

CORPORATE SOCIAL RESPONSIBILITY: A BURDEN OR BENEFIT?

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ABSTRACT

A corporation is incorporated for the purpose of advancement of economy and society. Business largely produces good things in our society. At the same time, it also possesses the potential to cause great harm such as environment degradation, accidents and many more. In between good things and bad things there arise a need to find out the real aim of corporation for this around the world the concept of Corporate Social responsibility (CSR) have been discovered as to the objective of the concept of CSR is deciding where company fit in the social fabric.

There is no certain definition of CSR. This uncertainty makes it strenuous for legislators to include CSR in statutes. The current coronavirus pandemic has shown us the social responsibility of the corporations whereby various judicial orders reflect the importance of CSR as the directions were made to the companies and many new regulations were brought by the state to enhance the efficiency of provision. This paper will here analyse the clash of shareholders interest and CSR activities. This paper will further talk with how CSR can be safely sheltered under the company law and the various issues that create hindrance in implementing CSR particularly governance mismanagement of which globalisation of corporations is a big factor and this paper will also analyse the nexus between the main objective of the incorporation that is profit making and CSR.

In Addition to that this research paper will proceed with a hypothesis that the recent amendment brought in Section 135, Companies Act, 2013 and CSR rules are not adequate in addressing the balance between the interest of shareholders and CSR activities merely adding the teeth to the provision will not resolve the main issue but merely end up as a compliance requirement the core objective of CSR as stated by Praveen Malla¹ while discussing social contract theory explains the role of corporations as social institutions are not fulfilled. The essence of the balance of interest of Corporations and society lies in the good governance.

Keywords: Corporate social responsibility, Shareholders, globalization, corporate governance.

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“Profits earned by hook or crook cannot be the sole criterion for judging the success of a business. The success of liberalization requires the steady development of a new corporate ethic” - PM Atal Bihari Vajpayee

1. INTRODUCTION

In general, there are two major theories on CSR. According to Milton Friedman's view, it is the company's duty to maximize the wealth of its shareholders. The company's expenditures were decided by the shareholder's decisions.

The stakeholder interest approach, on the other hand, proposed balancing corporate rights with social duties. Employees, creditors, the environment, and other stakeholders have all been represented in this theory. The Companies Act of 2013 significantly favored the Stakeholder Approach when it came to Corporate social Responsibility.

The Companies Act, 2013 in India does not mark the commencement of corporate social responsibility in India. Over time, the concept of corporate social responsibility has

¹ Parveen Malla, Corporate Governance, History evolution and Indian history (2010)

evolved. Beginning from the notion of corporate philanthropy In India, corporate philanthropy has been practiced for many decades. Corporations such as Tata, Birla, and others have spent billions of dollars on philanthropic efforts, and on a voluntary basis, for the betterment of society. Without any involvement from the government or any other administrative authority, the corporate charity was done exclusively on a personal basis and regulated through their close aides. However, the concept of corporate philanthropy was distinct from the concept of corporate social responsibility as we know today in 2021.

CSR, which is a strategic corporate management idea, and philanthropy, which is a purely humanitarian notion, are fundamentally different. CSR's contribution to society will aid in a company's reputation and brand enhancement, thereby developing its foundation for a business concept. The current coronavirus pandemic has shown us the social responsibility of the corporations whereby various judicial orders reflect the importance of CSR as the directions were made to the companies and many new regulations were bought by the state to enhance the efficiency of provision. This paper will here analyze the clash of shareholders interest and CSR activities.

1.1 NOTION OF CORPORATE SOCIAL RESPONSIBILITY

As stated by Praveen Malla² while discussing social contract theory explains the role of corporations as social institutions. In other words, it refers to the fact that corporates have to give back what it owes to the society. In spite of the fact word used is not identical as corporate social responsibility but the notion same to the social responsibility exists in India from ages. As a fact it finds itself mentioned in Vedic literature where it provides an identical approach to corporate social responsibility whereby it is established that the commercial transaction of business need to established balance between profit making and, on the environment, while operating. Although the research over the decade on Corporate social responsibility have increased enormously still it is unachievable to define Corporate social responsibility in exact words. There are numerous factors on this expanding nature of corporate social responsibility some of the followings are first, as the concept of social responsibilities carries the application

² Parveen Malla, Corporate Governance, History evolution and Indian history (2010)

of it as rules. Secondly, Corporate social responsibility as the plethora of research have led to many other developments that corresponds with Corporate social responsibility and many more such factors.

Hence there are numerous definitions of corporate social responsibility from simple aspects to complex and there exists many of the analogous idea to corporate social responsibility including corporate sustainability, corporate citizenship and many others.

While

The World Business Council for Sustainable Development has a very well definition of CSR that it is a continuing pledge by business corporates to contribute to economic development coherently improving the life of the associates and the society³.

Meanwhile the definitions of CSR differ in many ways but there is agreement on some of the principles that govern CSR:

1. CSR is a beneficial for business: whether the concept of CSR is followed as a consensus by corporate houses or for legal conformity it will achieve its objective only when it is truly believed that it will benefit Corporates.
2. CSR is associated to sustainable development
3. CSR is a new pathway to manage business

Thus, the growing idea of Corporate Social Responsibility (CSR) extends beyond philanthropy and asks businesses to go above and beyond their legal requirements by incorporating social, environmental, and ethical concerns into their business processes⁴.

2. EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA

In recent times, Corporate social responsibility in India have gone past charity concept approach now shifted to more structured way. It has now become a part of corporate strategy. The development further can be discussed into four stages which takes this journey alongside with historical development.

³ United Nations Industrial Development Organization, What is Corporate Social Responsibility, 2016

⁴ Dr. Mohad. Ashraf Ali & Azam Malik, Corporate Social Responsibility : An Indian Perspective, IJR(2012).

- 1) First stage: Charity and philanthropy were the primary drivers of corporate social responsibility in the early stages. Corporate social responsibility was influenced by culture, religion, family values and tradition, and industrialisation. Wealthy merchants shared a portion of their riches with the wider society during the pre-industrialization period, which lasted until 1850, by erecting temples for religious purposes. Furthermore, they assist the population during times of famine and epidemics by contributing food and money from their godowns, securing a vital position in society. In colonial rule this approach shifted and the CSR was contributed with some self-beneficial motives behind this.
- 2) Second stage (For social development): This phase was driven by the theory given by Mahatma Gandhi 'trusteeship'. Gandhiji explained this theory as differed from advanced socialist and during this stage there was huge change in the approach of industrialist as they started contributing towards the development of society.
- 3) Third stage: Another emergence of corporate social responsibility is seen in the period (1960-80). Where it was said as lot of public sector undertakings have started showing the footprints and lots of legislation was drafted relating to labour and environmental aspects. For example, environment protection act, air act and many others. This phase is further termed as a shift from self-regulation to stricter legal regulations on business operations. Private sector was showing decline in this phase because of the stricter regulations. In the time of cold war, India decides to take midway between capitalism and communism and PSUs were again given a hefty role in social development. Although the expectation of public undertaking fulfilling the role of social development was only for limited time. As a result, expectations shifted from the public to the private sector, and their active participation in the country's socioeconomic development became essential.
- 4) Fourth stage: In this stage Indian corporations began abandoning their traditional engagement with corporate social responsibility in the fourth decade (1980–present) and integrating it into a long-term business plan. The first steps toward globalisation and economic liberalisation were done in the 1990s. Parts of the controls and licencing system were eliminated, giving the economy a boost that may still be seen today. The economy's increased growth momentum aided Indian corporations' rapid growth,

making them more ready and able to donate to social causes. India has become an important destination in terms of production and manufacturing bases as a result of globalisation. As industrialized nation in the west start showing lot of concern regarding the standard in developing world for the effect Indian corporates have start showing attention to the CSR compliances matching Indian standard.

In India, CSR has gone through several stages. Corporates have clearly demonstrated their potential to make a substantial difference in society and improve the quality of life. In order to have an effective and long-term solution to the social issues in India, all corporations should endeavor to bring about a change in the current social scenario. Partnerships between businesses, non-governmental organizations, and the government should be encouraged so that a combination of their skills, such as knowledge, strategic thinking, manpower, and money, may be used to accelerate India's socioeconomic growth⁵

3. CORPORATE SOCIAL RESPONSIBILITY LEGAL FRAMEWORK IN INDIA

The concept of corporate social responsibility is based on companies functioning as partners in the nation's social development. The concept of corporate social responsibility (CSR) emerged in India during the time of economic liberalization and gained prominence in the early 2000s, when major global corporations established operations in the country. The Ministry of Corporate Affairs (MCA) released CSR Voluntary Guidelines in 2009 to promote corporate social responsibility, and National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business in 2011. Since these guidelines were only voluntary, it was observed that just a few businesses followed them. Subsequently, Corporate social responsibility in India as a mandatory practice is an outcome of companies act, 2013. In fact, it was the first country to pass legislation mandating companies to engage in CSR initiatives, and recently followed by the United Kingdom⁶.

The question from the above discussed notion of corporate social responsibility arises is that if the notion is well embedded in the history what is the need of having legislation to govern such concept? As discussed above in the fourth stage of development of corporate

⁵ Sathish, Ramya. "Corporate Social Responsibility in India - Putting Social-Economic Development on a Fast Track

⁶ Ropps & Gray, Corporate Social Responsibility, Compliance in 2018 and beyond, 2018

social responsibility the globalisation has made a lot of corporates became business oriented. Corporate social responsibility legislation is intended to assist in the transfer of excess money from the corporates to the have-nots through charitable deeds.

CSR rules, according to current statistics, contributed in raising monetary contributions from \$600 million to \$2 billion every year⁷. This will encourage businesses to engage in greater social, economic, and environmental initiatives to benefit the wider population. This also allows corporations to have a direct stake in developing society, transforming them from perceived exploiters of commerce to development facilitators. They will be obliged to participate in ways that go beyond the surface, such as assisting in the transformation of society on a far deeper level.

The Companies act, 2013 which is a replacement of earlier followed companies act, 1956 makes CSR a legal requirement. CSR is mandatory for all companies whether government, private, or otherwise by the notification⁸, under Section 135 of the new legislation, if they meet any one or more of the following fiscal criteria⁹ i.e., firms which possess net worth of Rs 500 crore or if it does have a revenue worth 1000 crore, or if it has an annual profit of Rs 5 crore.

If the company meet any of the above criteria, this here means that they are required to pay minimum 2% of the profit on corporate social responsibility i.e., as per the provision.

Furthermore, Schedule VII of the Act of 2013 specifies a wide range of activities that corporations in the country may engage in. Moreover Rule 2(c) of the Companies (Corporate Social Responsibility Policy) Rules defines the phrase Corporate Social Responsibility as all inclusive definition. Companies benefit from the definition since it allows them to choose their ideal Corporate social responsibility interactions while still adhering to the rules. Prescribed actions include reducing hunger and poverty, promoting education and gender equality, and ensuring a sustainable environment, among others. Furthermore, corporations are required to publish

⁷ Business Today, The unintended consequences of India's CSR law, January 13, 2015
<https://www.businesstoday.in/opinion/columns/story/corporate-social-responsibility-tax-in-india-hidden-costs-144332-2015-01-11>

⁸ Section 135 CA, 2013 notification 27.2.2014

⁹ Tax Guru, New Rules of Corporate Social Responsibility, March 10, 2014, available
<https://taxguru.in/company-law/rules-corporate-social-responsibility.html>

3.1 ANALYSIS OF RECENT AMMENDMENTS IN COMPANIES ACT,2013 IMPACT ON CSR

In recent there are two major amendments that took effect and have some of implications with corporate social responsibility.

One of these two amendment was **Companies Amendment act, 2019**¹⁰. In July of 2019, the President signed the Amendment Act. The amendment has made certain changes to the existing CSR system, which is outlined in Section 135 of the Companies Act. Section 21 of the Amendment Act mentions the modifications to this section in specific.

- **Unspent CSR account:** According to the amendment, all unspent money connected to CSR in one financial year (with respect to an ongoing CSR Project) must be transferred to a designated account within thirty days of the end of that financial year, in accordance with the company's CSR Policy. This account will be named Unspent CSR Account and will be opened in a designated bank. These funds must be utilized by the company within three financial years following the date of transfer.
- **Penalty Imposed:** If a corporation fails to follow the mentioned responsibilities, a penalty ranging from Rs 50,000 to Rs 25 lakhs can be imposed on it, according to the stipulated Amendment. It also provides for the imprisonment of all corporate officers who have defaulted for up to three years, as well as a fine ranging from INR 50,000 to INR 500,000. In addition, a separate punishment has been imposed for repeat offences.

The government confiscating CSR funds through an escrow fund is tantamount to fiscal extortion, therefore the modified CSR law may prevent corporations from doing business in India. The government already has control over a large portion of funds disbursed for CSR by public sector companies, but now it also has control over funds disbursed by private companies, as companies are required to transfer unspent funds to an escrow account, which is under the control of the government. Furthermore, there would be no monitoring or checks to see if the funds are being used for the intended purpose.

¹⁰ The companies amendment act, 2019 No. 29 Act of parliament

3.2 JUDICIAL APPROACH:

The Indian judiciary has likewise emphasised the importance of CSR. The Gujarat High Court in a case¹¹ clarified and lauded the notion of CSR even before it was established in Indian legal framework. As The time-honoured idea that company law must protect the interests of the firm's investors and shareholders is now too rigid a framework in which it can operate. New issues necessitate a new strategy. And, in determining and developing this new method, the goal for which the organisation was founded may serve as a catalyst for the path to be travelled.

In another case¹² Justice P.N. Bhagwati has held the concept of *lassiez faire* has taken a shift and state began to take foot in the social and economic aspects of citizens life to result in more welfare activities. This new concept of corporate responsibility developed as a significant feature of modern thought on the role of the companies in modern society, transcending traditional views about the relationship between board and shareholders and encompassing much broader groups affected by trading activities and other related operations of companies. The adoption of a socialist social model as the ultimate goal of a country's economic and social policies facilitated the formation of this new corporate concept.

Thus, Judiciary from time to time discussed the importance corporate social responsibility and emphasized on fact Corporate Social Responsibility legislation is ground breaking in that it inculcates in corporations the concept of social responsibility. However, the influence of the legislation on businesses in general and society in particular must be measured, investigated, and analysed throughout time in order to make appropriate adjustments in the law.

4. REPERCUSSIONS OF THE CORPORATE SOCIAL RESPONSIBILITY MODEL IN INDIA

Though the Section 135 of companies act, 2013 primary purpose and reason for being enacted are undeniable, the provision has garnered a harsh reaction from the business community. A

¹¹ Panchmahal Stee. v.Universal Steel Trader 1976 46 Comp Cas 706

¹² National Textile Workers Union v. P.R. Ramakrishnan AIR 1983 SC 75

closer examination of this provision reveals several of the long-term inconsistencies. Few of the following inconsistencies are:

- Corporate social responsibility leads to increase the cost for its compliance: The primary drawback of CSR is that the costs associated with its implementation could be too expensive for small corporations. The allocation of funds for CSR can be afforded by large corporations, but it is a time-consuming process for smaller businesses¹³. There is a need to incur extra cost in order to establish a different style of operation than typical, which is expensive. The expense of training employees, developing specific programmes for the advancement of society, and guaranteeing environmental safety is the second sort of cost involved. All of these actions raise the corporation's overall spending.
- Corporate social responsibility involuntary and restrictive nature: One of the most common criticisms of Section 135 is that it has altered the essential character of CSR by making it mandatory and making it a legal obligation. Despite of doing this it is to be on the decision of the management. The corporations are contesting the 'compulsory' character of Corporate Social Responsibility rather than the concept itself. It cannot be contested that the company's decision to spend profits on welfare programmes should be its sole prerogative. A business majorly has already bowed to a complex web of regulations and systems. Companies are find it incredibly difficult to comply with a compulsory rule like this.

This means that only activities that are stated on the schedule will be considered CSR. That is, only what the government determines to be CSR will be CSR, and corporations would have very little discretion over how they contribute to society. For the purposes of COVID – 19, the Chief Minister's Relief Fund or the State Relief Fund, for example, was explicitly excluded from CSR expenditure. Even payment of wages and salaries to casual and daily wage workers who live pay check to pay check is not considered 'CSR' under the amendment, despite the fact

¹³ Aayush Kumar, Mandatory CSR experience Vision?, 1(3) CLJ 113 (March 2013).

that they may have suffered the most during the coronavirus pandemic and associated lockdown¹⁴.

if a new activity is to be included as part of 'CSR' due to a novel concern (such as the coronavirus), an amendment to the Companies Act would be required to put such activity in Schedule VII, as was done in March 2020 due to the pandemic. This could cause delays in providing important services and dealing with new issues as they develop.

- Corporate social responsibility loggerheads with business objectives: It is a well-known concept that the primary goal of every corporate organisation is to make a profit. This is why they offer a wide range of products and services to their customers. During some decisions, the concept of CSR can be a hindrance. It requires that the corporation strike a balance between its own interests and those of the general public. This can occasionally result in a conflict, resulting in a loss for these businesses.

For Example- A corporation XYZ wishes to purchase property on which to build its business. At the same time, it is located near a residential area. Now, purchases are necessary for increasing output and thus increasing profits, but it is also the social responsibility of the organisation to protect the interests of the people. As a result, there is a conflict of goals.

- CSR places a company at a competitive disadvantage: In the long run, corporate social responsibility (CSR) can be damaging to businesses. As previously stated, incorporating CSR principles into a company's operations might result in an increase in production costs and other additional costs. This has a cascading impact, with the company's consumers and stakeholders bearing the brunt of the consequences. Customers will be less likely to acquire a product from such a company if the price of the product increases.

¹⁴ ICA, Business Response to COVID-19 through CSR,
https://www.iica.nic.in/images/CSR_COVID_Publication.pdf

There have been a number of other ambiguities raised in relation to this clause. One of such ambiguity there is no clause that assesses the impact of corporate spending or investment on CSR-related activities. If the Act requires social spending, it should properly establish a plan to assess its impact so that the plan's feasibility can be determined.

5. CORPORATE SOCIAL RESPONSIBILITY AS A BOON:

- Employee satisfaction by Corporate social responsibility: It is vital for a business to treat its employees fairly. The way a business behave with its employees reveals a lot about how it will treat the community. Employees that are treated well become active members of society and brand ambassadors for the company. It is vital that employees feel valued and supported in their roles. Employee morale is boosted as a result of this. In the minds of these employees, a sense of belonging emerges, and they take pride in the fact that they work for the company¹⁵. Employees become motivated as a result of the company's beneficial actions. Hence, this helps in benefiting corporates as the recruitment process here became more diluted because the current employees are satisfied with the function of company.
- Corporate Social Responsibility enhances company's public image.: In today's world, it's important to showcase what you've accomplished; otherwise, it's as if nothing happened at all. Companies must demonstrate their CSR actions in the digital age. This increases the company's prominence and, as a result, admiration for their efforts and active participation. Customers of a particular brand would feel good about purchasing items or services that benefit the community as a whole.
- Corporate social responsibility brough more capital inflow: Companies that engage in CSR initiatives on a regular basis attract attention from a variety of sources. Because of its active participation, the company will be noticed, which will strengthen its image

¹⁵ Premlata and A. Agarwal, CSR: “An Indian Perspective”, BLJ1, (2013)

and lead to more business prospects. As a result, the company will have a higher capital investment than corporations that do not engage in CSR. Foreign investments can also improve a country's economy.

- Corporate Social responsibility as Social good will: Ethical labour practises, sustainable machinery, overseas investors, and other factors all play a role in how a business operates. However, in today's world, the entire community is a key stakeholder. The right to operate a business is valid in two ways: legally and morally. Companies that participate in CSR activities win the trust and support of their communities. They now have a “social licence” to operate as a result of this. This is often referred to as the brand's "social goodwill."

Therefore, CSR has developed from its initiation as a suggestion that corporations give away a percentage of their revenues for philanthropic purposes to becoming an integral part of many businesses function. It is now a broad word that refers to a company's efforts to better society in some way. These initiatives can differ range from monetary donations to the implementation of ecologically friendly workplace rules

6. CONCLUSION:

Corporate social responsibility law is indeed an innovative law, as it generally implants in Corporates the very idea of being Socially responsible. However, the impact of the law both on Companies in general and Society in particular, needs to be assessed, studied and analysed over a period of time and make suitable changes, in law, from time to time.

As far as the issue in this research is concerned after analysing the bane and boon of corporate social responsibility model in India. It was found that there are not any straight jacket formulae to ascertain Corporate social responsibility is either a burden or benefit. The answer to this question depends on the implementation of these corporate social responsibility activities. There are lot questions in process of execution such as lack of transparency, restrictive nature of corporate social responsibility and etc. Hence, it is crucial that all elements are taken into consideration before evaluating Corporate social responsibility blessing or a curse.

7. RECOMENDATIONS:

In terms of policy and procedure, CSR in India has some deep flaws. As a result, it may be argued that additional steps are required to aid in the better implementation of CSR. As a matter of fact, these are some of recommendations:

Expertise of Company could be used more efficiently i.e., CSR should be viewed as more than just a way to spend funds. But wisely utilizing these resources. For instance, if a corporate house like L&T instead of just using money provide free houses to below poverty line people it can led to better implementation of idea. Further section 135 should be amended to provide enough leeway to companies for using their expertise for CSR.

Another such suggestion is Profit contribution limits must be divided into various smaller and larger categories, with corporations making more profit having to contribute more, and vice versa. These limits are to be adjusted accordingly from time to time. Smaller businesses and start-ups should not be required to contribute from profits, but they must nonetheless report on how their business is sustainable, how they are attempting to make it environmentally friendly, and how they are meeting their social responsibilities. This will help in creating equilibrium and will lead to be an equitable move in favour of small businesses.

Though mandating and penalising CSR is also a debatable issue but certainly it somehow makes the provision more fruitful rather than just a voluntary method but it can be more fruitful if Schedule VII which is restricted and opposed to the stakeholder theory on which CSR is built under CA 2013. This is due to the mandatory and stringent compliance of the list of activities in Schedule VII. Alternatively, if the legislation preserves obligatory CSR but gives firms the option of how to implement it, the stakeholder theory will be maintained. It would also ensure that the goal of giving back to society is achieved, as corporates, rather than the government, may be in a better position to make decisions on issues of welfare, such as the pandemic. Corporate Credit Rating System is the most recent introduction to woo the sector on the lines of CSR. This notion (trading in CSR credits) should be seriously considered by the industry. Companies would have to obtain government accreditation for their CSR operations in order to gain credits. Following that, the credits might be traded on a CSR credit exchange. If a corporation does not wish to participate in a CSR activity, it must purchase CSR credits from companies that have earned them. This is analogous to carbon credits, where the polluter

purchases carbon credits from companies that have earned them through environmentally responsible activities.

