

# Corporate Social Responsibility- Contours and Issues

## Abstract

The concept of Corporate Social Responsibility (CSR) was not a new one rather the advance version of the earlier concept of social responsibility of business, based on the foundation of paternalistic and philanthropic approach to improve the quality of life of not only the employees but also the common public in the vicinity areas of the industries. However, with the emergence of the concept of Corporate Social Responsibility at the beginning considered as a voluntary response of the corporate towards their accountability to the society, gradually shaped to be a compulsory requirement on the part of the corporates. The same is reflected, with the amendment made in the Companies Act in the year 2013. With the amendment in the Companies Act, CSR got a statutory shape with required guidelines for successful implementation to derive positive result and got a multi-disciplinary status in the management. The present paper focused on the genesis to the level of implementation and interpretation by both Central and State Governments.

**Keywords:** CSR, Social Welfare, Community Insensitivities, Corporate Citizenship, Corporate Policy.

## Introduction

### Meaning and Genesis

Corporate Social Responsibility is defined as operating a business that meets or exceeds the ethical, legal, commercial and public expectations that society has of business. It arises out of Corporate Citizenship philosophy that which centers round values like altruism, empathy, social justice and socialism (Murthy & Patro: 1977). It has traversed through phases of philanthropy, ethics, legal prescriptions, economic considerations to stakeholder interests. Robert Owen's New Lanark Experiment in Great Britain in early 19<sup>th</sup> century can be cited as the first example of the employers' paternalistic and philanthropic approach to improve the quality of life of the employees as well as of the neighbouring communities (Ling: 1965).

The famous observation of Jamshetji Nusserwanji Tata (1867) that "In a free enterprise the community is not just another stakeholder in the business but in fact the very existence of it"; can be acclaimed as the first example of social responsibility of business in India as an ethical practice. Mahatma Gandhi's imploration of employer as a trustee of the wealth to be spent on the society whose resources are utilized by the industry is also an example of ethical moorings of social responsibility of business. He observed that "Supposing I have come by a fair amount of wealth- either by way of legacy, or by means of trade and industry- I must know that all that wealth does not belong to me, what belongs to me is the right to an honourable livelihood, no better than that enjoyed by millions of others. The rest of my wealth belongs to the community and must be used for the welfare of the community."

In its current form of legal prescriptions, the Corporate Social Responsibility (CSR), the new nomenclature substituting the erstwhile Social Responsibility of Business (Bowen: 1953, Drucker: 1954, and Selekman: 1959), is gaining strategic importance as an important aspect of corporate governance that could be an image and brand building exercise essential for the very existence and survival of the company in a highly competitive and sensitive market scenario (Balachandran, V & Chandrasekaran, V :2008).

### Logic behind CSR

Industry and corporate houses use resources allocated by the society to pursue socially approved goals. Therefore, they have a responsibility to pay back not only in terms of products, services and earnings; but also in terms of social welfare and community development.

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There is evidence of industry disturbing social equilibrium, polluting the environment and depleting natural resources and above all displacing many from their habitat. As a good and affluent neighbor, it has the responsibility towards its immediate community (Dauite: 1964 and the Calcutta Study Group on Social Responsibility of Business: 1969)

Social welfare is a Government responsibility. But the services of industry and corporate houses can be used as carters of welfare to the communities. The Tax sops extended by the Government can be route for compensating the social costs.

CSR models cut across multi-disciplinary domains such as politico-legal policy prescriptions, developmental economics, socio-cultural theories, business ethics perspectives, human rights and strategic management dimensions.

A synergy of all these models is assuming importance for the precise reason that, CSR is not easily becoming viable. Its realization is more appreciated in precepts than in praxis. One approach, by domino effect, is raising new issues thereby creating an unsolved puzzle between reality and rhetoric.

#### **The Legal Provisions Governing CSR**

The Companies Act, 2013 ('2013 Act'), enacted on 29 August 2013 on accord of Hon'ble President's assent, *inter alia* has made provision for CSR. Clause 135 of this Act, 2013 (the "CSR Clause") requires targeted companies to spend a prescribed formula-based amount on CSR for the applicable fiscal year, report on these activities, or explain why they failed to spend, in the annual board report.

Specifically, the CSR Clause applies to any company, during any fiscal year, with

1. A net worth of rupees 500 crore or more; or
2. A turnover of rupees 1,000 crore or more; or
3. A net profit of rupees 5 crore or more.

For the purpose of deciding the CSR spending eligibility of a company, profit from overseas branches and dividend received from other companies in India is being excluded from the net profit criteria.

CSR Rules, made operational from 1<sup>st</sup> April 2014, were notified by Ministry of Corporate Affairs on 27<sup>th</sup> Feb, 2014. The following are prescribed by the rules:

1. That only up to 5% of total CSR fund to be spent on manpower for CSR works in a financial year either for its own manpower or for implementing agencies hired for this purpose.
2. A company can carry out CSR works through a registered trust or society or a separate company.
3. CSR activities shall have to be within India.
4. These rules will apply to foreign companies registered in India.
5. Corporates providing funds directly or indirectly to political parties cannot classify such expenses as CSR spending.

#### **CSR Clause Requirements**

The CSR Clause requires a targeted company

1. To constitute a CSR Committee and make changes within its Board of Directors,

2. To spend on government delineated categories of CSR, and
3. To formulate and publicly disclose an official policy on its CSR activities.
4. While there is no penalty for failing to spend on CSR, there are penalties for failing to report on CSR activities conducted or explain why CSR spending was not carried out.

#### **CSR Committee**

1. The CSR Clause requires companies to form a Corporate Social Responsibility Committee ("CSR committee") within the Board of Directors that will devise, recommend, and monitor CSR activities, and the amounts spent on such activities, to the rest of the Board.
2. The CSR committee must consist of three or more directors, at least one of which must be an "independent director" (defined in Clause 149(6) of the Companies Act). The composition of the CSR committee must be disclosed in the Annual Board Report.

#### **CSR Spending & Government Approved CSR Categories**

1. The company must spend at least two percent of its average net profits made in the preceding three financial years (the "Two Percent Formula") on government approved categories of CSR.
2. The CSR Clause states that companies must give preference to local areas where the company operates.
3. Schedule VII of the Companies Act, 2013 has indicated CSR policy focus areas

#### **CSR Policy Focus Areas**

1. Eradicating extreme hunger and poverty.
2. Promotion of education.
3. Promoting gender equality and empowering women.
4. Reducing child mortality and improving maternal health.
5. Combating HIV, AIDS, malaria and other diseases.
6. Ensuring environmental sustainability.
7. Employment-enhancing vocational skills.
8. Social business projects.
9. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central 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, and
10. Such other matters as may be prescribed.

#### **Activities under CSR Ambit**

1. Livelihood enhancement projects, Rural Development Projects, Promoting preventive health care, Sanitation, Safe drinking water
2. Spending on protection of national heritage, art and culture, Restoration of buildings and sites of historical importance, Works of art and promotion of traditional arts and Handicrafts
3. Setting up public libraries
4. Sports promotion by training rural sports talents, contributing to nationally recognized sports, Paralympic and Olympic sports, funding for technology incubators

5. Protection of nature in form of ensuring ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources, maintaining quality of air, soil, and water
6. Striking social balance by activities meant to reduce inequalities faced by socially and economically backward groups, steps for armed forces veterans, schemes for war widows and their dependents, setting hostels for women and orphans, setting up of old age homes, day care centers for senior citizens
7. Slum Redevelopment or housing for economically weaker sections, Road Safety Awareness, Consumer Protection Services are also included in CSR activities, according to clarifications issued by the Ministry of Corporate Affairs as a sequel to the NDA Government's manifesto.
8. Salaries paid to staff and volunteers for CSR work can be included in CSR cost.

#### Activities not under CSR Ambit

1. One-off events undertaken by India Inc. such as sponsoring marathons, awards, sponsorship of TV programmes, will not qualify as eligible CSR activities.
2. Expenses incurred by India Inc. for fulfilment of any regulation such as Labour Laws, Land acquisition Act would not count as CSR expenditure. (circular issued in June 2014 :Times of India-27<sup>th</sup> June)
3. Even sustainable urban development and urban public transport system are not eligible CSR activities.

#### Punishments for Failure to Comply

1. While a company is not subject to liability for failing to spend on CSR, a company and its officers are subject to liability for not explaining such a failure in the annual report of the Board of Directors.
2. There is currently no guidance as to what constitutes a sufficient or statutorily valid explanation for failure to spend in the board report. In addition, a company and its directors are liable even if they fail to report on CSR activities that actually were conducted.
3. Failure to explain is punishable by a fine on the company of not less than 50,000 rupees and up to 25 lakh rupees.
4. Further, officers who default on the reporting provision could be subject to up to three years in prison and/or fines of not less than 50,000 rupees and as high as 5 lakh rupees.

#### Two Pronged Implementation Mechanism

1. **CSR Baseline, Need & Impact Study.** It is essential to make CSR activities need based, culture specific, and community focused.
2. **CSR Strategy, Execution & Report.** It gains importance in terms of participative and sustainable change leading to development of communities and dissemination of information thereof to various stakeholders and regulators for transparency.
3. Both the above mutually complimentary mechanisms are operational in nature, which are conspicuous by their absence in the law.

4. The Government is now contemplating to form an autonomous body to collect CSR fund, plan its spending patterns by identifying base line and organization specific CSR needs, analyze the impact of CSR activities and monitor the CSR operations on a continuous basis.

#### Implementation Issues

1. Starkly absent from the CSR Clause are any indicators for measuring CSR impact. A targeted company, shall be hyper-conscious that indiscriminately spending the required amount on CSR is not a strategic way to comply with the CSR clause.
2. CSR must be tailored to the company's industry location, supply chains, in addition to customizing the project to Indian cultural nuances and local community needs. To do otherwise can be harmful to intended beneficiaries of CSR projects and disastrous for the company's reputation.

#### Possible Behavioural Responses

There are several behaviours that companies tend to exhibit to merely obey the law (Sanjay K. Agarwal: 2008; C. Gopala Krishnan: 1992; Khan, A.F. and Atkinson, A.:1987)

1. Some companies may make the structural changes to their board to avoid fines.
2. Some may only explain in their board report why they are unable to spend on CSR.
3. Others may allocate an additional portion of their budget to meeting the reporting requirements and/or use the board report as an opportunity to showcase their CSR activities.
4. Many companies are likely to re-categorize current quasi-CSR activities so as to fall within the scope of the new law. This is not altogether contrary to the spirit of the CSR Clause, so long as actual benefits accrue in the forms listed in Schedule VII of 2013 Companies Act.
5. Whether the CSR Clause actually encourages more CSR spending or not, it will certainly force companies to seriously contemplate social responsibility or risk becoming a conspicuous non spender among peers who already invest heavily in it.

#### Critical Analysis

1. Crucially, companies should not view the CSR Clause as an onerous reporting requirement—i.e., a necessary cost of doing business in India. Instead, they should utilize the two percent amount of the CSR Clause as an opportunity to effect positive impact in the communities where they work and in the communities they affect.
2. These concerns are not mutually exclusive to enhancing a company's brand value and market equity through CSR activities. Indeed, some companies feel CSR is simply the right thing to do and already give beyond the tentative requirements of the CSR Clause.
3. However, hazarding ethics and reputational perceptions from the public, Boards of Directors can include explanatory statements in their annual report simply because they do not want to engage in CSR.
4. More appropriately, Board of Directors may feel it is in the company's best interest to spend the money elsewhere. As the Companies Bill does

not provide a definition of what constitutes a valid explanatory statement, such explanations could plausibly contain reasoning that the money was better spent on research and development, information technology, infrastructure, or acquisitions, among many other valid reasons

## Two Cases of Odisha

### Case 1

The Indian Rare Earths Ltd at Matikhil Village near Chatrapur in Ganjam District was seriously affected by the Super Cyclone 'phyllin'. The industry was seriously damaged and almost was crippled. The neighbouring communities which were hitherto already adopted by the company for community development were also directly hit by this cyclone and expected the Company to send immediate help and succour. But, it was not possible on the part of the company to send the relief as its own employees residing in the colony situated on the sea front where the Cyclone directly hit were also distressed. After few months, after the Company recovered from the trauma of the Cyclone wanted to resume its CSR activities, the communities and village groups resisted even the entry of the CSR officials to those villages. Sometimes, it appears that even communities should also realise their Social Responsibilities towards the Industry.

### Case 2

The recent game plan of the Odisha Government to rope in Central Public Sector Organizations located in Odisha to foot the subsidy for its flagship 'ahar' project of providing 5 rupees worth meal to the urban poor was defined not a CSR activity and not allowed by the Central Government to be shown as a CSR spending. The Central Public Sectors withdrew from the project thereby subjecting them to be caught between political forces. The Tata Steel, and other State owned public sectors however came forward to fund the project. It is to be seen whether they can show their spending on 'ahar' project as CSR activity. Thus, companies are caught in a dilemma of Corporate Political Responsibility *Vis a Vis* Social responsibility.

### Conclusion

CSR is not a new strategy. In its new format it looks more dressed by the law than by the corporate

imperatives. Anything made mandatory under the law has not yielded the desired result. Compliant behaviour is only self-serving. If the corporate houses have realised it as important requirement for doing business with the help of and for the communities, they can provide better provisions than what is prescribed under law or rules thereof. But, they shall be given the freedom to do it. Government intervention and community insensitivities may defeat the very purpose of CSR. The two brief cases only exemplify this point.

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