CSR OBLIGATIONS UNDER THE COMPANIES ACT, 2013: A CRITICAL ANALYSIS

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ABSTRACT

The paper is a critical analysis of the Corporate Social Responsibility (CSR) requirements, presented in the Companies Act, 2013, and an assessment of its effects on corporate behaviour, the governance system and social development in India. The paper provides the background and the conceptualization of CSR, which forms the ground on which Section 135 and the CSR Rules came into force, which is why India is the first country to require CSR spending by qualifying companies. The analysis of the legislation and regulatory environment reveals the impact of statutory requirements in creating higher levels of accountability, systematic execution, and additional involvement of companies in community welfare programs. Comparative analysis of CSR policies of other countries shows that the world tends to take diverse approaches with most jurisdictions preferring voluntary or disclosure model of CSR policies as opposed to compulsory adherence. The paper also examines the overlap between corporate governance and CSR, and shows that good governance practices improve ethical behaviour, transparency, and trust in the stakeholders. The paper, in its incorporation of stakeholder theory, highlights the importance of meeting the demands and expectations of the various groups so as to achieve socially highly effective and sustainable CSR results. Critical cases of law and brand examples of how CSR can be utilised are given to show how the law can be applied in practice and judicial viewpoints. Regardless of these developments, the paper cites a number of challenges, such as poor guidelines, transparency issues, implementation lapses, greenwashing, and poor awareness of the populace to fully ensure the success of CSR initiatives. The paper draws a conclusion that, despite the fact that the Companies Act, 2013 has created a solid basis of responsible corporate behaviours, it is important to enhance regulatory controls, transparency of reporting, and impact-oriented approaches to the implementation of the transformational potential of CSR in India.

INTRODUCTION

"We make a living by what we get, but we make a life by what we give" — Winston Churchill. Corporate Social Responsibility (CSR) is basically a business model that helps a company be socially accountable to it's shareholders and public. It makes the businesses to incorporate social, environmental ,and economic concerns into their core operations and strategies to create a overall positive impact on both the society and environment beyond their primary goal of maximising profits. CSR helps the businesses to maintain a balance between pursuing economic performance and addressing societal and environmental issues.

A widely accepted way to understand CSR is through Triple Bottom Line framework that describes that a company's success is not measured by it's profits alone but it is also measured by it's overall impact on People, The Planet and Company' Profits. Some of the CSR initiatives includes Environmental Responsibility, Ethical Responsibility, Philanthropic Responsibility and Economic Responsibility.

STATUTORY AND REGULATORY FRAMEWORK

CSR regulations are established under "The Companies act, 2013" making India the first country to have CSR legislation.

Section 135[1] of the Companies act, 2013 makes CSR mandatory for the companies, in any financial year, falling under at least one of these categories: (I) Net worth of rupees five hundred crore or more (II) turnover of rupees one thousand or more (III) Net profit of rupees five crore or more. Such companies shall constitute a corporate social Responsibility committee of the board consisting of three or more directors, out of which at least one director should be an independent director, adopt a CSR policy and ensure spending of at least 2% of the average net profits of the preceding three financial years on CSR activities as defined under the Act and the Rules. The same holds true for international businesses and have project offices or Braches in India. Schedule VII provides a detailed list for permissible CSR activities, including promotion of gender equality and education, environmental sustainability, eradication of poverty and other activities that enhance societal well-being.

[1] Companies Act, No. 18 of 2013 § 135

In 2019, Section 135[2] was amended to ensure the corporations get on the line of CSR. The amendment is punitive both pecuniarily and personally. Pecuniary punitiveness necessitates the transfer of the unutilized funds to either of the funds listed in schedule VII of companies act, 2013 within 6 months of the financial year. In case the CSR funds are related to an ongoing project the amount not spent must be transferred to an unspent CSR account in the 30 days that follow the financial year and must be spent within 3 years. In case the funds are not spent as at end of discussed period of 3 years, the balance must be transferred to any of the funds listed in schedule VII. Breaking this can attract a fine of between 25,000 and 25 lakh rupees or punitive measure of personal character where all defaulting officers can also be punished by imprisonment up to three years or both.

Besides the legislation, the government also introduced CSR Rules, 2014 that was updated in 2021. The regulations closely map CSR mechanism functioning in India. The definition of CSR, according to the CSR rule, is exclusive. According to it, the term CSR refers to the activities undertaken by the corporations as per the Section 135[3] of Companies Act, 2013. Rule 2(d) of CSR Rules, 2021 does not include the routine business activities; any activity which will take place outside India other than the training of Indian sports; any direct or indirect contribution to political part as it is stated in Section 182 of Companies Act, 2013; any activity which the corporates are obligated to do according to law and activity which the employees will benefit as stated in Section 2(k) of Code on Wages, 2017.

The rule unveils the assumptions of role that India has placed on CSR. India also considers corporations as co-partners in providing social welfares. As noted in the first part, in the early modern times, the welfare of employees was considered a socially responsible behavior of the corporations. The CSR rules of 2021 categorically define that it is not the exclusion of employee benefits in the CSR definition. The assertion is further supported by schedule VII of CA, 2013 that sets out more broad agendas that can be pursued to socio-economic pledges in nature of DPSP in Part IV of the Indian Constitution. As an example, the constitution of India, 1950, in Article 45[4] of the constitution gives a progressive duty to the state to offer free and mandatory education to all children up to the age of 14. Among the CSR activities listed in schedule VII of CA, 2013 include spending on education. The Indian corporations cannot disclose CSR expenditure to activities of such nature that are foreign to Schedule VII. Ministry

[2] Supra 1
[3] Supra 1
[4] India CONST. § art.45

of Corporate Affairs (MCA) came up with this clarification in its General Circular No. 21/2014. It proceeds to justify the compulsive nature of the corporations that the Indian government assigns them in developing socio-economic growth of the nation.

BENEFITS OF CSR PROVISIONS IN COMPANY LAW

The impact or the benefits of incorporating CSR provisions in the corporate structure are –

- "Companies nowadays are increasing their participation and involvement in different CSR activities as to gain the customers and employees loyalty and thus enhanced reputation. A company's commitments towards CSR helps them to attract, retain and motivate employees. It is observed that there is a direct linkage between a company's reputation and its active participation in various CSR activities."[5]

- It has been observed that participation of companies in CSR activities helps them to easy access to capital that might be otherwise not available. A study of Harvard University reflects that the companies who are involved in CSR activities have four times growth rate and eight times employment growth as compared to other companies which do not have much participation in CSR.

- Involvement in CSR activities allows companies to be socially responsible towards the society enhancing the goodwill of the company and creating a positive image in the eyes of public and business community.

- Contribution of the companies in CSR programs helps them to differentiate themselves in the marketplace giving the companies a competitive edge over the competitors.

- CSR aligns the business operations with the stakeholders' needs and desires which leads to reduction in the conflicts and enhances the cooperation and leads to long- term support.

- Eco- friendly initiatives like waste reduction, recycling, reuse often reduces operational costs and helps in operational improvements.

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[5] *Mani Goswami*, *Impact of CSR on Company Law*, Int'l Conference Paper, at *XVI AIC TS4* (pdf), https://www.internationalconference.in/XVI_AIC/TS4_pdf/4.MANI%20GOSWAMI.pdf

- CSR enables the companies to align their operations within the boundaries of environmental, social and other regulations which reduces the possibility of facing legal penalties, sanctions and other reputational harm due to non-compliance of the regulations. Moreover, CSR enables the companies to stay updated with new regulatory requirements.

CSR POLICIES IN DIFFERENT COUNTRIES: A COMPARITIVE ANALYSIS

The concept of Corporate Social Responsibility (CSR) has been introduced across the world. Different Countries have different ways of practicing CSR, as India is only the country with a mandatory CSR law for eligible companies, while many other nations like the US and EU members treat CSR as voluntary. Below is the brief comparison of CSR rules and regulations across different countries:

"USA – In USA there is no mandatory law which insists the companies to spend a specific amount on CSR activities. The main factor for the companies in USA to spend money on CSR activities is to legitimate the expectations of the people and to maintain the reputation of the company in eyes of the people. Although the CSR is voluntary the Government creates soft pressures for the companies to be socially responsible. There are some liberal laws which causes the larger corporations to report their CSR related activities. There are many government agencies which uses CSR activities to guide the companies on human rights, labour standards and other social and environmental concerns. One example of such government agency is US Bearu of Economic and Business Affairs which has a CSR team which encourages different corporations to strengthen their work on human rights, women's empowerment which helps them to only work for profits but also for the welfare of the society."[6]

NORWAY - Norway is immensely involved in CSR and the dominant driver of CSR in Norway is its vibrant culture. This culture has marked its presence in various laws that ensures that the companies in Norway are socially responsible towards the society. Different laws and regulations like Gender Equality Act, Pollution Control Act, Human Rights Act and other laws promotes responsible corporate behavior by the companies. The key legislation promoting CSR is the Accounting Act ,1998 that strengthened in 2013 to mandate large companies to report on

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[6] Goel, Anupama & Himangshu Rathee, *CSR Policies in Different Countries: A Comparative Analysis*

human rights, labor standards and, environmental practices etc. Overall, the concept of CSR in Norway stems more from the cultural norms rather than the strict legal framework.

"DENMARK – In Denmark CSR policies are comprehensive as it requires large corporations to report on the policies which are beneficial for the society and environment. In Denmark basically reporting of CSR policies, their implementation and the results arising out of such implementation is mandatory. Additionally, the government also provides support for the CSR through the Danish Business Authority. Denmark is the standard example of the state which is highly inclined towards the social welfare leaving a marginal space for voluntary CSR."[7]

"UK- CSR in the UK has become a core aspect of the corporate strategy as opposed to a discretionary practice. As such, it has become a crucial part of any successful business strategy. The legal framework for CSR in the UK is not contained in a single piece of legislation. Instead, it is driven by government mandates like the climate change act 2008, companies act 2006, the UK modern slavery Act 2015 and the Equality Act 2010. Although these acts don't expressly enforce CSR rather, they impose certain obligation certain obligations on business to conduct their social and environmental responsibility while also improves the brand image and recognition."[8]

EUROPE- European CSR policy has undergone a transition since it was a quasi-legal, voluntary policy to a legally binding policy, with now most of the requirements being mandatory reporting and due diligence requirements. The present concern is Corporate Sustainability Reporting Directive (CSRD), which obligates companies to report their sustainability effects, and the Corporate Sustainability Due Diligence Directive (CSDDD), which obligates a duty on companies to perform due diligence on the social and environment issues across the whole chains of values.

CORPORATE GOVERNANCE AND CSR

Corporate Governance is the framework that directs the operation and management of the company. It involves establishing a clear distribution of rights and responsibilities among the

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[7] *Corporate Social Responsibility in Denmark*, ResearchGate, https://www.researchgate.net/publication/353085166_Corporate_Social_Responsibility_in_Denmark

[8] *Corporate Social Responsibility: How Businesses Can Make a Difference*, LawHive, https://lawhive.co.uk/knowledge-hub/corporate/corporate-social-responsibility-how-businesses-can-make-adifference/

board of directors, management and shareholders, while CSR refers to the voluntary actions of companies which are aimed at dealing social and environmental issues beyond legal requirements.

Corporate Governance and CSR are interwinding concepts as both are built on the principles of accountability, transparency, fairness and ethical conduct thus reinforcing and supporting each other. Corporate Governance directs the managers to set objectives that are connected to "CSR, while stakeholder theory integrates corporate governance and CSR, implying that both need to work towards enhancing stakeholder interaction and organizational credibility. According to Stuebs and Sun (2015) good corporate governance leads to good CSR performances."[9]

There are some key areas in which both intersects like an effective Corporate Governance balances the interest of shareholders, customers, employees and society which empower CSR to be united into strategic decision making. Transparency which is a core principle of Governance promotes the reliability of CSR initiatives by making sure the clear disclosure of social and environmental impacts and builds trust among the stakeholders. Accountability and ethical conduct are also entrenched in the governance structures, which enhances the ethical behavior on which CSR is executed. Both the concepts are based on long term value creation over short term gains thus it helps the companies to navigate risks, adapt to changing market dynamics and built resilience for future. Together CSR and Corporate governed enhance the reputation of company and built stakeholder trust. The Board of Directors is central in the management of corporate governance and implementation of CSR under the Companies Act, 2013, therefore institutionalizing their integration. Thus, the establishment of harmonious relationship between Corporate Governance and CSR essential in organizations that want to achieve long term success in the world and make a positive impact in it.

CSR AND STAKEHOLDER THEORY

"Stakeholder Theory is basically a concept that determines the interrelationship between a business and its various stakeholders which includes investors, customers, employees, suppliers etc. This theory emphasizes on the fact that a company should be responsible towards

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[9] Berber, Nemanja; Slavić, Agneš; & Aleksić, Marko, *The Relationship Between Corporate Social Responsibility and Corporate Governance*, ResearchGate (Jan. 2019), https://www.researchgate.net/publication/336993445_The_relationship_between_corporate_social_responsibility_and_corporate_governance

all its stakeholders who are affected by its business actions and decisions, and not only shareholders. This theory marks a paradigm shift from the shareholder-centric view of corporate responsibility."[10]

The convergence of CSR and Stakeholder Theory highlights that a company's long-term success is directly related to its ability to ethically and sustainably managing relationships between all its stakeholders and the environment. Although the two concepts point at the necessity to act ethically and make sustainable decisions, they pursue these objectives in somewhat different directions. CSR is a concept that helps the companies to be more responsible towards the society and the environment, whereas Stakeholder Theory stresses the importance of considering the welfare of all the individuals which relate to the business. Though there are some differences between the two concepts, but when they are aligned together, they work for the betterment of the society and the environment. The organizations would not be able to effectively fulfil or achieve their CSR goals without the active participation, support and loyalty of their stakeholders. Many of the challenges that are faced by the businesses while implementing CSR activities can be mitigated by aligning the concept with the Stakeholder Theory. The alignment of CSR and Stakeholder Theory results in the offering of maximum benefits in the form of societal developments as well as creating a dedicated and motivated workforce, enhancing the sales, company's reputation, profitability and consumer's satisfaction. Thus, CSR is an integral and indispensable part of the corporate structure which requires the active participation of various stakeholders for its proper and impactful implementation.

SOME IMPORTANT CASE LAWS ON CSR

Foseco India Ltd v. Union of India (2014)[11] – In this Case, Delhi High Court noted that funds must not be utilized for the personal benefit of directors and employees of the company of the company in line with the intent of CSR provisions. This case has given an indication that CSR contributions must be geared towards genuine societal needs and social causes and not self-interest.

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[10] *The Stakeholder Theory of Corporate Social Responsibility*, ProjectGuru, https://www.projectguru.in/thestakeholder-theory-of-corporate-social-responsibility/

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Charan Singh Meena v. Union of India and others (2018)[12] – The High Court of the Madhya Pradesh, in this case, highlighted the mandatory nature of Section 135 of the Companies Act, 2013, which demands the eligible companies to set up a CSR Committee and formulate a CSR policy. The Court also prescribed that although companies framed various CSR policies, such policies must be implemented on ground rather than being limited to just paperwork and theory.

Union Carbide Corporation v. Union of India[13] **(Bhopal Gas Tragedy case)** – This judgement was the landmark case of Corporate accountability. In this case the Supreme Court's decision emphasized that the companies are morally and legally responsible for industrial disaster. It identified the need of companies to provide compensation, relief and rehabilitation to victims due to the negligence in such accidents and environmental harm thus highlighting corporate responsibility beyond mere profit.

Technicolor India (P) Ltd. V. Registrar of Companies[14] **-** Through this case the National Company Law Tribunal (NCLT) in Bengaluru, dealt with a scenario in which the Technicolor India (P) Ltd company spent less that the mandate 2% on the CSR activities during the fiscal year of 2017-2018. But later on the But, later on it was asserted that the expenses of CSR activities and the details of the same was incorrectly quoted and so the company submitted the application to the NCLT in Bangalore. The NCLT allowed the company to file an updated report, indicating that appropriate reporting and, in the event, compounding of the offense (payment of a fine) was the necessary measures of non-compliance. The case demonstrated the need to ensure transparency and proper reporting of CSR spending.

Alps remedies Pvt Ltd.- In this case the National Company Law Tribunal (NCLT), Mumbai Bench, addressed the company's failure to adhere with mandatory CSR, disclosure requirements under the companies Act, 2013. The NCLT concluded that the company and its directors had contravened the disclosure rules. However, considering the lack of malicious intent and the company's willingness to comply with the rules in future, the Tribunal permitted the compounding of the offence under Section 441 of the Companies Act, 2013.

[12] Charan Singh Meena vs Union of India(2018) , Madhya Pradesh High court , Charan Singh Meena v. Union Of India | Madhya Pradesh High Court | Judgment | Law | CaseMine .
[13] Union Carbide Corporation v. Union of India, AIR 1988, SC 1531
[14] Technicolor India (P.) Ltd. v. Registrar Of Companies, C.P.No.124 of 2019

EXAMPLE OF THE BRANDS DOING CSR SUCCESSFULLY

- "Renewable Innovation: Johnson & Johnson – For nearly Thirty years the company has taken significant steps to reduce their impact on the planet through a wide range of sustainability initiatives which includes investing in renewable energy such as wind power. The company also acquired a private energy supplier in the Texas Panhandle. This initiative encourages the Johnson& Johnson to reduce pollution while providing a renewable alternative to electricity. The company has the goal of fulfilling its 100% energy needs from renewable sources by 2025."[15]

- Sustainability: Coca Cola – The Coca Cola brand is putting huge efforts on sustainability. The key areas on which they are more focusing are - climate, packaging and agriculture along with water stewardship. Their goal is to collect and recycle every bottle and making their packaging 100% recyclable. There is to reduce their Carbon footprints by 25% by 2030.

- "Employee Rights: Netflix and Spotify – Companies like Netflix and Spotify offer benefits to support their employees and their families. Netflix offers 52 weeks of paid leave to birth parent and non- birth parents which also includes adoptive families.

  Employees have the liberty to use this leave at any time of their child's early years."[16]

- Spotify also offers 24 weeks of paid parental leave which can be taken at any point until the child turns three years of age . The company also allows employees one month of flexible work when they return back to the work.

- Microsoft: Employee Volunteering, Humanitarian Aid , Carbon Negative , Zero Waste. – Microsoft has been ranked high among companies with the best CSR programs over the past few years . Microsoft offered training with certification to 14.1 million people from underserved communities. The donated a huge amount in tech assets to Ngo's and public institutions worldwide.

[15] 6 Brands Doing Corporate Social Responsibility Successfully, Digital Marketing Institute, https://digitalmarketinginstitute.com/blog/corporate-16-brands-doing-corporate-social-responsibilitysuccessfully
[16] 6 Brands Doing Corporate Social Responsibility Successfully, Digital Marketing Institute, https://digitalmarketinginstitute.com/blog/corporate-16-brands-doing-corporate-social-responsibilitysuccessfully

- Apple : Energy Efficiency, Freshwater Conversation, Carbon Neutrality , Zero Waste – Apple aims to make all its product carbon neutral by 2030 by using recycled materials in its supply chains. Apple Company also provides support and funding to the communities which get effected during natural disasters. The company also collaborates with many non-profit organisations on projects related to conservation of clean energy for rural villages.

CHALLENGES IN CSR

There is a notable gap between the strategy, implementation and measurement of initiative taken under CSR. Some of the issues and challenges faced by the corporate body are as follows:

- Lack of public awareness about CSR initiatives: There is general lack of awareness about CSR with local communities, which limits their involvement and the potential effectiveness of initiatives. The situation is made worse by the shortage of communication between the public and corporations involved in CSR activities. Further, this is also due to the fact that no attempt or effort has been made to bring the awareness to the grassroot that is only limited to urban areas. Eventually, poor awareness undermines CSR performance from consumer influence and causes weaker policy evaluation by the government.

- "Transparency Concerns: Another dominating challenge for CSR is lack of transparency as some companies do not publicly reveal the nature, scope and impact of CSR activities. They put insufficient efforts in revealing information about their programs, audit issues, impact assessments and funds utilization. Thus lack of clear reporting, incomplete information or selective disclosure arise questions about whether CSR funds are actually used for social welfare or just for image building, ultimately undermines the credibility of CSR as a whole."[17]

- Inadequate CSR guidelines: Although the Companies Act, 2013 guides the CSR activities to some extent but the supervision is limited. There are no adequate CSR guidelines or directives to direct the commercial organisation on the right direction. The guidelines should apply irrespective of the size of the organisation so that they can

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[17] *Importance, Issues, and Challenges of Corporate Social Responsibility: An Insight*, iPleaders Blog, https://blog.ipleaders.in/importance-issues-and-challenges-of-corporate-social-responsibility-an-insight/

participate equally for the effective implementation of the program. Thus, impact assessment becomes challenging in the absence of clear framework, which limits the transparency, accountability, undermines stakeholder trust and the overall objective of promoting CSR.

- Greenwashing: Greenwashing is basically a concept used by the companies to distract public from the negative doings or practices in which it is involved. CSR is frequently seen as a corporate strategy for greenwashing.
- "Inadequacy: CSR initiatives frequently fail to address problems like income disparity, climate change, human rights protection, etc. Therefore, some contend that CSR is incapable of addressing the main problems facing society"[18].

CONCLUSION

In the past few years, it has been observed that CSR has achieved accelerating growth in today's society and becoming more competitive. A company's goodwill is enhanced due to its engagement in activities that benefit the society in anyway. The legislation and regulatory framework of CSR signify that the CSR provisions not only have widened the corporate responsibility but have also had a major impact on the corporate behaviour as they have forced the companies to undertake organized and purposeful social activities. The CSR is most effective can when it is supported with ethical governance, transparency and long-term stakeholders interests. The possibilities of CSR to generate a meaningful social impact are highlighted by case laws and real life examples of successful CSR initiatives which are executed with good intentions and a strategic purpose. Nonetheless, some of the challenges that still exist making the full achievement of the goals of CSR difficult include inappropriate guidelines, transparency, greenwashing, lack of public awareness, and unequal application.

Finally, despite the fact that Companies Act, 2013 has provided a good base on responsible corporate citizenship, the future of CSR in India is pegged on the need to enhance regulatory control, accountability, improve impact measurement, and develop cooperation between the government, corporations, and communities. A stronger and more open ecosystem on CSR will

[18] Ketaan Mehta, *Corporate Social Responsobilities – Decoded*, Tax TMI, https://www.taxtmi.com/article/detailed?id=13337

guarantee that corporate donations will actually promote inclusive growth and sustainable development.