



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

CSR MANDATED AND AMENDED: WHAT NEXT?

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Abstract:

Globally, Corporate Social Responsibility (CSR) has evolved through distinct phases with various terminologies like corporate philanthropy, corporate ethics, corporate citizenship, corporate social performance, corporate accountability, corporate sustainability, triple bottom line, etc. where CSR happens to be the fulcrum of all the above approaches. Further, one of the biggest experiments in the history of CSR is the enactment of Companies Act, 2013 by the Ministry of Corporate Affairs, Government of India, to introduce mandatory CSR on the companies to take up projects towards social/environmental welfare activities. Indeed, India is the first country to have brought about a legislation to implement CSR activities. Such CSR regulations help corporates to have a direct stake in developing the society and acutely change their role from perceived exploiters of commerce to facilitators of balanced economic development.

This paper juxtaposes the evolution of CSR in India, from voluntary to mandatory approach. CSR provisions as per the Companies Act, 2013 and its impact on the CSR initiatives are examined. The CSR regulations are further amended in the Companies (Amendment) Act, 2019. The government, however, is considering a re-evaluation of the CSR provisions, after the companies objected to the strict rules and regulations. Further, to encourage corporates towards fulfilling their social responsibilities during the pandemic COVID-19, certain amends were made. Future dimensions relating to the extent of government intervention in promoting and motivating companies to take up CSR activities are also analysed.

Keywords:

Corporate Social Responsibility (CSR), Ministry of Corporate Affairs (MCA), Companies Act 2013, Mandatory, Voluntary

Introduction:

“The National Empowerment Foundation (NEF) defines Corporate Social Responsibility as the concept whereby companies act to balance their own economic growth with the sustainable social and environmental development of the country”. (UKEssays, 2018)

At the onset, CSR is a voluntary initiative for companies to act socially responsible. Given the fact that CSR in the United States is voluntary, companies can define and interpret their views of social responsibility within the context of their own company. This liberty has allowed them to better consider and encourage CSR activities in comparison to their International counterparts.

In the year 2000, the Millennium Development Goals set the challenge of eradicating poverty, hunger, providing better education to children, equal opportunities for women and a healthier environment. Unfortunately, in many developing countries these global aspirations remained unaccomplished which later made to realise that, this can only be achieved by the combined efforts of governments, public sector and private organisations.

The obligatory aspect of CSR was first initiated in Indonesia and then in Mauritius. In 2007, Indonesia enforced a regulation and imposed on the companies to pay 3-5% of profits to the government, but later the studies revealed that the CSR laws in Indonesia required revision and proper imposition, due to misinterpretations and lack of precise definition. In 2008, Mauritius made an obligation to pay 2% of the book profit, and if, in respect to a year, the amount paid out to the CSR fund is less than 2% then the difference shall be remitted as income and be taxed at the end of the financial year.

Keeping in view of the above perspectives in various nations, the aim of this research is to determine the importance of mandatory CSR for the overall socio-economic development of India.

Literature Review:

(UKEssays, 2018) states that when CSR was being regulated in Mauritius, one of the main issues that arose was how to regulate it. Should it be a social norm, ethical norm or legal norm? Should it be regulated in a voluntary way or should it be an obligation to companies? Whether it is the role of the private sector or of the government to look after the society, since all companies are paying tax and the main objective of a company is to maximise profits. On a different perspective, should an organisation only focus on maximising profits or should its role as a socially responsible organisation also include looking after society?

(Sundar, 2018) towards CSR regulations in Companies Act 2013, specifies that if the aim of the act was to inculcate business responsibility towards all the stakeholders, then there is still a long way to go. By identifying social responsibility with money contributions, the government seemed to indicate that, all that was required to be held socially responsible was to make the required contribution, almost like guilt money, and all other offences will be forgiven.

(Dharmapala & Khanna, 2018) observe that the firms initially spending less than 2% increased their CSR activity, while large firms initially spending more than 2% reduced their CSR expenditures after Section 135 came into effect.

Methodology:

The current paper, with the review of above literature is based on secondary data and tries to understand the following points:

- Evolution of CSR in India from voluntary to mandatory phase
- Companies Act 2013 relating to CSR provisions and its impacts
- CSR amendments in Companies Amendment Act 2019
- CSR initiatives amidst COVID-19
- Future dimensions of CSR

Evolution of CSR in India:

India has the richest tradition of Corporate Social Responsibility (CSR). “The concept dates back to Mauryan history, where Chanakya emphasized on ethical practices and principles.” (Jose, Bandi, & Mehra, 2003). According to Chanakya’s Arthashastra, “In the welfare of the people lies the King’s welfare and in their happiness his happiness.” CSR was informally practiced in ancient times in the form of charity to the poor and underprivileged. “Several religions encouraged the concept of CSR and intertwined it within their laws. ‘Dharmada’ followed by Hindus, ‘Zakaat’ by Muslims and ‘Daashaant’ by Sikhs, meant donation from one’s earnings which is specifically given to the poor and disadvantaged.” (KPMG, ASSOCHAM, 2008)

(Kumar, Murphy, & Balsari, 2018) enumerated that the evolution of CSR in India followed a chronological evolution of 4 thinking approaches:

Ethical Model (1930 –1950): One important aspect of this model is the drive for “trusteeship” that was propagated by Gandhiji. Under this model the businesses were inspired to manage their business entity as a trust held in the welfare of the community. The idea initiated many family run businesses to work towards socioeconomic development. The Tata group’s efforts towards the well-being of the society are truly worth mentioning in this model.

Statist Model (1950 –1970s): Under the Prime Ministership of Jawahar Lal Nehru, this model came into practice in the post-independence era. The era was guided by a mixed and socialist kind of economy. The important feature of this model was that the corporate’s social responsibilities were decided by the state ownership and legal requirements.

Liberal Model (1970s –1990s): The model was confined by Milton Friedman. As per this model, corporate responsibility is limited to its economic bottom line, which implies that, it is enough for business to obey the law and generate wealth and through taxation and private charitable choices can attain the social ends.

Stakeholder Model (1990s – Present): The model came into being because of realisation that with growing economic profits, businesses also have certain societal roles to undertake. The stakeholder model is often associated with R. Edward Freeman. The model expects companies to perform according to “triple bottom line” approach to be responsible to various stakeholders. The businesses should also focus on accountability and transparency through several mechanisms.

CSR Mandated through Companies Act 2013:

CSR, a voluntary mechanism, started going through a period of swirl with the advent of globalization. India responded to this changing structure by issuing guidelines on voluntary CSR in 2009, updating them in 2011 and legally mandating in 2014. There were strong criticism when trying to impose mandatory CSR. The Companies Bill 2009 contained many provisions but none more debated than CSR. Mr. Salman Khurshid, the then Union Minister of Corporate Affairs, initially a mandatory CSR enthusiast, put his views that if CSR contributions were publicised, they would create competitiveness between organisations that in turn would encourage contributions. The purpose was to make it obligatory for companies to contribute at least 2% of net profits to the government. In 2011 the Indian government backed down and made CSR contributions voluntary by recasting it as ‘responsible business’ and a set of guidelines were issued by the then Union Minister of Corporate Affairs, Mr. Murli Deora. The debate surrounding the mandatory CSR in India continued and the government requested the companies to keep records of their CSR spending in order to disclose to their stakeholders.

The Federation of Indian Chambers of Commerce & Industry (FICCI) suggested tax concessions to companies who reached voluntary targets. The Confederation of Indian Industry (CII) felt that mandatory corporate responsibility would be counterproductive, arguing that “companies may resort to concealing activities to meet such regulations, particularly during economic recessions.” The mandatory CSR was not supported by philanthropic groups also. The CEO of the NGO ‘Give India’ viewed this as a crazy idea, believed that once CSR is made mandatory, people will find ways and means to get out of it. The rules would be so unclear that the reporting would be still more unclear. The CEO and co-founder of the Dasra foundation agreed and felt that when you make things mandatory, the chance of them not being done would be greater. Philanthropist Rohini Nilekani strongly criticised mandatory CSR believing that it was just outsourcing of governance. She felt that if needed, the corporations should be taxed extra to utilise the same extra taxed amount for social programs but CSR should not be dictated.

Despite the strong opposition from various sectors, India attempted to follow in the footsteps of Indonesia and Mauritius by imposing mandatory CSR regulations through Companies Act 2013, and became the first country to have actively considered such enforcement. Corporate giants, TATA and BIRLA, practised CSR actively, decades before the term CSR became popular in India. Even then, CSR remained misunderstood in the Indian Development Sector. A few days after Tata Group chairman emeritus Ratan Tata said that the 2% compulsory spending on CSR was nothing more than taxation, Sudha Murthy, chairperson of Infosys Foundation, told Hindustan Times that it was a blessing and not a tax or financial burden. Only few private and public companies greeted mandatory CSR and those that did, tend to had International shareholding from countries where CSR considered a best business practice.

The motive that led India's approach towards CSR is that companies are social organisms with deep roots into the society. While proposing the Corporate Social Responsibility Rules, the Chairman of the CSR Committee mentioned the following: "CSR is the process by which an organization thinks about and advances its relationship with various stakeholders for the commonweal, and signifies its commitment in this regard by accepting and practising appropriate business processes and strategies. Thus, CSR is not charity or mere donations. CSR is a way of managing business, by which corporates contribute to the social good. Socially responsible companies do not restrict themselves to using resources to increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth."

In India, CSR governed by clause 135 of the Companies Act 2013, was passed by both Houses of the Parliament, and received the approval of the President of India on 29 August 2013.

Provisions of Companies Act, 2013 on CSR: (Confederation of Indian Industry, 2013)

- Following companies to constitute CSR committee
 - Net worth of Rs. 500 crores or more, or
 - Turnover of Rs. 1000 crores or more, or
 - Net profit of Rs. 5 crores or more
- The above provision requires every company having such prescribed Net worth or Turnover or Net profit or more shall be covered within the ambit of CSR provisions. The section has used the word "companies" which indicates a wider meaning and includes the foreign companies having branch or project offices in India.
- At least 2% of average net profit of last 3 preceding years is spent on CSR activities every year. 'Net Profit' means, net profit before tax as per books of accounts and does not include profits arising from branches outside India. 2% CSR spending would be computed as 2% of the average net profits made by the company during every block of three years. For the purpose of first CSR reporting the net profit mean average of the annual net profit of the preceding three financial years ending on or before 31 March 2014.
- Committee to consist of at least 3 directors out of which at least 1 to be independent director.
- A company may set up an organization which is registered as a Trust or Section 8 Company, or Society or Foundation or any other form of entity operating within India to facilitate implementation of its CSR activities in accordance with its stated CSR Policy.
- A company may also implement its CSR programmes through Trusts, Societies, or Section 8 companies operating in India, which are not set up by the company itself.
- Companies may collaborate or pool resources with other companies to undertake CSR activities and any expenditure incurred on such collaborative efforts would qualify for computing the CSR spending.
- Only such CSR activities will be taken into consideration as are undertaken within India.
- Only activities which are not exclusively for the benefit of employees of the company or their family members shall be considered as CSR activity.
- Company shall give preference to the local area or areas around it where it operates, for spending the amount earmarked for CSR activities.

Schedule VII of Companies Act, 2013: (ebook.mca.gov.in)

Ever since the Companies Act of 2013 was enacted, India assumed a pivotal role in channelizing CSR funds in alignment with national priorities, as enumerated under Schedule VII of the 2013 Act:

- (i) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.
- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- (iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water, including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.
- (v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts.
- (vi) Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows.
- (vii) Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports.
- (viii) Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the central government for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women.
- (ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).
- (x) Rural development projects.
- (xi) Slum area development.

Explanation: For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

- (xii) Disaster management, including relief, rehabilitation and reconstruction activities.

Impact of mandatory CSR:

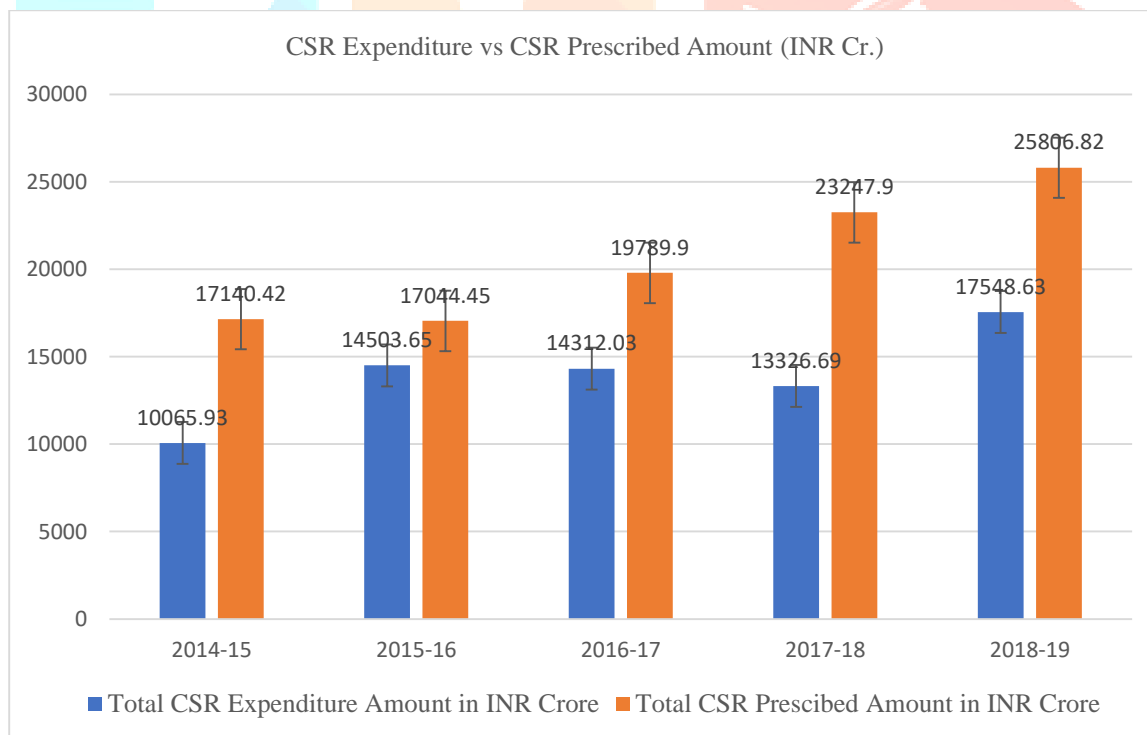
Five years (2014-2019) of Section 135 of the Companies Act, 2013:

Following are the key milestones achieved in the sphere of CSR as per the survey report of (KPMG, 2020)

- More companies complying to requirements of Section 135 of the Companies Act, 2013
- 325% Increase in the number of companies that have disclosed details of outreach in annual report
- 30% Companies had more than three CSR committee meetings
- 76% Companies have spent 2% or more in 2019
- 41% Companies have aligned CSR projects to SDGs in their annual report
- 150% Increase in the number of companies that have committed to carry forward 2% of unspent amount
- INR 35077 crores the cumulative expenditure by N100 companies
- 220% Increase in expenditure towards Schedule VII (3) – reducing inequality at companies with women as chairpersons of CSR committee
- 75% CSR projects implemented through partnerships demonstration of SDG 17
- 18% Companies have a CSR Foundation

Prescribed and Actual CSR in Numbers:

Prescribed CSR reached INR 100,000 Cr mark
Actual CSR spent reaches at INR 69800 Cr.



Source: Report of the High-Level Committee on CSR, 2018, MCA, Govt. of India (For FY14-15 to FY17-18) (CSR BOX & NGO BOX, 2019)

Note:

For FY 2018-19

- The total prescribed amount is projected based on the average y-o-y growth % for FY 2014-15 to FY 2017-18
- The total CSR expenditure is projected based on the Average % Compliance for FY 2014-15 to FY 2018-19.

CSR Amendments in Companies Act 2019: (Rajora, 2019)

Section 135 has been amended with respect to spending of CSR amount by companies, transfer of unspent amount, penal provisions and power to Central Government to issue directions.

Clause (a) in sub-section (5), —

(i) after the words “three immediately preceding financial years,”, the words “or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,” shall be inserted;

(ii) after the words “reasons for not spending the amount” occurring at the end, the words, brackets, figure and letters “and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year” shall be inserted;

Clause (b) after sub-section (5), the following sub-sections shall be inserted, namely:

“(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.”

It is hereby important to put the remarks of Finance minister Nirmala Sitharaman; “It was easy for people to interpret that either we comply, or we give an explanation and get away with it. Now that is not happening because Section 135 is being amended to provide specific penal provision in case of non-compliance”.

CSR initiatives amidst COVID-19:

Ministry of Corporate Affairs, on 23 March 2020, issued notification in light of the novel coronavirus disease and specified to treat COVID-19 as a notified disaster and included spending of funds towards mitigating the devastation caused by the virus as an eligible CSR activity. It further clarified through another notification on 28 March 2020, that the Government of India set up the PM CARES Fund with the objective of dealing with emergency or distress situations of COVID-19 pandemic.

MCA vide two Notifications dated 24th August, 2020 provided the following amendments:

- A company which, in its normal course of business, does R&D activity of new vaccine, drugs and medical devices is now permitted to incur CSR expenditure to undertake R&D of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that
 - such research and development activities are carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act; and
 - details of such activity are disclosed separately in the Annual Report on CSR included in the Board’s Report.
- Companies may also contribute the CSR amount towards the following:

- R & D projects in the field of Science, Technology, Engineering and Medicine funded by the Central Government or State Government or any agency or PSU of the Central Government or State Government; and
- Autonomous Bodies established by the Department of Pharmaceuticals and Ministry of AYUSH.

Future Dimensions of CSR: (CSR BOX & NGO BOX, 2019)

Four years post companies act 2013 enforcement, when the implementation of the Act had gained enough traction, a High-Level Committee (HLC-CSR) was set up by the Government of India to review the CSR Framework helping for social development. The HLC comprised of eminent individuals from the government, public sector, private sector, civil society and academia. The Committee submitted its report to the Ministry of Corporate Affairs on 13th Aug 2019. Following are the 10 major expected changes in the CSR and social sector landscape of India, if all the recommendations of the HLC-CSR are accepted.

1. Applicability of CSR Provisions: Extending the applicability of CSR provisions to Limited Liability Partnerships, Banks registered under the Banking Regulations Act, 1949 and other similarly placed entities that have not been covered under the Companies Act, will positively impact the CSR ecosystem with close to INR 900 to 1200 Cr. increase in prescribed amount for CSR per annum.
2. Constitution of CSR Committee: Exemption to companies with prescribed amount less than 50 Lakhs from forming a separate CSR Committee would reduce the undue burden of operational costs on almost 16000 companies falling under the ambit of the mandatory CSR.
3. Obligation to carry out CSR and Carrying Forward of Unspent CSR Amount: Considering the financial and operational challenges of companies, varied nature of projects, gestation period, flexibility in project design etc., provision of flexibility to spend CSR amounts based on need will go a long way in encouraging value creation and desirable impact of social development projects.
4. Schedule VII of the Act and SDGs Alignment: Aligning CSR with SDGs and broader national priorities will encourage social inclusion and will contribute to firmly establishing businesses as partners in achieving Global Goals. Discontinuation of considering contribution to Central Government Funds as CSR will encourage more spend towards social development projects and partnerships with local non-profits.
5. Deepening CSR Impact: Mandating companies above INR 5 Cr. prescribed CSR to undertake the need and Impact Assessment studies will push companies to identify need-based impactful CSR projects and invest CSR fund for sustainability of the intervention.
6. Reporting for CSR: Since CSR is to be monitored and regulated through a disclosure-based regime, more holistic reporting and granular capturing of data in machine readable formats will enable technology-based assessments for regulation and seamless data for information dissemination.
7. Investing in Social Enterprise: The recommendation to allow CSR fund for creation of social impact companies and then investing in social capital bond raised by these companies will go a long way to create an enabling ecosystem for building social capital and impact investing through CSR.
8. Mere Disbursal of Fund is not CSR: Transaction-based approach of CSR where fund transfer for companies to implementing agencies' account takes place, will not be accounted as CSR spend. The actual spent on projects need to be done in the same financial year. This will encourage companies to look at CSR in more programmatic way.
9. Random Audit of Companies' CSR Work: Random third-party assessment of CSR projects of 5% of the companies will help in sensitizing companies and management to get more engaged in CSR project planning and execution.
10. Participation of International Organization in CSR: The idea to allow international organizations in CSR project design and implementation on pilot basis is a good move to bring in domain specific expertise in social sector.

Conclusion:

India, in normal times is a chaos whereas in abnormal times, is systematic. This is proved in various instances from the struggle for independence to recent fight against COVID-19. Indian Vedas state, "You can accumulate wealth but has to be given to society in times of need." But in the present scenario of disparities between rich and poor, giving has become all times need. Work and Earn, at the same time Give and Gain should be the present mantra.

CSR, particularly after 2013 legislation presents a powerful and meaningful conduct to deal with basic yet important issues such as poverty, malnutrition, low productivity in agriculture, unemployment and environmental issues to name a few. Mandatory CSR in India though was questionable, has displayed positive results. CSR cannot be a one-size-fits-all approach with the diversity and development levels in different parts of our nation. CSR needs to evolve and put a strategy in place that will expand opportunities for the balanced development, fitting into triple bottom line approach.

Mandating something which should be voluntary has its own drawbacks. The companies which did voluntarily magnificent work through shared ownership, will have to wait for the government guidelines, whereas the government mechanism takes time and the guidelines may not be compatible with the company's CSR policies. On the other hand, not mandating CSR will also have adverse impact like, it will not be able to impose obligations on those companies who can do but are not willing to do. This does not mean that severe penal punishments to be imposed, but it should be supportive and motivative obligation. Hence CSR should not just be considered as the rules and regulations put up by the authorities, but an art which is voluntary and flexible within the set framework.

There are also debates that there are lot of expectations from corporates in the name of CSR; Companies should focus towards society, should go beyond philanthropy, should do research and development, should safeguard stakeholders' interests, should maintain ecological balance and the list goes on. This is really a burden for new and small companies. But once these initiatives are deep rooted into the businesses in the maximum possible ways, they become the best business practices.

Moving ahead, those organisations who are efficiently effective in achieving greater, wider and deeper impact will be preferred and will therefore prosper. Currently, India Inc. spends around Rs.15,000 crores annually on CSR programmes. Though, this is a sizable figure, it is miniscule compared to the magnitude of challenges we are facing. There is also a wide difference of about INR 30,000 crores between prescribed and actual expenditure of CSR amount, the reasons of which have to be properly analysed. The range of problems and the size of available resources with us makes it imperious for us to utilize the resources not just efficiently but also imaginatively to achieve the required scale. CSR should not just be a focus on what should be done after profits but also on how profits are made instead of debating on the issue of 2% on profits after tax or profits before tax. And also, the government giving 80G eligibility of tax exemptions for only specific items of Schedule VII should either make it for all or for none.

The country needs doers who think and thinkers who do. As the famous author, John Charles Salak said, "Failures are divided into two classes — those who thought and never did, and those who did and never thought." Right action is needed with right thought behind it. Forcing into the act without thinking can lead to disaster while thinking without acting can lead us nowhere. Further, CSR leaders should be transformational to make a meaningful difference. They must have passion but what is most required is compassion, sensitivity and empathy.

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