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Development of Legal Framework in Corporate Social Responsibility: An Indian Panorama

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ABSTRACT

An organization operates its overall activities in an environment where legal framework provides a protection to it. In the same way organization is also accountable for its duties towards various stakeholders. In dynamic environment, organizations need to cope with the changes due to certain reasons, such as: being mandate by the State and Statute, used as a weapon to improve quality by winning confidence of customers, building brand image, increasing market share and to meet the legal formalities of corporate social responsibility.

It is a concept to run organizations profitable with certain social and environmental responsibility in order to achieve sustainability and stakeholder satisfaction. Development of legal framework in CSR activity originate from philanthropy approach came across various voluntary guidelines and became mandatory according to section 135 of the Companies Act, 2013, which was passed by both Houses of the parliament, and had received the assent of the President of India on 29 August 2013.

Amid this background, the present paper endeavors to study the Corporate Social Responsibility (CSR) in global context, development of legal framework in India, comparison of Schedule VII Vs. UN Millennium Development Goal and ISO 26000 Vs. SA 8000 relating to CSR activity.

KEYWORDS : Corporate Social Responsibility (CSR), Stakeholder, Philanthropy, Sustainability.

INTRODUCTION:

Corporate Social Responsibility (CSR) is based on the Gandhian Principle of "trusteeship concept" and as old as civilization. According to this, business houses are looked upon as trustees of the resources they draw from society and thus are expected to return them manifold. A more common approach to CSR is corporate philanthropy. This includes monetary donations and aid given to nonprofit organizations and communities. CSR is extremely important for sustainable development of all stakeholders (all the people, on whom the business has an impact, including the society at large. CSR is the deliberate inclusion of public interest into corporate decision making, and the honoring of triple bottom line: People, Planet, and Profit. It is a type of corporate self-regulation integrated into a business model. CSR policy functions as a built-in, self-regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norms.

OBJECTIVES AND RESEARCH METHODOLOGY OF THE STUDY:

The study is based on secondary data which is collected from the published reports of Department of Public Enterprises (Ministry of Heavy Industries and Public Enterprises) & Ministry of Corporate Affairs (MCA), Government of India, articles, journals, websites etc. The study was planned with the following objectives:

- To study the Corporate Social Responsibility (CSR) in global context and development of legal framework in India.
- To study the comparison of Schedule VII Vs. UN Millennium Development Goal and ISO 26000 Vs. SA 8000 relating to CSR activity.

CSR IN GLOBAL CONTEXT:

The roots of CSR lie in philanthropic activities (such as donations, charity, relief work, etc.) of corporations. As global issues concern, the concept of CSR has well defined by several countries and organizations. The European Commission (EC) 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 (WBCSD) defines CSR as "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 Organization (UNIDO), "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 (profit), social imperatives (people) and environmental (planet) as Triple-Bottom-Line Approach (TBL/3BL), while at the same time addressing the expectations of shareholders and stakeholders.

DEVELOPMENT OF LEGAL FRAMEWORK:

2009: *Corporate Social Responsibility Voluntary Guidelines, 2009* provides that each business entity should formulate a CSR policy to guide its strategic planning and provide a road-map for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with the participation of various level executives and should be approved by the Board. The CSR Policy should normally cover following core elements:

1. Care for all Stakeholders
2. Respect for Environment

Ministerial recommendatory initiative CSR Voluntary Guidelines, 2009 recognized that CSR is not philanthropy and CSR activities are purely voluntary.

2010: *Guidelines on Corporate Social Responsibility for Central Public Sector Enterprises* issued in March, 2010 have made CSR allocation of funds mandatory for PSU's. A PSU with a net profit of less than Rupees 100 crore will have to allocate 3-5% of its earnings on CSR and net profits of Rupees 100-500 crore in a year will have to earmark 2-3% on CSR (subject to minimum of Rupees 3 crores). A company with a bottom line of Rupees 500 crore and above will have to set aside 0.5-2% on CSR.

2011: Keeping in view the feedback from stakeholders, review of 2009 Guidelines was undertaken by the Guidelines Drafting Committee (GDC) constituted by the Indian Institute of Corporate Affairs, resulting into the formulation of 2011 Guidelines entitled "*National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business*" that will mainstream the subject of business responsibilities. The Guidelines were released by MCA on July 8, 2011. The principles and the core elements of these Guidelines are summarized below:

1. Ethics, Transparency and Accountability 2. Goods and services that are safe and contribute to sustainability 3. Well being of employees 4. Responsive towards stakeholders 5. Respect and promote human rights	6. Environment 7. Influence public and regulatory policy in a responsible manner 8. Inclusive growth and equitable development 9. Provide value to customers and consumers

2012-13: In India, the concept of CSR is governed by section 135 of the Companies Act, 2013, which was passed by both Houses of the parliament, and had received the assent of the President of India on 29 August 2013.

Entities covered by CSR obligations: The threshold coverage levels for CSR are below. Companies are subject to the CSR requirements if they have, for any financial year:

- a net worth of at least Rs. 5 billion (approximately U.S.$80 million);
- a turnover of at least Rs. 10 billion (approximately U.S.$160 million); or
- Net profits of at least Rs. 50 million (approximately U.S. [$800,000).

Companies meeting these thresholds are required to develop a CSR policy, spend a minimum amount on CSR activities and report on these activities, or prepare to explain why they didn't.

Required amount of CSR funding: An entity or business that meets these specified thresholds must spend on CSR activities not less than two percent of its average *net profit* for its preceding three financial years. *Net profit* means a company's profits as per its profit and loss account prepared in accordance with the New Act, but excludes profits from a company's operations outside India or dividends received from an Indian company that has itself met its CSR requirements.

Permitted CSR activities: There is a long list of permissible funding areas. They include such purposes as ending hunger and poverty; promoting public health; supporting education; addressing gender inequality; protecting the environment; and funding cultural initiatives and the arts. All CSR funds must be spent in India. The New Act encourages companies to spend their CSR funds in the areas where they operate, but money cannot be spent on activities undertaken that are part of the normal course of the company's business or on projects for the exclusive benefit of employees or their family members.

Contributions of any amount to a political party are not permitted under CSR activity. However, the New Act has an exception allowing companies to use their CSR funds to support development projects initiated by the prime minister or central government.

CSR Committee and CSR Policy: The New Act requires companies to appoint a Corporate Social Responsibility Committee consisting of at least three directors. If a company is one that is required by the New Act to appoint independent directors to its board, then the CSR committee must include at least one independent director. The CSR committee is required to recommend a formal CSR Policy. This document, which is to be submitted to the company's board, should recommend particular CSR activities, set forth a budget, describe how the company will implement the project, and establish a transparent means to monitor progress.

Administration of CSR projects: A company can meet its CSR obligations by funneling its activities through a third party, such as a society, trust, foundation or Section 8 company (i.e., a company with charitable purposes) that has an established record of at least three years in CSR-like activities.

Reporting Requirements: The New Act requires companies to prepare a detailed report, in a particular format, about the company's CSR policy, the composition of the CSR committee, the amount CSR expenditures, and the specifics of individual CSR projects. A company's board must include this report in its annual report to shareholders and publish it on the company's website.

Failure to Comply: If the minimum CSR amount is not spent, the board is required to disclose this fact, with reasons thereof, in its annual Director's Report to the shareholders. It is still not clear whether failure to comply is a legal offense of any sort. Thus, the new Act may be the advent of a new regime in Indian corporation law of the concept of "comply or explain." It is important that failure to explain non-compliance is a punishable offence under the New Act.

2014: *Companies (Corporate Social Responsibility Policy) Rules, 2014* signifies the development of legal framework in field of CSR in 2014. With effect from April 1, 2014, the much-awaited rules for the new 'corporate social responsibility' (CSR) regime were notified, under which companies with sizable businesses would need to spend a minimum 2 per cent of net profit for the benefit of the society. The CSR activities will have to be within India, and the new rules will also apply to foreign companies registered here. However, funds given to political parties and the money spent for the benefit of the company's own employees (and their families) will not count as CSR. Listing out the permitted CSR activities, the government said that they needed to be undertaken as per approval of the company's board in accordance with its CSR Policy and the decision of its CSR Committee. The CSR rules will take effect from April 1, as part of the new Companies Act. They will apply to companies with at least Rs 5 crore net profits, or Rs. 1,000 crore turnovers or Rs. 500 crore net worth. Such companies will need to spend 2 per cent of their three-year average annual net profit on CSR activities in each financial year, beginning the next fiscal, 2014-15. For the purpose of deciding the CSR spending eligibility of a company, profit from overseas branches and dividend received from other companies in India will be excluded from the net profit criteria. The CSR policy of a company should also specify that "surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of a company." A company can also carry out CSR works through a registered trust or society or a separate company. As per the rules, a company may also collaborate with other companies for CSR activities, provided they have to separately report about spending on such projects programmes.

Deletion of 'Social Business Projects' as a CSR activity: Social business projects forms the core philosophy of corporate social responsibility and Schedule VII of the original Companies Act, 2013 contained 'social business projects' among the list of various activities that a company could undertake. The Central Government vides notification dated February 27, 2014 made amendments to the Schedule while deleting 'social business projects' from the list of activities enlisted under the Schedule. Although Section 467 empowers the government to amend the Schedule through delegation, the power to amend under this section is meant to make simple alterations without affecting the legislative policies enshrined in the Companies Act, 2013. Deletion of 'social business projects' through the notification seems to override the CSR policy as envisaged under the Companies Act. By deleting 'social business projects' through the notification, the central government seems to have exceeded its legislative mandate and the same may be subject to judicial review in future.

SCHEDULE VII vis-à-vis UN MILLENNIUM DEVELOP MENTGOALS:

Schedule VII of the Companies Act, 2013, which lists out the CSR activities, suggests communities to be the focal point. On the other hand, by discussing a company's relationship to its stakeholders and integrating CSR into its core operations, the draft rules mandate that CSR needs to go beyond communities and beyond the concept of philanthropy. It seems that Government of India esteemed the United Nations Millennium Development Goals by incorporating similar requirements in Schedule VII of Companies Act, 2013. A brief list of both is given below for broader reference.

SCHEDULE VII MANDATES	UN MILLENIUM DEVELOMENT GOALS
• Eradicating extreme hunger and poverty; • Promotion of education; • Promoting gender equality and empowering women; • Reducing child mortality and improving maternal health; • Combating HIV, AIDS, 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.	• Eradicate extreme poverty and hunger • Achieve universal primary education • Promote gender equality and empower women • Reduce child mortality and Improve maternal health • Combat HIV/AIDS, Malaria and other diseases • Ensure environmental sustainability • Develop a Global Partnership for development

ISO 26000 vis-a-vis SA 8000:

ISO 26000 is the international standard giving guidance on social re-

sponsibility and is intended for use by organizations of all types both public and private sectors, in developed and developing countries. It provides guidance on principles of social responsibility, the core subjects and issues pertaining to social responsibility and on ways to integrate socially responsible behaviour into existing organizational strategies, systems, practices and processes. However, SA 8000 is a comprehensive, global, verifiable performance standard, for auditing and certifying compliance with corporate responsibility norms. The heart of the standard is the belief that all workplaces should be managed in such a manner that basic human rights are supported and that management is prepared to accept accountability for this. SA 8000 is an international standard for improving working conditions. This standard is based on the principles of the international human rights norms as described in International Labour Organization conventions, the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights. The requirements of this standard apply regardless of geographic location, industry sector, or company size.

CONCLUSION:

While the introduction of CSR provision in the Companies Act is a welcome step, however the current discourse of corporate philanthropy without giving any express autonomy to companies in choosing their CSR activities may not yield the desired outcome. By allowing only selected list of activities within the Schedule in a sectional manner may end up encouraging only a passive participation by corporate towards CSR activities. In order to enable corporate to participate fully in the philanthropy space, the participation must start with a more inclusive management of CSR policies where government and industry work side by side, which does not assume that (social) business and CSR are incompatible. Thus, the policymakers should frame rules for social business projects instead of eliminating it from the scheme of CSR regime altogether. By expanding the scope of CSR to include foreign companies, its impact on such companies may be manifold. In light of the ambiguity surrounding financial computation of foreign companies, it needs to be seen how practical it would be for branch or project offices to participate in CSR activities. In order to retain the advantage of having a CSR provision in the Companies Act, MCA must also facilitate greater convergence with tax and foreign contribution laws in India.

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