



ORIGINAL RESEARCH PAPER

Law

CORPORATE SOCIAL RESPONSIBILITY- A MYTH IN DEALING WITH ENVIRONMENT SUSTAINABILITY AND FOR ITS PROTECTION

KEY WORDS:

Neeru Chauhan

Researcher Scholar (Law) B.A.LL.B., LL.M., UGC NET Mohan Lal Sukhadia University, Udaipur

ABSTRACT

Corporate social responsibility is now a mandatory provision for the companies to follow, as according to the new provisions of company Act 2013. Schedule VII of the act specify many activities under which companies can spend their money on any of such activities on the name of CSR, if they are profit making companies according to section 135 of the said act. Putting environment under one of the heads in among such activities shows the law maker has completely ignored the major responsibility to protect the environment rather it gives a choice to companies to choose and spend their money in any of such activities. Most of the companies choose such activity to spend their money which are primarily focused on branding and promoting companies product rather focusing on social responsibility of protecting the environment. This research paper is critical analysis of corporate social responsibility towards the environment.

INTRODUCTION

The constitution of India speaks about the protection of environment through article 48 A as directive principle of state policy and article 51a (g) as duty of citizens. Law makers of the country also impose duty upon the corporate to protect the environment by making necessary provision of corporate social responsibility. Companies has to follow certain rules and regulations during whole process of company's operations, production and facilities and eliminate waste and emissions so that it can maximize the efficiency and productivity of its resources and minimize practices that might adversely affect the sustainability of the country's resources so that it can be remain for future generations also.

Enactment of Companies Act, 2013 by the Ministry of Corporate Affairs, Government of India was one of the world's largest experiments of introducing the CSR as a mandatory provision by imposing statutory obligation on Companies to take up CSR projects towards social welfare activities. This has made India the only country which has regulated and mandated CSR for some select categories of companies registered under the Act. This CSR Initiative will push the nation towards achievement of sustainable development goals and public-private partnership in transforming India.¹

The Corporate Social Responsibility concept in India is governed by Section 135 of the Companies Act, 2013 and Rules made there under, so it is now mandatory for companies to assess the CSR eligibility of a company, Implementation and Reporting of their CSR Policies. India having the most elaborated CSR mechanism and implementation strategy has started its journey to set a benchmark in attaining sustainability goals and stakeholder activism in nation building.

The CSR ambit is getting bigger and for upcoming years it would turn as a unique knowledge base for analyzing and achieving sustainability goals as among various large economies now India is also one of those countries which has assured by mandating CSR through its legislative action.

PROVISIONS OF CSR UNDER NEW COMPANYS ACT

The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 to come into effect from April 1, 2014.

With effect from April 1, 2014, every company, private limited or public limited,

- i- which either has a net worth of Rs 500 crore or
- ii- a turnover of Rs 1,000 crore or
- iii- Net profit of Rs 5 crore, need to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities.

The net worth, turnover and net profits are to be computed in terms of Section 198 of the 2013 Act as per the profit and loss statement prepared by the company in terms of Section 381 (1) (a) and Section 198 of the 2013 Act.

Schedule VII of the Companies Act, 2013 along with the Companies (Corporate Social Responsibility Policy) Rules, 2014 specifies certain activities that can be undertaken by a company to fulfill its CSR obligations includes-

- (i) Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water;
- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water;
- (v) Protection of national heritage, alt and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional and handicrafts;
- (vi) Measures for the benefit of armed forces veterans, war widows and their dependents;
- (vii) Training to promote rural sports, nationally recognized sports, Paralympics sports and Olympic sports;
- (viii) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (x) Rural development projects.

Later, "Swachh Bharat Abhiyan" and "Clean Ganga Mission" have also been included as CSR activities under Schedule VII of the Companies Act, 2013 from 24th October, 2014

The activities mentioned above makes it clear that Ministry of corporate affairs is concerned for the environment sustainability and for protection of environment. However, this ought to be done in different way as for environment protection there must be separate plans to impose some stringent provision for companies rather making them socially responsible. Whenever question arises relating to how companies are dealing with protection and for sustainability of environment, the companies answer is mostly

concerned on the spending on CSR policies as it is being mandate to use some fix percentage of their profit earned on one of above mention scheme or welfare missions. But most of the companies are spending on such of the activities which are related to their product publicity, they are least concerned on spending for the environment concern.

WHY INDIA NEED NEW POLICY- FOR PROTECTION OF ENVIRONMENT

In India there are plenty of provisions available in the country for the protection of environment. But determining damage towards the environment by the companies or industries always resulted in a huge ache in mind of the judiciary as well as to the government. So to take some initial steps for sustainable development and protection of environment law makers has imposed some primary responsibility to the big companies through the CSR mandatory provisions. The actual aim of imposing CSR provisions over corporate, is to make them responsible towards society or to make some good for the welfare of society and one the welfare is by spending money for the protection of environment also.

As with the implementation and enforcement of new companies Act, almost 6 years has been passed till today, but only few of the top big companies of the country has spent their share of CSR on or for environment protection.

A survey made by KPMG, as mentioned by Economic Times bureau of the country, specify that how 100 top listed company² has spent their amount on CSR activity. Following is the study over top 100 listed companies who spend their 2% profit on CSR activity in the financial year 2016-17³

No. of Companies	Type of Company	CSR spent as % of prescribed amount
1	Chemicals	487%
5	Construction and cement industries	125
7	Mining and metals	111
17	Consumer protection	110
9	Automobile and allied products	107
14	Energy and power	106
3	Services	92
19	Banking and financial services	91
2	Media and entertainment	87
5	IT Consulting and software	87
6	Industrial manufacturing	82
9	Pharmaceuticals	79

In above, it was require that these top 100 listed companies has to spend 7,410 crore in FY 2017⁴ on CSR activities. Among these 100 companies, one of the chemical companies has spent 487% of the required CSR amount which was the highest among all mentioned above. Construction and cement has spent 125%, mining and metals 111% and so on.

These 100 companies has spent 5,114 crore, 6,518 crore, 7,215 crore rupees respectively in the year 2014-15, 2015-16, 2016-17 on CSR activities⁵. However above shows that CSR amount is gradually increasing but concern point is that how many of above is spending for Environment protection and sustainability.

CSR FOCUS AREA

In above study, 4,045 crore rupees has spent on health and education which almost 56% of total CSR spending of above 100 listed company in the year 2016-17. The most focusing area is education on which almost 92% has been spent in last presiding 3 year by these companies, which indicates that companies are more focused on other areas of society welfare given under schedule vii of company Act 2013 rather spending for environment pollution control or sustainability work.

CSR Spent: Development Sector-wise⁶

No.	Development sector	CSR Amount spent (Lakh)
1	Clean ganga fund	2200
2	Education, Differently abled, Livelihood	54617
3	Ecouraging sports	2642
4	Environment, Animal welfare, Resource conservation	11978
5	Gender equality, Women empowerment, Old age home, Reducing inequalities	3455
6	Health, Eradicating hunger, Poverty and Malnutrition, Safe drinking water, Sanitation	44390
7	Heritage, Art and culture	1040
8	Other sectors (Technology incubator and benefits to armed force and admin overheads)	263
9	Prime Ministers National fund relief	6998
10	Rural development	43950
11	Swachh bharat kosh	2766
12	Any other fund	1745
13	NEC/ Not mentioned	16782

The above table shows how companies⁷ spend their CSR share in different development sectors, which makes it clear that maximum of the corporate spend their CSR money on Education, Differently able, Livelihood, which is the most preferable sector among all above development sectors. Some other likes to spend on Health, Eradicating hunger, Poverty and Malnutrition, Safe drinking water, Sanitation sector, which is the 2nd highest preferable sector in above table.

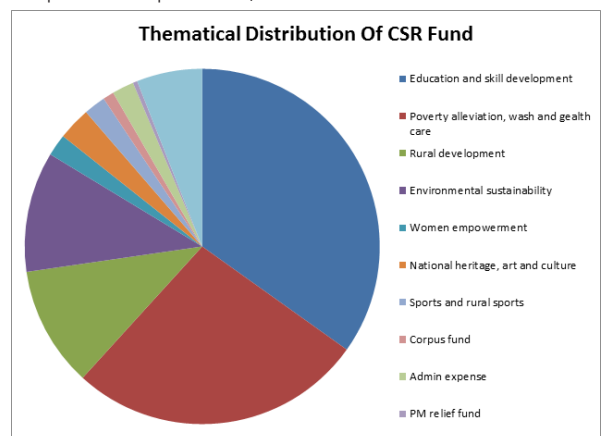
As according to comparative study with the all other sectors it is clear that Environment, Animal welfare, Resource conservation comes on lateral position, which shows that corporate are least bother about spending their profit share on Environment protection or resource conservation. The industries like Chemicals, Construction and cement industries, mining and metals are primarily engage in the work which directly affect environment.

In an another study, CSR ANALYSIS OF BSE BIG 359 COMPANIES (FY 2017-18)⁸

Stated that Education projects received almost three-fourth of total CSR spent.⁹

These 359 Companies, stated in this report , were short-listed on the basis of the following criteria:

- INR 1 Cr. Or above prescribed CSR in FY 2017-18
- Listed on BSE or subsidiary of a BSE-listed company
- Availability of data by 31st Aug. 2018 and CSR disclosures as per the Companies Act, 2013



This shows that environment sustainability comes on tangential preference, in the choice preference on spending CSR money by these 359 BSE companies which share a huge amount of CSR spend with the total CSR spending amount of the country.¹¹

Although there is increase in the interest to spend the CSR amount on environment related activities from the comparative analysis from 2016, 2017, 2018 reports but this slight in preference.

It is very clear with the above study that making mandatory CSR provision to the corporate, is a necessary step taken up by the government for the welfare of society but bring environment protection and sustainability under one of the various heads¹² provides corporate a merciful behavior towards the environment as it is a choice of them to spend their 2% profit on any of such mentioned activity. But as for protection of environment and for its sustainability government should go with some necessary steps i.e. making compulsory spend by some companies which are directly or indirectly involve in environment pollution and also it should make that some of the CSR percentage necessarily spend for environment protection and resource conservation by all existing companies whether government or other then government, listed or unlisted, Public or private companies. As we all know the environment problem is not country concern it is worldwide issue and this ought not to be in the least of preferences among the companies, this must be the primary concern of the corporate to give preferential concern on this as a matter of fact.

REFERENCES

1. The National Corporate Social Responsibility Data Portal, by Ministry of Corporate Affairs, Government of India
2. 100 top listed companies in terms of market capital as of March 31, 2017
3. Documents for N100 companies were reviewed on the basis their availability in the public domain as on 30 September 2017
4. The data for FY 2016-17 is provisional due to delay in the Annual Filing.
5. ET Bureau|Mar 01, 2018, 09.44 AM IST Read more at: //economictimes.indiatimes.com/articleshow/63120415.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
6. The data is available on National CSR data portal by ministry of corporate finance India.
7. These companies are listed-unlisted, Government-other then government and PSUs who provided their CSR spend under the CSR discloser scheme.
8. India CSR outlook Report 2018, Abridged version 24th, September 2017 www.ngobox.org. #IndiaCSRsummit @ngobox
9. The 'India CSR Outlook Report (ICOR), an annual research publication of NGOBOX
10. ibid
11. These 359 companies account for more than 2/3rd of total CSR spend in India, making it a big sample size for any such study and analysis, says India CSR Outlook Report.
12. As mentioned in Schedule VII of the company Act 2013