

Corporate Social Responsibility: A Constructive Step under Companies Act, 2013

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ABSTRACT

The concept of Corporate Social Responsibility has given a new direction to corporate world. Though the word (CSR) may be new to Indian corporations but the origin of the same can be traced back to the Gandhian philosophy of Trusteeship. After independence in 1947, the Indian government followed the socialist pattern and the corporations were mostly owned by Indian Government. The corporations used to take up their responsibilities in philanthropic manner but with the drastic changes in the economic policies in 90s, India witnessed globalization on an unprecedented scale. Indian became a preferential market for major multi and transnational corporate houses. Today, Indian economy is world's third largest economy and it is still flourishing the number of corporations mark their presence in the various lists and they are still increasing. But this development has flip side also i.e. blatant exploitation of poor labour, excessive exploitation of natural resources, environmental degradation, widening inequalities etc. With the development in the corporate houses, the question regarding their responsibilities towards society has been a moot issue. The earlier Companies Act, 1956 did not touch upon many important aspects, CSR being one of them. The year 2013 has brought a drastic shift in corporate affairs with the enactment of Companies Act, 2013. CSR which were earlier seen more as a philanthropic activity now has become a social mandate. Now with the introduction of section 135 in the Companies Act, 2013 it has become mandatory for the companies to constitute CSR committee, which will formulate and recommend CSR policy. Companies will have to spend 2% of their average net profits. What was voluntary has become compulsory in nature now. The first part of the paper will discuss the concept of CSR as understood in Indian Scenario. The second part of the paper emphasized on the impact of new Companies Act 2013 on the CSR policies of Indian companies. The paper

further takes into consideration Section 135 along with schedule VII and the categorization of subjects under schedule VII has also been examined. This last part of the paper will deal with the National Voluntary Guidelines on Social, Environmental & Economic Responsibility of Business and Global Compact principles and while concluding the paper it highlights the saying that the scope of CSR in India is very bright and immense especially when government is withdrawing and private players are assuming new roles. And for further research a question will be raised to see whether this 2% can be brought under the clout of RTI to make it more effective.

Key words: CSR, Companies Act 2013, Global compact principles, Section 135, National Voluntary Guidelines.

Introduction

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 honorable 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.

Mahatma Gandhi

Mahatma Gandhi's above written quote that Companies are trustees of Nation's wealth is more important today. The concept of welfare does not bind the governmental organizations only. It reflects from the above quote that those who own fair amount of wealth either by means of legacy or by establishing big industries own some responsibilities toward the community or their country. Though these responsibilities may find their roots in moral principles or in good citizenry but it cannot be ignored altogether. The concept of corporate social responsibility ('*hereinafter CSR*') is nothing but the beginning of a new era, the era of responsibilities, and the era of some duties toward the community and finally the first principle of good citizenry. The concept of CSR itself flows from the idea of Corporate Governance and Business ethics.

In the present era, where we are building a new world where each of us owns a responsibility towards environment, humanity, good governance etc., corporations too cannot be excused. The Corporate sector has emerged as essential wing to the government in the new

millennium in India which led to the growth of multi or transnational corporations owning massive resources. Corporations have crucial role to play in promoting sustainable development and addressing global problems. In many countries, companies' contribution to society is encouraged and reported through annual sustainability reports of the board. Scandinavian countries, particularly Norway, encourage companies to be involved in social projects with global implications, like clean drinking water, poverty reduction and environmental initiatives.¹ The rationale behind this is in the fact that actions of business and industry, particularly corporate sector, directly and indirectly touch and impact the lives of citizens at many points. Hence, the business and industry is expected to assure reasonable level of responsibilities towards society.² According to E. Merrick Dodd, business also has responsibilities towards community which should be fulfilled voluntarily.³

The former Secretary-General of United Nation Ban ki-moon said “*We cannot achieve a more equitable, prosperous and sustainable future without business engagement and solutions.*”⁴ The concept of Corporate Social Responsibility (CSR) denotes the idea that corporations can no longer work in isolation by making gap with society.

At one end of the spectrum CSR can be viewed as a collection of good citizenship activities being engaged by various Organizations, at the other end, it can be a way of doing business that has significant impact on Society. For this latter vision, the Companies Act 2013⁵ has incorporated the Concept of CSR in clause 135.⁶ By incorporating the CSR provision in the new Companies Act, India stood first in the World to legally mandate the expenditure on CSR activities.⁷ The inclusion of the CSR mandate under the Companies Act, 2013 is a shift from philanthropic activities to mandatory duties with a view to supplement Government's efforts of equitable distribution of the benefits of growth and to engage the corporate houses with the country's development agenda.

¹ Arun Dugal, 'Make the best use of the CSR proposal, India CSR'. Available at <http://www.indiacsr.in/en/make-the-best-use-of-the-csr-proposal/> (last visited on August 14, 2014).

² Ranjit Singh Ghuman “CSR: An effort towards inclusiveness and equity”, *The Tribune*, Chandigarh, India, October 21, 2013,

³ Dodd E. Merrick, 'For whom are corporate managers trustees', 45 *Harvard Law Review*, 1145, 1150 (1932)

⁴ Global Corporate Sustainability Report 2013. http://www.unglobalcompact.org/AboutTheGC/global_corporate_sustainability_report.html (last visited on March 25, 2014).

⁵ The Act was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013. This Act has replaced nearly five-decade-old Companies Act, 1956.

⁶ The new Companies Act has brought many new concepts and provisions; section 135 (Corporate Social Responsibility) is one of them. The Companies Act 1956, did not contain provision of CSR. Act of 2013 has made a mandatory provision in this regard.

⁷ Rama Mohana R Turaga and George Kandathil, 'Defining the Social Responsibility of Businesses', *Economic & Political Weekly*, Vol. XLIX, No.7, Feb. 15, 2014.

Meaning of Corporate Social Responsibility

Though the CSR activities are known to world but there is no absolute and clear definition of this term. It is often defined as corporate responsibility, corporate citizenship, social enterprise, sustainable development, triple-bottom line, corporate ethics, and in some cases, corporate governance.⁸

World Bank in 2003 reported that Corporate Social Responsibility (CSR) is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve quality of life, in ways that are both good for business and good for development.⁹

The phrase Corporate Social Responsibility was coined in 1953 with the publication of Bowen's 'Social Responsibility of Businessmen', which posed the question 'what responsibilities to society can business people be reasonably expected to assume?'. In 1984, the celebrated management consultant Peter Drucker wrote about the imperative to turn social problems into economic opportunities. Throughout the 70s and 80s academic discussion of the concept of CSR grew, but the first company to actually publish a social report was Ben and Jerry's in 1989, and the first major company was Shell in 1998.¹⁰

Corporate Social Responsibility: Indian Scenario

The concept of CSR is not new to India. Though the earlier CSR activities were in the form of philanthropy, but it was never ever absent from Indian corporate regime. The liberalizing economic policy of 90's resulted in increased presence of large Global corporations in India. That was the time when the business minds were more inclined toward profit making rather welfare. These changes attracted the policy makers' attention to make rules and regulations welfare centric by passing a new legislation. The Companies Act, 2013, while revamping almost sixty year's old Companies Act, 1956 has incorporated some of the new concepts which were the demand of time.

⁸ India: Corporate Social Responsibility, Available at <http://www.worldbank.org/en/news/feature/2013/08/27/india-corporate-social-responsibility> (last visited on July 12, 2014).

⁹ Public Policy for Corporate Social Responsibility, WBI Series on Corporate Responsibility, Accountability, and Sustainable Competitiveness, (2003). Available at http://info.worldbank.org/etools/docs/library/57434/publicpolicy_econference.pdf (last visited on July 12, 2014).

¹⁰ "What's wrong with Corporate Social Responsibility?" Corporate Watch CSR Report, 2006, p. 6. Available at <http://www.corporatewatch.org/download.php?id=55> (last visited on March 25, 2014).

Clause 135¹¹ and Schedule VII¹² of the Act, 2013 now contain provisions relating to CSR and gave legal recognition to it. Now with the passing of the Act the idea of CSR has come to the forefront, formally introduced and legally binding. Now CSR is no more a voluntary practice but a legal obligation.

Section 135 of the Companies Act, 2013, contains provisions relating to CSR and schedule VII of the Act contains list of the activities which may be taken as CSR activities under Section 135 of the Act. The Act was passed by both house of Parliament, and had received the assent of the President of India on 29 August 2013. MCA had notified 1st April 2014 the day of enforcement. During this time Central Govt. in exercise of its power

¹¹ (1) Every company having net worth of Rupees 500 crore or more, or turnover of Rupees 1000 crore or more or a net profit of 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 manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy 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.

Explanation.—For the purposes of this section “average net profit” shall be calculated

in accordance with the provisions of section 198.

¹² SCHEDULE VII: Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:-

(i) eradicating extreme hunger and poverty;

(ii) promotion of education;

(iii) promoting gender equality and empowering women;

(iv) reducing child mortality and improving maternal health;

(v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;

(vi) ensuring environmental sustainability;

(vii) employment enhancing vocational skills;

(viii) social business projects;

(ix) 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

(x) such other matters as may be prescribed.

conferred by sub-section 1 of section 467, has amended schedule VII¹³, by making the list more comprehensive. Even after the Act came into force, schedule VII was amended again¹⁴. This time a new Item no. XI i.e., slum area development, is added.

The Government has also by exercising power under sub section 1 and 2 of Section 469 drafted rules for CSR known as Companies (Corporate Social Responsibility Policy) Rules, 2014.¹⁵ The CSR provisions within the Act is applicable to companies with an annual turnover of 1,000 crore INR and more, or a net worth of 500 crore INR and more, or a net profit of five crore INR and more. The new rules, which will be applicable from the fiscal year 2014-15 onwards, also require companies to set-up a CSR committee consisting of their board members, including at least one independent director. The Act encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities.

Section 135 of the Companies Act, 2013 requires a CSR committee to be constituted by the board of directors. They will be responsible for preparing a detailed plan of the CSR activities including, decisions regarding the expenditure, the type of activities to be undertaken, roles and responsibilities of the concerned individuals and a monitoring and reporting mechanism. The CSR committee will also be required to ensure that all the income accrued to the company by way of CSR activities is credited back to the CSR corpus.¹⁶

According to Indian Institute of Corporate Affairs, a minimum of 6,000 Indian companies will be required to undertake CSR projects in order to comply with the provisions of the Companies Act, 2013 with many companies undertaking these initiatives for the first time. Further, some estimates indicate that CSR commitments from companies can amount to as much as 20,000 crore INR.¹⁷

Many Multinational corporations are already engaged in number of social activities in India. A good example of this is Microsoft Inc., which through Avahan¹⁸, is collaborating with the Indian government and other partners to stop the spread of HIV/AIDS by expanding

¹³ See Ministry of Corporate Affairs (Govt. of India) Notification dated on February 27, 2014. <http://www.mca.gov.in/MinistryV2/companiesact.html> (last visited on March 25, 2014).

¹⁴ See Ministry of Corporate Affairs (Govt. of India) Notification G.S.R. 568(E) Dated on 6th Aug.2014. Available at http://www.mca.gov.in/Ministry/pdf/Amendment_Notification_06082014.pdf (last visited on August 18, 2014).

¹⁵ *Ibid.*

¹⁶ Handbook on Corporate Social Responsibility in India p. 15. Available at http://www.pwc.in/en_IN/in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-in-india.pdf. (last visited on March 25, 2014).

¹⁷ *Id.*, p. 5.

¹⁸ The private sector's largest, fully-integrated HIV prevention program.

access to prevention programs in Indian states where the disease is most prevalent. Similarly, the Clinton Foundation is partnering with companies such as Ranbaxy, Cipla, Matrix, Roche, and Becton Dickinson to negotiate better pricing for ARV drugs and diagnostics to assist NACO in its care and treatment programs. The success of these initiatives has resulted in benefit for both corporations and society at large. The benefit to society is obvious, whereas the gain to corporations has been in the strong brand image that they have created in the minds of their customers and potential investors, both domestic and international.¹⁹

Corporate social responsibility has much broader implications for the nation as a whole. It reduces dependency on the government for social change. Most governmental programmes quickly become embroiled in political manipulation, corruption, communal overtones, and bitter infighting. There is a need for public-private partnership with well-defined controls and processes for the best use of resources for social change. Social reforms driven by the community will bring people together, turn the attention of the masses to tasks that benefit society, and reinforce peace and harmony²⁰

CSR and United Nation Global Compact

The UN Global Compact²¹ is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles²² in the areas of Human Rights, Labour, Environment and Anti-corruption. With over 12,000 corporate participants and other stakeholders from over 145 countries, it is the

¹⁹ Sharma, *Supra* note 6, at 1531-1532.

²⁰ Prabhudev Konana, "Toward corporate social responsibility", *The Hindu*, March 9, 2006.

²¹ The Compact was announced by the then UN Secretary-General Kofi Annan in an address to The World Economic Forum on January 31, 1999, and was officially launched at UN Headquarters in New York on July 26, 2000. The Global Compact Office is supported by six UN agencies: the United Nations High Commissioner for Human Rights; the United Nations Environment Programme; the International Labour Organization; the United Nations Development Programme; the United Nations Industrial Development Organization; and the United Nations Office on Drugs and Crime.

²² Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;
Principle 2: make sure that they are not complicit in human rights abuses.
Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour;
Principle 6: the elimination of discrimination in respect of employment and occupation.
Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility;
Principle 9: encourage the development and diffusion of environmentally friendly technologies.
Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

largest voluntary corporate responsibility initiative in the world. The UN Global Compact works toward the vision of a sustainable and inclusive global economy which delivers lasting benefits to people, communities, and markets.²³

The Global Compact was launched in India at a high-level meeting of Business Leaders in Mumbai on 4 December, 2000 and over 100 leading organizations from India have joined the initiative to date. However, participants felt that an institutional framework was needed for organizations to exchange experiences and engage in joint activities to implement the Global Compact principles. In November, 2003 the Global Compact Society (GCS) was formed and registered in New Delhi as an all India forum for organizations participating in the UN Global Compact. Thus far, 41 Indian organizations from public and private sector companies, professional bodies and institutions have joined the Society as founding members and a Governing Committee has been established.²⁴

The main objective of the Global Compact Society is to provide a forum for Indian companies and organizations to exchange experiences, network and work together on activities related to Corporate Social Responsibility (CSR) and the Global Compact.

Currently, 323 Indian companies have backed the Global Compact, slightly less than in Brazil²⁵, but on this occasion, considerably more than in China.²⁶ Section 135 of the Companies Act 2013 also affirms the principles of global compact and has taken guidance pertaining to CSR activities while drafting Schedule 7 of the Act.

Conclusion

Based on the concept that corporations are nothing but the outcome of society, so corporations bears some responsibilities toward the society. Welfare of the society is the foremost tool to achieve good governance. No one can deny that motive of business is profit making, but along with this it should be value oriented. Moral responsibilities of the market should be chalked out. There is no doubt that with the inclusion of CSR in the new companies Act, the government's load has considerably been lessened as it alone is not capable of

²³ <http://www.unglobalcompact.org/AboutTheGC/index.html> (last visited on March 26, 2014).

²⁴ http://www.unglobalcompact.org/NetworksAroundTheWorld/local_network_sheet/IN.html (last visited on March 26, 2014).

²⁵ Brazil has 593 participant corporation. Available at <http://www.unglobalcompact.org/participants/search> (last visited on March 26, 2014).

²⁶ China has 297 participant corporation. Available at <http://www.unglobalcompact.org/participants/search> (last visited on March 26, 2014).

undertaking social responsibility due to many reasons. In a developing country like India, companies have no dearth of CSR opportunities or areas to address as the needs are immense. A study in 2011 by the Oxford Poverty and Human Development Initiative estimated that approximately 650 million people, or fifty-three percent of India's population, live in poverty. In 2010, the World Bank estimated that about 394 million people in India live on less than U.S. \$1.25 a day.²⁷

The inclusion of 2% rule under the Companies Act, 2013 is landmark step in the corporate history of India. Though the incorporation of section 135 in the Act 2013 is mandatory provision but it is interesting to observe that the provision provides an option for companies to choose not to comply with the 2% rule by providing reason. This indicates that the provision is not really mandatory in the complete sense.

Though the new Act has come with new concepts and idea but still on some of the provisions there is need of clarity. The same problem is with this provision under section 135. *Firstly*, there is no doubt that section 134 provides punishment on non-reporting. But on the other hand second proviso to section 135(5) leave the gap for escape. *Secondly*, the schedule VII has been amended twice, still there is no flexibility. *Thirdly*, Tax benefits should be given to companies on the amount spent under section 135.

No doubt Indian companies like Tata group²⁸, Birla group²⁹ and Bajaj autos etc. are seriously engaged in CSR. But still India has a long way to go. Even today donations are dominant way of CSR. They will have to incorporate CSR as part of their business strategy for sustainable development. The future of CSR is bright in India. The private businesses are flourishing and the scope of growth is still immense. In times to come private players (big corporate houses) will be playing a major role in every sector. With many infrastructural and developmental challenges before India, MNCs and other companies can play an important role in achieving long term sustainable goals and help in creating a vibrant India.

²⁷ Poverty and Equity. Available at <http://povertydata.worldbank.org/poverty/country/IND> (last visited on March 26, 2014).

²⁸ The Tata Group spent Rs 1,000 crore on Corporate Social Responsibility (CSR) in 2013-14, *Times of India*, July 16, 2014. Report Available on <http://timesofindia.indiatimes.com/business/india-business/Tatas-spent-Rs-1k-cr-on-corporate-social-responsibility-activities-in-FY14/articleshow/38444133.cms>

²⁹ Ibid. The \$40-billion Aditya Birla Group spent Rs 200 crore on CSR in fiscal 2014, which is a little over 2% of the net profit from India.