



CORPORATE SOCIAL RESPONSIBILITY IN INDIA AND PROVISIONS OF COMPANIES ACT-2013 (SECTION 135 OF THE 2013 ACT)

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ABSTRACT

Corporate Social Responsibility is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. Globally, the notion of CSR and sustainability seems to be converging, as is evident from the various definitions of CSR put forth by global organisations. As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits. Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR commitments. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company. The genesis of this convergence can be observed from the preamble to the recently released draft rules relating to the CSR clause within the Companies Act, 2013 which talks about stakeholders and integrating it with the social, environmental and economic objectives, all of which constitute the idea of a triple bottom line approach.

KEYWORDS : Corporate Social Responsibility, Companies Act-2013

WHAT IS CSR?

Corporate Social Responsibility is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies. Thus CSR is not charity or mere donations. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth.

THE GLOBAL CONTEXT :

While there may be no single universally accepted definition of CSR, each definition that currently exists underpins the impact that businesses have on society at large and the societal expectations of them. Although the roots of CSR lie in philanthropic activities of corporations, globally, the concept of CSR has evolved and now encompasses all related concepts such as triple bottom line, corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability and business responsibility. This is evident in some of the definitions presented below:

Ecl 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 WBCSD defines CSR as2 "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."

CORPORATE SOCIAL RESPONSIBILITY IN INDIA :

Corporate Social Responsibility in India has traditionally been seen as a philanthropic activity. And in keeping with the Indian tradition, it was an activity that was performed but not deliberated. As a result, there is limited documentation on specific activities related to this concept. However, what was clearly evident that much of this had a national character encapsulated within it, whether it was endowing institutions to actively participating in India's freedom movement, and

embedded in the idea of trusteeship.

As some observers have pointed out, the practice of CSR in India still remains within the philanthropic space, but has moved from institutional building to community development through various projects. Also, with global influences and with communities becoming more active and demanding, there appears to be a discernible trend, that while CSR remains largely restricted to community development, it is getting more strategic in nature than philanthropic, and a large number of companies are reporting the activities they are undertaking in this space in their official websites, annual reports, sustainability reports and even publishing CSR reports. The Companies Act, 2013 has introduced the idea of CSR to the forefront and through its disclose-or-explain mandate, is promoting greater transparency and disclosure. Schedule VII of the Act, which lists out the CSR activities, suggests communities to be the focal point. It will be interesting to observe the ways in which this will translate into action at the ground level, and how the understanding of CSR is set to undergo a change.

CORPORATE SOCIAL RESPONSIBILITY AND SUSTAINABILITY:

Sustainability is derived from the concept of sustainable development which is defined by the Brundtland Commission as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" CSR in India tends to focus on what is done with profits after they are made. On the other hand, sustainability is about factoring the social and environmental impacts of conducting business, that is, how profits are made. Hence, much of the Indian practice of CSR is an important component of sustainability or responsible business, which is a larger idea, a fact that is evident from various sustainability frameworks.

Globally, the notion of CSR and sustainability seems to be converging, as is evident from the various definitions of CSR put forth by global organisations.. It is also acknowledged in the Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises issued by the DPE in April 2013. The new guidelines, which have replaced two existing separate guidelines on CSR and sustainable development, issued in 2010 and 2011 respectively, mentions the following:

"Since corporate social responsibility and sustainability are

so closely entwined, it can be said that corporate social responsibility and sustainability is a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical."

BENEFITS OF A ROBUST CSR PROGRAMME :

As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits, some of which are as follows:

(1) Communities Provide the License to Operate:

Apart from internal drivers such as values and ethos, some of the key stakeholders that influence corporate behavior include governments (through laws and regulations), investors and customers. In India, a fourth and increasingly important stakeholder is the community, and many companies have started realising that the 'licence to operate' is no longer given by governments alone, but communities that are impacted by a company's business operations.

(2) Attracting and Retaining Employees:

Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR commitments. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company.

(3) Communities as Suppliers:

There are certain innovative CSR initiatives emerging, wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain.

(4) Enhancing Corporate Reputation:

The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes. This allows companies to position themselves as responsible corporate citizens.

WHY IS THE CSR CLAUSE OF THE NEW COMPANIES ACT, 2013 SO CRITICAL FOR SMES?

By requiring companies, with a minimum net profit of 5 crore INR, to spend on CSR activities, the Companies Act, 2013 is likely to bring in many SMEs into the CSR fold. This will usher in a fresh set of challenges to a sector that is increasingly being asked by its B2B customers to comply with environmental and social standards, while remaining competitive in terms of price and quality. Thus, SMEs will have to quickly learn to be compliant with these diverse set of requirements and it is hoped that this handbook will facilitate their ability to comply with the CSR clause of the Companies Act, 2013.

SECTION 135 OF THE 2013 ACT :

The Ministry of Corporate Affairs (MCA) had introduced the Corporate Social Responsibility Voluntary Guidelines in 2009. These guidelines have now been incorporated within the 2013 Act and have obtained legal sanctity. Section 135 of the 2013 Act, seeks to provide that every company having a net worth of 500 crore INR, or more or a turnover of 1000 crore INR or more, or a net profit of five crore INR or more, during any financial year shall constitute the corporate social responsibility committee of the board.

This committee needs to comprise of three or more directors, out of which, at least one director should be an independent director. The composition of the committee shall be included in

the board's report. The committee shall formulate the policy, including activities specified in Schedule VII, which are as follows:

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 and Tribes, other backward classes, minorities and women

The committee would comprise of three or more directors, out of which at least one director shall be an independent director

The mandate of the said CSR committee shall be:

- to recommend the amount of expenditure to be incurred on the activities referred to above;
- to monitor the Corporate Social Responsibility Policy of the company from time to time
- approve the CSR Policy for the company and disclose contents such Policy in its report and also place it on the company's website, and
- ensure that the activities as are included in CSR Policy of the company are undertaken by the company, and
- ensure that the company spends, in every financial year, at least two per cent of the average net profits

If the Company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount

"Average net profit" shall be calculated in accordance with the provisions of section 198 of the 2013 Act

DRAFT CSR RULES PROVIDE FOR THE FOLLOWING:

- 'Net Profit' for the section 135 and these rules shall mean, net profit before tax as per books of accounts and shall not include profits arising from branches outside India
- Reporting will be done on an annual basis commencing from FY 2014-15
- Tax treatment of CSR spend will be in accordance with the IT Act as may be notified by the Central Board of Direct Taxes (CBDT)
- CSR activities may generally be conducted as projects or programmes (either new or ongoing) excluding activities undertaken in pursuance of the normal course of business of a company
- The CSR Committee shall prepare the CSR Policy of the company which shall include the following:
 - specify the projects and programmes to be undertaken
 - CSR projects/programmes of a company may also focus on integrating business models with social and environmental priorities and processes in order to create shared value
- CSR which has largely been a voluntary contribution by corporate has now been included in law
- Only such CSR activities will be taken into consideration as are undertaken within India