

LEGISLATIVE APPROACH OF CSR IN INDIA*

INTRODUCTION

Corporate social responsibility also known as CSR is a welfare activity undertaken by business organisations with an intention to give back credits to the society. This is done simply because any organisation exists and function with the help of the society, therefore all organisations depend on the society for raw material, land and work force; so it is the duty of the organisation to give something back to the society as well.

It is not an easy task to define CSR as the definition differs from one organisation to other. Corporate social responsibility is defined as, "actions that appear to further some social good, beyond the interests of the firm and that which is required by law". CSR aims to embrace responsibility for corporate actions and to encourage a positive impact on the environment and stakeholders including consumers, employees, investors, communities, and others¹. While performing CSR the management of a company or a firm engaged in any business try and integrate both economic and environmental concerns.

“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. Eventhough 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 that².”

Over the past decade CSR has gained mass popularity among business organisations engaged in all sectors of the economy. Most of the companies take up CSR as it has its own benefit i.e., it gives the company a ‘goodwill’ in the market where the business organisation operate. Basic CSR activities are based on the concept of philanthropic activities like donations, charity, etc.

TYPES OF CSR:

CSR can be broadly classified into the following categories-

1. Economic Responsibilities:

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¹ Available at-http://en.wikipedia.org/wiki/Corporate_social_responsibility Browsed on-14-5-2015 at 7:30pm

² Available at-<http://www.unido.org/en/what-we-do/trade/csr/what-is-csr.html>. Browsed on-14-5-2015 at 7:30pm

Economic responsibilities are those responsibilities wherein the organisation has to achieve its own economic targets, simply because only if it has adequate amount of funds under its belt it can go for the voluntary CSR activities. After attaining the minimum requirements of funds, now the organisation looks to contribute towards the overall economic development of the State or the nation where it is based.

2. Legal Responsibilities:

Under legal responsibilities, the organisation should be registered under the Companies Act, 2013, and follow all the rules and regulations mentioned in the section 135 of the Companies Act, 2013 which talk about CSR. The organisation should also make sure that it is run properly without any illegal practices and the actions of the organisation should always be beneficial to the nation.

3. Philanthropic Responsibilities:

Philanthropic responsibilities of an organisation are the ones where the organisation takes up philanthropy seriously, it may be done in the form of donations to schools, hospitals or any other institutions, charities may be organised in order to raise money for the under privileged of the society.

4. Ethical responsibilities:

Ethical responsibilities of an organisation include all the above three responsibilities as well. The organisation has to function ethically, all its administrative decisions and functions should be taken up and done ethically with a generic interest of benefiting the society at large.

CSR IN INDIAN CONTEXT:

In India, CSR is not a new concept, it is in practice since a very long time. Although in India, CSR has also been associated with philanthropic activities. CSR is practiced in India since the origin of the Vedas, those Vedas taught us to do good for the underprivileged. The concept of CSR may be new in India but it is in practice from Mauryan period. Where CSR was done through charity for the poor and disadvantaged. Hindus followed Dharmada where the manufacturer or seller charged a specific amount from the purchaser, which was used for charity. The amount was known as charity amount or Dharmada.³

The first phase of CSR was driven during the 1850s, during this period the concept of CSR changed with the arrival of the British Rule in the country. The second phase was during the freedom struggle. The third phase was during the 1960 to 1980s, this was taken up by the Govt. in setting up Public Sector Units to benefit the people.

Although with changing times and modernization the concept of philanthropic activities have evolved from mere donations to setting up of educational institutions. But, in India CSR largely restricts itself to community development and not social development. Moreover, these days the philanthropic activities have developed and grown more strategically with the idea of attracting 'goodwill' to the business organisation.

The idea of 'trusteeship' was introduced in India by Mahatma Gandhi during the Independence Movement. Trusteeship meant, industry leaders had to manage their wealth so as to benefit the common. Back in the time when the concept of trusteeship was introduced the main aim was to eradicate capitalism.

³Available at <http://soulace.in/blog/evolution-of-csr-in-india/> Browsed on 14-5-2015; Time- 7:45pm.

In India business organisations like, Birla, Godrej and Tata group of industries have made a huge difference to the society by their contribution towards the society. They generally practice philanthropic form of CSR which is basically related to making donations and charity work. They have established number of education institutions like Birla Institute of Technology and Tata Institute of Social Science to name a few. Lately, such business organisations with large turnover are joining hands with NGO's trying to fight against the violation of basic rights of the people. Companies are also taking up the idea of 'Swachh Bharat Abhiyan' on a serious note.

Although very few organisations practice it ethically. The Companies Act, 1956 did not have any CSR related articles, so the concept of CSR was not in lime light. Companies Regulation 2010 and 2011 also didn't stress on CSR. It was Companies Act, 2013 where CSR was recognised and was mandated by the legislature. India is the second country in the world to have CSR in the legislation, making CSR not a voluntary activity but a mandatory responsibility.

NEED AND IMPORTANCE OF CSR:

CSR should be taken up by the business organisations seriously because CSR may contribute to solving the social issues which may not be efficiently solved by the Govt. For instance, Birla Group of Industries have come up with the concept of adopting under developed villages in India. They do so by surveying the villages around their industrial setups. Many organisations globally have Rural Development Cells which take care of such CSR activities. This as a result balances the overall growth of a nation in all sectors.

CSR is important and should be practiced by all firms as it ensure TBL i.e., it has a triple bottom line approach. It helps in monitoring and reporting a corporate performance against economic, social and environmental performance⁴.

One of the main aims of CSR is to preserve the rights of the people. Business organisations provide this by setting up educational institutes, hospitals and small business start-ups. Some organisations have come up with the idea of awards, awards for bravery and excellence. CSR activities also ease the burden off the Govt. if it is performed honestly and regularly. Moreover, CSR not only helps the society that gives so much to the organisation but it helps in building the reputation of the organisation itself. As CSR brings in a lot of goodwill and brand name to the organisation indulged in CSR.

CSR is now mandatory as per the Companies Act, 2013, according to this Act 'every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall be engaged in CSR'. CSR is important as it tries to help the left behind sections of the society to come in pace with the ever growing economy. Most of CSR programmes are towards promotion of education, promotion of gender equality and eradication of poverty.

CSR is important as it tries to balance the growth of the economy, where in it ensures that the backward groups of the society are benefited by the deeds of the company. CSR also has micro-level application where the company tries to enhance the working conditions for the workers. There are provisions for labour welfare in the Factories Act which are examples of CSR activities at micro-level.

⁴Available at-UNIDO--<http://www.unido.org/en/what-we-do/trade/csr/what-is-csr.html>Browsed on 14-5-2015; Time-8:00pm

COMPANIES ACT, 2013:

According to Companies Act, 2013 every company having net worth of Rupees five hundred crore or more, or turnover of rupees one thousand crore or more, or a net profit of rupees five crore during any financial year should be engaged in CSR.

This Act mandates the formation of a CSR Committee which shall be composed of three directors among which one has to be an independent director. The functions of the Board of Directors is also defined by the Act. This board shall recommend the amount to be spent in CSR activities. This board shall make policies within their power to boost the CSR activities. The Board should also make sure that, 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 Policy⁵.

It is very important for the business organisations to follow the guidelines set by the Govt. and practice CSR effectively so that the companies benefit the society, as it is very important for the companies to give back to the society.

As per the section 135 of the Companies Act, 2013 the major areas to be considered in the CSR policy of a company are as follows:

- (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 prescribed⁶.

So the legislation clearly narrows the CSR policies to be focused on the under privileged and disadvantaged sections of the society. All the companies should do their best so that they can effectively help the nation develop in all aspects. CSR policies should be made considering the above issues which need to be eradicated as soon as possible.

The companies must use their funds in a proper way, they should directly invest the funds by themselves so that any chances of corruptions can be curbed.

CRITICISM OF SECTION 135 OF COMPANIES ACT, 2013:

In India although many companies are registered under the Companies Act, 2013 not many companies take up one of the mandatory function of CSR. This is a result of a lenient legislation, CSR is mandatory for all organisation registered under the Companies Act, 2013 but there is no punishment for failure to perform CSR. Organisations or companies which fail

⁵Available at-Section-135 of Companies Act, 2013.

⁶Available at-Section 135 of the Companies Act, 2013.

to practice CSR can easily escape as legislation considers CSR as a voluntary activity and not a mandatory responsibility.

Moreover, the percentage of amount to be invested in CSR activities is minimum of 2%. The amount is less considering the amount of profit the companies are incurring at present. Setting up of minimum amount to be invested will demotivate the players like Infosys, Reliance and Aditya Birla Group, who are investing more than 4% of their profits into CSR activities.

There is no clarity in the schedule, the desired areas which need CSR's attention are merely mentioned and give out a lot of options to the organisation ultimately resulting in lesser investment of funds into the required area.

CONCLUSION:

Section 135 of the Companies Act, 2013 should be reviewed and the section should be made more rigid. The binding nature of the CSR norms should be upheld, CSR should be mandated, and it shouldn't be left as an option for the companies in India. Moreover, the amount of profit to be invested in CSR activities should also be increased, the percentage of profit to be invested in future should also be set in the legislation. There is no punishment for failure to perform CSR, punishment should be included in the section.

Another, major criticism for sec 135 of the Companies Act, 2013 is that, the section has clauses which mention about the percentage of profits to be invested as CSR contributions by the concerned company or profit generating organisation, but the clauses fail to make justice while differentiating between the percentage of profits to be invested as funds of CSR.

On a concluding note, the section should be amended by the authorities considering the factors which affect the profit margins of companies; based on such factors the differentiation between companies with different scales of profits should be made. This will make the section much more realistic.

