



CORPORATE SOCIAL RESPONSIBILITY IN INDIA- LEGAL PERSPECTIVE

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ABSTRACT:

The Concept of Social Responsibility is not new to Indian Society. It is observed over the years Corporations in India has increasingly played a vital role in the Socio-economic development of the country, through their innovative and responsible business practices, as well as conscientious CSR initiatives.

This dynamic has given enormous reach, scale and impact to business and their operations-across geographies, cultures and ethnicities. Thus, corporations in India have today evolved as a major player in nation building. Keeping this progression in mind The Companies Act 1956 has been radically overhauled in the form of the New Companies Act 2013 effective from 1 April 2014.

In 2013 India has become first country in the world to make spending under CSR mandatory by law. This legislation has thus created an important opportunity to mobilize resources and build mechanisms to promote inclusive development in the country. This paper aims to examine the CSR legislation along with its legislative changes which is creating a great impact on the corporations and on the society as well.

Key words: - CSR, corporations, responsibility, mandatory, development.

INTRODUCTION :

“Earn your crores but understand that your wealth is not yours, it belongs to society. Take what you require for your legitimate needs and use the remainder for society”.

—Mohandas Karamchand Gandhi.

Ancient Indian wisdom teaches us that our first responsibility is towards society, second towards our family and third to ourselves. Social responsibility ought to be the moral obligation of every citizen. Business depends on the society for existence, sustenance and development. Every decision the businessman takes and every action he contemplates have social implications. CSR represents goodwill creator of the corporates of the present generation. Business requires a stable social environment that provides a favourable climate to trade and for investments. CSR is the means by which a business gets the strength to compete liberalization, privatization and globalization by establishing and maintaining a corporate

agenda which recognizes social priorities and is tailored to meet them. The phase of globalization has come up with a lot of possibilities, CSR is one of them. As a consequence of Globalization and increased competition with MNC's, Indian Companies have shifted from personal interest to the social and environmental interest.

Historical Background of Corporate Social Responsibility

The Concept of Social Responsibility is not new to Indian Society. It is observed over the years Corporations in India has increasingly played a vital role in the Socio-economic development of the country, through their innovative and responsible business practices, as well as conscientious CSR initiatives. Religion, philosophy and history have an influence over how CSR gets articulated within a cultural context. The Bhagavad Gita lays utmost emphasis on “Loksamagrah” which means keeping human beings or the world together, The ancient scriptures like Vedas, Upanishads

preach the virtues of sacrifice and co-existence. In Vedic mythology, business has been seen as legitimate, integral part of society that emphasizes work for an economic structure based on contention of “Sarvalokahitam” which means “well-being of all stakeholders”. The references are also available from Arthashashtra saying “Prajasukhesukham” the concept of “sheshhadharma” which means the ‘better off’ one is in society, the higher should be ones sense of responsibility. By sharing a part of their wealth with the wider society by way of setting examples for a religious cause or helping in phases of famine and epidemics and thus securing an integral position in the society.

In India, the industrialization and independence struggle went on side by side. Consequently, the idea of CSR worked with freedom movement, which was mostly dominated by Gandhian philosophy. The Philanthropic activities were taken out of personal savings, which did not constitute an integral part of the business. In the modern context the term CSR gained in the early 1970’s whereas by 1990’s the concept was fully recognised. Individuals and organizations across the globe started supporting it.

Business has today, emerged as one of the most powerful institutions on the earth and in the current scheme of things, business enterprises are no longer expected to play their traditional role of mere profit-making enterprises. Business does not operate in isolation and there is today, an increased realization that not only can companies affect society at large, but they are also in a unique position to influence society and make a positive impact.

The beginning of Industrialization Phase

The most significant shift that happened at the turn of the 19th century was that the religious underpinnings of charity work, often restricted to members of the same caste, was expanded to include other members of the society in a more

secular manner. They set up educational institutions, orphanages, hospitals, and patronized libraries, art galleries and the like. Due to their active interest in social and religious reforms, many of the business leaders of this period were also revered as social leaders (Mohan 2001).

Gandhi philosophy of trusteeship is similar to CSR of modern world, companies like Tata and Birla have been imbibing the cause for social good in their operations for decades long before CSR become popular cause. The avid interest in community welfare among the Tata group dates back to the 1860s when the company was founded by Jamshed Ji Tata. Dr.Kurien’s Amul-led operation Flood had pioneered inclusive growth through work with dairy farmers at grass root level, changing lives , enhancing income , empowering women and at the same time reaping benefits to the business. At Indian oil, corporate social responsibility has been the cornerstone of success right from the inception in the year 1964. The Corporations objective in this key performance area enshrined in its mission statement, “ to help enrich the quality of life of the community and preserves ecological balance and heritage through strong environmental conscience .”Before corporate social responsibility found a place in corporate lexicon, it was already textured into the Birla groups value system. As early as in 1940s, the founder G.D. Birla espoused the trusteeship concept of management.

The ‘Modern’ Form of Corporate Responsibility

The 1980s gradually saw the rise of Indian business houses as players in the global market, with large and diversified businesses. This led to higher expectations from the corporations to contribute to social agendas, and they usually obliged (Sundar2000). 1980s also saw the rise of organized grassroots NGOs coming out in support of various social and environmental

causes, opposing corporations and even government projects. The mass (continuing) opposition against the Narmada Dam Project is a case in point, which critics fear will displace 200 thousand of people in the Narmada River valley (Dreze et al. 1997) . Gradually, environmental concerns joined the social development agenda, culminating in the establishment of The Ministry of Environment and Forests in the wake of the Bhopal disaster in 1984. The Environmental Protection Act was enacted in 1986, followed by a number of related environmental regulations (Divan and Rosencranz 2001) . Next the 1980s also saw the dramatic enlargement of the Indian business community. Traditional business families such as Tata, Birla, Bajaj were joined by up-and-coming family conglomerates (e.g. The Reliance Group, Ranbaxy, TVS) and professionally managed companies (Hindustan Lever, Indian Tobacco Company) alike. This growth led to a surge of employment in the private sector, and companies adopted various employee development schemes in order to retain talent (Sundar 2000) . The Indian home market finally opened up to the world economy in 1991, ushering in vast economic reforms (Chong 2002) and integrating into the global value chains. This liberalization also saw the government officially including sustainable development on the growth agenda (Sawhney 2004) . Greater levels of privatization thus resulted in increased foreign trade, and the meeting of international labour, operations and environmental standards. CSR in India thus essentially has been practiced as corporate philanthropy over the years.

Corporations in India have today evolved as a major player in nation building. Keeping this progression in mind The Companies Act 1956 has been radically overhauled in the form of the New Companies Act 2013 effective from 1 April 2014. In 2013 India has become first country in

the world to make spending under CSR mandatory by law. This legislation has thus created an important opportunity to mobilize resources and build mechanisms to promote inclusive development in the country.

Legal aspects of CSR as per the Companies Act 2013: CSR u/s 135 of Companies Act 2013:

It is Applicable to all the Companies registered with the Registrar of Companies. The Applicability is with effect from 1st April, 2014. The conditions are the Company should have a profit of Rs. 5 Crores or more or a net worth of Rs. 500 Crores or more, or turnover of Rs. 1000 Crores or more in the current financial year. The scope of this section 135 extends to cover all companies percentage to spend is 2% of the average profits of the preceding three financial years.

Prior to that, the CSR clause was voluntary for companies, though it was mandatory to disclose their CSR spending to shareholders. CSR includes but is not limited to the following: Projects related to activities specified in the Companies Act; or Projects related to activities taken by the company board as recommended by the CSR Committee, provided those activities cover items listed in the Companies Act.

Businesses must note that the expenses towards CSR are not eligible for deduction in the computation of taxable income. However, the government is considering a re-evaluation of this provision, as well as other CSR provisions recently introduced under The Companies (Amendment) Act, 2019 (“the Act”).

Transfer and Use of Unspent Amount. The specified funds for transfer of unspent amount are: A contribution made to the prime minister’s national relief fund. Any other fund is initiated by the central government concerning socio-economic development, relief and welfare of the scheduled caste, minorities, tribes, women and

other backward classes. A contribution made to an incubator is funded either by the central government, the state government, public sector undertaking of the state or central government, or any other agency. Contributions made to: Public-funded universities, National Laboratories and Autonomous Bodies (established under the auspices of the Indian Council of Agricultural Research (ICAR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Indian Institute of Technology (IITs),

In case of the unspent amount relating to an ongoing project under the company's CSR policy, the amount shall be transferred by the firm in less than 30 days from the end of the financial year to an exclusive account to be opened by a firm in any scheduled bank. The account shall be designated as 'Unspent Corporate Social Responsibility Account', and the funds shall be used towards its obligations under the CSR policy within a period of three financial years from the date of the transfer. In a case where the company fails to utilise the funds at the end of the three financial years, the funds should be transferred to the specified fund mentioned above within a period of thirty days upon completion of the third financial year.

CSR Committee Applicability

- Every company to which CSR criteria are applicable shall constitute a Corporate Social Responsibility (CSR) Committee.
- The CSR Committee should consist of 3 or more directors, out of which at least 1 director must be an independent director.
- An unlisted public company or a private company shall have its CSR Committee without any independent director if an independent director is not required.
- A private company having only two directors on its Board shall constitute its CSR Committee with two directors.

- In the case of a foreign company, the CSR Committee shall comprise of at least 2 persons of which one person shall be a person resident in India authorized to accept on behalf of the foreign company – the services of notices and other documents. Also, the other person shall be nominated by the foreign company.

- A company having any amount in its Unspent Corporate Social Responsibility Account shall constitute a CSR Committee and comply with the CSR provisions.

Duties of the CSR Committee

- The CSR Committee shall formulate and recommend a CSR policy to the Board. CSR policy shall point out the activities to be undertaken by the company as enumerated in Schedule VII.
- CSR Committee shall recommend the amount of expenditure to be incurred on the CSR activities to be undertaken by the company.
- CSR Committee shall monitor the CSR policy of the Company from time to time.
- The committee shall establish a transparent controlling mechanism for the implementation of the CSR projects or programs or activities undertaken by the company.

CSR Reporting-

With respect to CSR Reporting, the provisions are as follows :The Board's Report referring to any financial year initiating on or after the 1st day of April 2014 shall include an annual report on CSR. In the case of a foreign company, the balance sheet filed shall contain an Annexure regarding a report on CSR. The Act will significantly affect corporate compliances and litigation in India. Companies operating in the country or planning to set up should pay close attention to the changes to understand legal implications as well as to ensure the smooth running of their business in India. Below, are some of the key provisions of the Act.

Role of board of directors- After considering the recommendations made by the CSR

Committee, approve the CSR policy for the Company. The Board must ensure only those activities must be undertaken which are mentioned in the policy. The Board of Directors shall make sure that the company spends in every financial year, a minimum of 2% of the average net profits made during the 3 immediately preceding financial years as per CSR policy. In case a company has not completed 3 financial years since its incorporation, the average net profits shall be calculated for the financial years since its incorporation.

The Board's Report shall disclose: CSR Committee's composition, The contents of CSR Policy

In case CSR spending does not meet 2% as per CSR Policy, the reasons for the unspent amount, and details of the transfer of unspent amount relating to an ongoing project to a specified fund (transfer within a period of six months from the expiry of the financial year

CSR Policy

CSR Policy elaborates the activities to be undertaken by the Company as named in Schedule VII to the Act and spend. The activities should not be the same which are done by the company in its normal course of business. Contents of CSR Policy should be placed on the company's website by the Board. The activities mentioned in the policy must be undertaken by the company. The Company can join hands with other companies for undertaking projects or programs or CSR activities and report separately on such programs or projects. The CSR policy shall monitor the projects or programs.

Fine and Penalties for non-compliance-

In case a company fails to comply with the provisions relating to CSR spending, transferring and utilising the unspent amount, the company will be punishable with a minimum fine of Rs 50,000 which may increase to Rs 25 lakh. Further, every officer of such

company who defaults in the compliance will be liable for a punishment which is imprisonment for a term which may extend to three years or with a minimum fine of Rs 50,000 which may increase to Rs 5 lakh, or with both.

List of Permitted Activities To Be Included in Accordance With Schedule VII of the Companies Act, 2013

The Board shall ensure that the activities included by a company in its CSR Policy fall within the purview of the activities included in schedule VII. Some activities are specified in Schedule VII as the activities which may be included by companies in their Corporate Social Responsibility Policies. These activities are related to:



CONCLUSION :

We live in a dynamic world which is growing more and more complex. The factors like global-scale environment, social, cultural and economic issues can now be considered as part of our everyday life. This dynamic has given enormous reach, scale and impact to business and their operations-across geographies, cultures and ethnicities. Also, boosting profits is no longer the sole business performance indicator for the corporate and they have to play the role of responsible corporate citizens as they owe a duty towards society. The concept of Corporate Social Responsibility (CSR), introduced through Companies Act, 2013 puts a greater responsibility on companies in India to set out a clear CSR framework. Many corporate

houses like TATA and Birla have been engaged in doing CSR voluntarily. The Act introduces the culture of corporate social responsibility (CSR) in Indian corporate requiring companies to formulate a CSR policy and spend on social upliftment activities. CSR is all about corporate giving back to society. The Company Secretaries are expected to be known about the legal and technical requirements with respect to CSR in order to guide the management and Board.

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