSR is faced with lot of issues and challenges. CSR is a culture and unwritten contract with the community. This invisible culture can shape brighter future for the nation. It must be made legally compulsory that every company has to discharge certain share of CSR.

Companies should collaborate with the people on the grassroots level- those who are supposed to receive their CSR aid. This will help them realize what people actually need and what their actual problems are and accordingly plan their CSR aid to help a number of people with greater efficiency. In fact, the companies must also compulsorily collaborate with non- government institutions that have acted in a particular field for at least three years. This will help them utilize their fiscal resources better as dedicated NGOs will guide them in effectively implementing their aid programmes.