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Abstract

The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc from the society. By performing the task of CSR activities, the companies are giving something back to the society. Section 135 of the Companies Act 2013 provides legislative provision of CSR. Further as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies, but also applicable to branch and project offices of a foreign company operating in India. The activities that can be done by the company to achieve its CSR obligations include eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired, immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the Prime Minister's National Relief Fund 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 and such other matters as may be prescribed. Under the Companies Act 2013, Companies having duty of CSR should give preference to local areas where the company operates. Company may also choose to associate with 2 or more companies for fulfilling the CSR activities provided that they

are able to report individually. This paper tries to identify the concept of CSR and explores the different categories of acts which can be initiated under CSR.

Introduction

August 29, 2013 was a red-letter day in the field of Indian corporate Law when the Companies Act 2013 was enacted with the aim of improving and simplifying corporate governance norms and legislate the role of whistle-blowers. One of the revolutionary provisions is that of mandating Corporate Social Responsibility (CSR) activities in India. The vision behind this move is this that a Corporation must not only achieve its economic goal but also adopt the principles of corporate social responsibility. Section 135 in the Act states that every company with the prescribed net worth or turnover must necessarily constitute a CSR Committee, with clearly defined composition ,activities to be undertaken ,budgets and responsibilities of the Committee, so formed. This would ensure that right steps are taken by companies in pursuance of the CSR provisions of the Act.

However, complying with this law may not seem to be an easy task due to some grey areas in the provision and its Rules which require clarifications because the fundamental argument arises as to how can the Companies act on behalf of the Government to uphold the spirit of the provision. Due to this, the Corporations in India have a mixed opinion about this move by the Centre. For example, some of the issues that have been brought to the fore are regarding the restrictive scope of activities mentioned under Schedule VII which will lead to the polarization of CSR resources.

Concept of Corporate Social Responsibility (CSR)

There exists no universal definition of CSR. But every definition that exists now corroborates the impact that businesses have on society at large as well as on the individuals. The idea of CSR was originally based on philanthropic views like charity, donations etc. but with the changing times, the concept of CSR has undergone various changes and has evolved and broadened to include various aspects of business thus interlinking with the society. Beyond making profits, companies are responsible for the totality of their impact on people and the planet.¹“People” constitute the company’s stakeholders: its employees, customers, business partners, investors, suppliers and

¹ Sir Geoffrey Chandler, *‘Defining Corporate Social Responsibility’* available at : http://www.rhcatalyst.org/site/DocServer/CSRQ_A.pdf?docID=103(last accessed on 4th April, 2020)

vendors, the government, and the community. This is evident in some of the definitions presented below:

The European Commission² defines CSR as “the responsibility of enterprises for their impacts on society”. To completely meet their social responsibility, enterprises should have in place a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.

The World Business Council for Sustainable Development defines CSR as³ “the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.”

According to the United Nations Industrial Development Organization⁴, “Corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (Triple-Bottom-Line Approach), while at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be a strategic business management concept, and charity, sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that.”

Corporate Social Responsibility – Development of the Concept in India

² ‘Corporate Social Responsibility’ (European Union Commission) ; available at : http://ec.europa.eu/enterprise/policies/sustainablebusiness/corporate-social-responsibility/index_en.htm (last accessed on 4th April, 2020)

³ ‘Corporate Social Responsibility (World Business Council for Sustainable Development) ; available at : <http://www.wbcsd.org/work-program/businessrole/previous-work/corporate-social-responsibility.aspx> (last accessed on 4th April, 2020)

⁴ ‘What is Corporate Social Responsibility’ (United Nations Industrial Development Organisation) ; available at: [http://www.unido.org/what-we-do/trade/csr/what-is-csr.html#pp1\[g1\]/0/](http://www.unido.org/what-we-do/trade/csr/what-is-csr.html#pp1[g1]/0/) (last accessed on 4th April, 2020)

Previously, in India there was no mandatory concept of CSR. Although Corporate Social Responsibility Voluntary Guidelines 2009 was available to assist the businesses to adopt

responsible governance practices and also focuses on some of the core elements that businesses need to focus on while conducting their affairs. These guidelines have been prepared after taking into account the governance challenges faced in our country as well as the expectations of the society.⁵

Corporate Social Responsibility as a concept has existed in India since ages and plays an important role in a developing country like ours. The organizations have realized that besides profit making, a corporation must involve in trust building by working upon its societal relationships and environmental issues. Also, companies which genuinely adopt the principles of socially responsible behavior are preferred and favored by the society at large, of which the company forms an integral part.⁶Hence, one can say that CSR is basically an act of moral, social and business responsibility with the aim to protect, preserve and nurture human values and promote socio-economic welfare.⁷

CSR evolved over a period of time when in the 19th century, the industrial families like Tata, Birla, Godrej, etc. had an inclination towards such activities. These giant corporate involved

⁵ *'Corporate Social Responsibility'* Lok Sabha Secretariat Parliament Library And Reference, Research, Documentation And Information Service (Larrdis) Members' Reference Service, Reference Note No. 11 /Rn/Ref./2013 ; available at : http://www.academia.edu/4552203/LOK_SABHA_SECRETARIAT_PARLIAMENT_LIBRARY_AND_REFERENCERESEARCH_DOCUMENTATION_AND_INFORMATION_SERVICE_LARRDIS_For_the_use_of_Members_of_Parliament_Not_for_Publication_Financial_Sector_in_India_Regulations_and_Reforms (last accessed on 4th April, 2020)

⁶ Rajeev Prabhakar and Ms. Sonam Mishra , 'A Study of Corporate Social Responsibility in Indian Organization: An-Introspection' , Proceedings of 21st International Business Research Conference 10 – 11 June, 2013, Ryerson University, Toronto, Canada, ISBN: 978-1-922069-25-2, available at: http://www.wbiworldconpro.com/uploads/canada-conference-2013/management/1370168444_430-Sonam.pdf.

⁷ Nishith Desai Associates, 'Corporate Social Responsibility & Social Business Models in India- A Legal & Tax Perspective', November 2013, available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Corporate_Social_Responsibility___Social_Business_Models_in_India.pdf

themselves in a variety of CSR activities without any legal requirements and view it in the context of building goodwill, reputation and brand building.⁸

Later, during the time of Independence, Mahatma Gandhi influenced various industrialists to adopt the practices with respect to socio-economic development due to which various companies had set up training centers and educational institutions like schools and colleges. Eventually, CSR got a push by way of introduction of the labour and environment protection laws in India and the Public Sector Undertakings were asked to take up the CSR initiatives. This is how this practice developed and has now evolved as a sustainable business strategy.⁹ According to the founder of Infosys Mr. Narayan Murthy, “social responsibility is to create maximum shareholders value working under the circumstances, where it is fair to all its stakeholders, workers, consumers, the community, government and the environment.”¹⁰ Hence one can say that social responsibility would mean asking businesses to be more practical and analyze the positive as well as negative effects of their activities and decisions on the people and society at large.

Provision under Companies Act 2013

The practice of CSR is not a new one in the Indian industry. It was an activity that was not deliberated, rather performed. Observers believe that in India, this activity has evolved from

⁸ Sanjay Kumar Sharma , A 360 degree analysis of Corporate Social Responsibility (CSR) Mandate of the New Companies Act 2013 , Global Journal of Management and Business Studies, ISSN 2248-9878 Volume 3, Number 7 (2013), pp. 757-762, available at: http://www.ripublication.com/gjmbs_spl/gjmbsv3n7_09.pdf

⁹ Gahlot Sushmita , Corporate Social Responsibility: Current Scenario, Research Journal of Management Sciences, Vol. 2(12), 12-14, December (2013) , ISSN 2319–1171, available at : <http://www.isca.in/IJMS/Archive/v2/i12/3.ISCA-RJMS-2013-105.pdf>

¹⁰ Paramashivaiah and Puttaswamy, CSR for sustainable development: an empirical study on the corporate social responsibility focus of top listed companies of BSE, AL-SHODHANA, Vol.-I, No.2, July 2013, available at: http://staloyisius.edu.in/c/document_library/get_file?uuid=7f9338fb-b64c-4d23-b793-2b6941c1099c&groupId=11530

institutional development to community development by way of several projects and tends to focus on the utilization of profits made by a company.¹¹

Also, undertaking such initiatives were a voluntary step for all companies until it was mandated by the new Companies Act which came to force in the year 2013. Section 135¹² of this Act

¹¹ Handbook on Corporate Social Responsibility in India, Confederation of Indian Industry, available at: http://www.pwc.in/en_IN/in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-in-india.pdf.

¹² Section 135: Companies Act 2013: (1) Every company having a net worth of Indian rupees five hundred crore or more, or a turnover of Indian rupees one thousand crore or more or a net profit of Indian rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-Section (3) of Section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,-

a) formulate and recommend to the Board a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) Monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-Section (1) shall,-

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such a manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility of the company are undertaken by the company.

(5) The Board of every company referred to in sub-Section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided 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 activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-Section (3) of Section 134, specify the reasons for not spending the amount

provides that every company in India, either private or public having a net worth of Rs 500 crore, or a turnover of Rs 1,000 crore or net profit of Rs 5 crore, during any financial year needs to

spend a minimum of 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities.¹³ A company refers to an entity incorporated under the Companies Act or under the other previous company law. A clarification has been made with regard to computation of net profits that if the profits have been computed under the Companies Act 1956 then they need not be recomputed under the 2013 Act. Also, the CSR activities must be undertaken with respect to certain areas which are listed under Schedule VII of the 2013 Act, some of which include:

- Activities to eradicate hunger, poverty and malnutrition.
- Promotion of preventive healthcare, education and gender equality.
- Setting up homes for women, orphans and the senior citizens.
- Undertaking measures for reducing social and economic inequalities.
- Ensure environmental sustainability, balance in the ecology and welfare of animals.
- Protection of national heritage, art and culture.
- Taking measures for the benefit of armed forces veterans, war widows and their dependents.
- Provide training to promote rural, nationally recognized, Paralympic or Olympic sports.
- Contribute to Prime Minister’s National Relief Fund or any other fund which has been set up by the Central Government for socio-economic development, relief and welfare of SC, ST, OBCs, minorities and women.

The provision also states that a company shall give preference to the local areas and those areas around which the company operates for undertaking the said CSR activities. Another statutory requirement under section 135 is the formation of a CSR Committee of the Board for monitoring the CSR policies of any company consisting of at least 3 directors (inclusive of an independent

Explanation- For the purposes of this Section “average net profit” shall be calculated in accordance with the provisions of Section 198.

¹³ Grant Thornton , ‘Implications of Companies Act, 2013 Corporate Social Responsibility’, , available at: http://gtw3.granthornton.in/assets/Companies_Act-CSR.pdf

director). The Committee is required to recommend and suggest the amount of expenditure that the company must incur on the activities so specified. After considering the recommendations put forth by the Committee, the Board shall approve the CSR policy for the company.

It has been notified by the Ministry of Corporate Affairs that Section 135 and Schedule VII under Companies Act 2013, along with the provisions of the Rules¹⁴ shall come into effect from 1st April 2014. The Statute provides CSR activities to be undertaken through a registered trust or society, or a company established by its holding, subsidiary or associate company. For this purpose, the company needs to specify the activities that will be taken up and the modalities for utilizing the funds. It is said that such an entity will have to establish a track record of three years where similar activities were performed by it.¹⁵The report which shall be submitted by the Directors along with the financial statements of a company shall include an annual report on the CSR Activities of a company in the prescribed format under the Rules, setting out inter alia a brief outline of the CSR policy, the composition of the CSR Committee, the average net profit for the last three financial years and the prescribed CSR expenditure. If the company does not have adequate profits or has been unable to spend the minimum required on its CSR initiatives, the specific reasons for not doing so are to be disclosed in the Board Report.

However, failure to report CSR spending or the specific reasons for non-expenditure shall amount to contravention of the provision under section 134 of the Companies Act 2013 and the said company shall attract penalty in the form of fine, which shall not be less than fifty thousand rupees and may extend to INR 2.5 Million. Also, every officer who will be liable for such a default will be punished with imprisonment for a term extending to 3 years, along with fine of minimum fifty thousand rupees but which may extend to INR five lakh rupees or both.¹⁶

¹⁴ Companies (Corporate Social Responsibility Policy) Rules, 2014

¹⁵ Lalit Jain, 'Challenges in the CSR & Rules Implementation' retrieved from :, <http://www.icsi.edu/portals/70/NIRRULE.PDF>

¹⁶ India Briefing, 12th March 2014, available at: <http://www.india-briefing.com/news/indias-corporate-social-responsibility-mandate-companies-act-2013-8057.html/>

Voluntary CSR Initiative in India

Before the statutory provision of mandating CSR initiatives in the Indian corporate sector was introduced, it is said that CSR was already textured in the activities of various corporations and business groups in India.

For example, IBM had joined hands with the Tribal Development Department of Gujarat as a part of its Corporate Service Corps Programme aiming at upliftment of the tribals in the Sasan area of Gir forests¹⁷, the Tata Group had a range of projects which is based on CSR activities like providing health services, family planning, endorsing sports as a part of life by establishing football and archery academies. The Business group also organized several relief programmes for natural disasters and has contributed towards the field of education as well. Another notable company voluntarily undertaking CSR activities is Infosys which is involved in various community programmes to a large extent and has created a not-for-profit trust named Infosys Foundation to which it contributes up to 1% of profits after tax annually. Their Management team has also taken various initiatives in areas of education, research, community service, programmes for generating employment, promoting & providing healthcare and education for poor. Reliance Industries Ltd, being a corporate giant in India, has launched a “Project Drishti” which is a countrywide initiative to help the visually challenged people belonging to economically weaker section of the society in restoring their eye-sight.

Apart from these commendable initiatives, ITC Limited is involved in facilitating livelihood of the Indian farmers by partnering with them and came up with ‘e-Choupal’ initiative by leveraging information technology, along with making investments in rain water harvesting to improve irrigation facility, empowering the rural women and providing infrastructural support in the villages.¹⁸

¹⁷ *Supra*, note 11.

¹⁸ ‘Mandatory Corporate Social Responsibility: Is the Government Shifting its Failure to Corporate India?’, available at: <http://socialissuesindia.files.wordpress.com/2012/12/mandatorycsrindia.pdf>

Conclusion:

Amid various practical difficulties which may have to be encountered at least in the initial phases of implementation of the new CSR provisions, the initiative of the government is no doubt appreciable. The new provisions may be viewed as the result of the changing corporate philosophy in India and worldwide which entrusts the responsibilities on giant corporates towards

social welfare of the population which comprise of their present or prospective employees, customers or other stakeholders in varied roles.

The CSR Clause will only apply to some of the over 800,000 companies in India, including over 8,000 publicly listed companies and multinational companies. The accounting firm Ernst & Young estimates that the law would cover over 2,500 companies in India and generate over U.S. \$2 billion of CSR spending in local communities.¹⁹

Much has been accomplished in recent years, yet much remains to be done. Market drivers of CSR will likely continue to grow in importance. Therefore, it can be concluded that the recent CSR provision in the new Companies Act has the potential to bring novelty in the corporate field and institutional philanthropy in India. Despite of the various practical difficulties with respect to the implementation of the new CSR provisions, the initiative by the government has been appreciated by many on the ground that it entrusts responsibility on giant corporates to contribute towards social welfare of the society.

However, due consideration must be given to the fact that when CSR is seen in a broader context, it should mean bringing sustainable changes around a company's eco-system and CSR should be seen as a mix of good governance and corporate philanthropy for a company but with a business and financial side to it as well.

This shall ensure that the provision is accepted by the companies across the country and the objective with which it was incorporated is successfully achieved and the companies are able to

¹⁹ *'The 2% CSR Clause: New Requirements for Companies in India'* Kordant Philanthropy Advisor, <http://www.kordant.com/assets/2-Percent-India-CSR-Report.pdf> (last accessed on 18th February, 2015)

involve themselves in wholesome development of the society, living up to the true meaning of the concept of Corporate Social Responsibility and become a responsible entity.

The new CSR law, being a 'Rule Ruled by Rules' (called so because Section 135 on CSR spending requires detailed and comprehensive guidelines towards implementation of new CSR law), since the rules are under finalization, once the rules are in place, we hope to have a better picture of the various aspects of new CSR provisions.