

Corporate Social Responsibility under Indian Legislation

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Abstract: Favorable human conditions for the employees, In-service allowances, in-service and post service educational and medical facilities for employees and their dependents, Retrial benefits, Protection of environment and other charitable programs initiated and provided by the corporations is a part of its Corporate social responsibility and denial and no fulfillment of the same is same is the violation of Individuals fundamental right under Article 21 of the Indian Constitution.i In Chameli Singh vs. State of Uttar Pradesh,ii the Supreme Court while dealing with Article 21 has held that for a decent and civilized life includes the right to food, water and decent environment. The court has observed that in any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object.

Keywords: Indian Legislation, Corporate Social Responsibility

1. Introduction

Right to live guarantee in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. The Crux of achieving "Social Security" lies in the "quality of life" and thus it can only be achieved by improving the same. Right to life is a Fundamental Right under the Constitutional Scheme but it does not mean mere a right to alive or live. Rather it does not mean an animal existence too. What the Right to Life means is living a life with "human dignity". Therefore Corporate Social Responsibility can make a great contribution to the community if they work to increase value for society as they go about their core activities and if they make good use of their assets, skill and others resources when they are consciously working on their corporate community involvement. Previously it was voluntary for all the corporate to take steps for betterment of the society but in era, Corporate Social Responsibility has gained statutory importance that's why earlier which is voluntary is now mandatory. The inclusion of the Corporate Social Responsibility mandate under the Companies Act, 2013; in India is an attempt to supplement the government's efforts of equitably delivering the benefits of growth and to engage the Corporate World with the country's development agenda.

1.1 Defining Corporate Social Responsibility?

The Confederation of British Industries defines Corporate Social Responsibility as a catch - all title referring to the activities of companies in areas where they impact on society and /or the environment, as well as on company's

shareholders, customers, suppliers, employees and other players. However, the Confederation of British Industries draws a distinction between legislative standards and 'that additional activity which many businesses undertake any way to add value to the business and build their reputation. Only the latter i.e. that, which is over and above the legal requirement, is Corporate Social Responsibility.¹ According to the UK government Corporate Social Responsibility means contribution of the business to our sustainable development goals. Essentially it is about how business takes account of its economic, social and environmental impacts in the way it operates - maximising the benefits and minimising the downsides. Specifically we see CSR as the voluntary actions that business can take over and above compliance with minimum legal requirements, to address both its own competitive interests and the interests of wider society.²

1.2 Indian Legislation on Corporate Social Responsibility

During 1980s to 2000 Corporate Social Responsibility was characterized as a sustainable business strategy. The wave of liberalization, privatization and globalization together with a comparatively relaxed licensing system, led to a boom in the country's economic growth. This further led to an increased momentum in industrial growth, making it possible for companies to contribute more towards social responsibility. What started as charity is now understood and accepted as responsibility.³ Today Corporations focus on social issues like ecological concerns, poverty, population growth, pollution, corruption, and illiteracy as a part of its Corporate Social Responsibility agenda. Earlier the social agenda is a voluntary

¹ CBI, 'Business Summaries: Corporate Social Responsibility', available at <http://www.cbi.org.uk>

² DTI, 'What is CSR?', available at <http://www.societyandbusiness.gov.uk>

³ Raja Banerjee & Dinesh J A, Evolution of CSR in India, 7 - 8 (Jana Urban Foundation, Bangalore)

concept for business world therefore the roots of Corporate Social Responsibility all over the world are found in the roots business itself. Business denotes activities of civil nature and thus creates a civil obligation. The enforcement of which is governed by some law. For example the law of contract which governs voluntarily created civil obligations.⁴ In India there was no fundamental law or provision as to mandate Corporate Social Responsibility until passing of Companies Act, 2013; only the National voluntary guidelines 2011, framed by Ministry of Corporate Affairs, which are refinement over the Corporate Social Responsibility Voluntary Guidelines 2009. And are applicable to all businesses irrespective of size, sector or location. These guidelines were designed with the aim of assisting enterprises to become responsible entities. The principles behind the guidelines are:-⁵

1. Businesses should conduct and govern themselves with ethics, transparency and accountability.
2. Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.
3. Businesses should promote the well-being of all employees
4. Businesses should respect the interests of, and be responsive to, all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.
5. Businesses should respect and promote human rights.
6. Businesses should respect, protect, and make efforts to restore the environment
7. Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.
8. Businesses should support inclusive growth and equitable development.
9. Businesses should engage with and provide value to their customers and consumers in a responsible manner.

Previously it was voluntary for all the corporate to take steps for betterment of the society except government rules and regulation related to protection of environment. But Corporate Social Responsibility has gained importance in New Companies Act, 2013. The inclusion of the Corporate Social Responsibility mandate under Section 135 the Companies Act, 2013 is an attempt to supplement the government's efforts of equitably delivering the benefits of growth and to engage the Corporate World with the country's development agenda. Under the New Companies Act, 2013, every company, private limited or public limited, which either has a net worth of Rs 500 crore or a turnover of Rs 1,000 crore or net profit of Rs 5

crore, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities. The corporate social responsibility activities should not be undertaken in the normal course of business and must be with respect to any of the activities mentioned in Schedule VII of the 2013 Act. Contribution to any political party is not considered to be a corporate social responsibility activity and only activities in India would be considered for computing corporate social responsibility expenditure. Further 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 constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities, and if the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.⁶ According to data published by the Ministry of Corporate affairs, for the year 2014 – 2015 Out of 10475 eligible companies, 7334 have reported CSR activity Out of these reporting companies only 3139 have done some expenditure on Corporate Social Responsibility. Out of total prescribed expenditure of 11883 crores by these 3139 companies, 8803 crores have actually been spent. (74%) CSR spent by the top 10 companies is 32% of the total Corporate Social Responsibility spend in 2014-15 (2783 crores) Rest of the 3129 companies have spent ₹ 6020 cores 39 companies have spent on Corporate Social Responsibility despite incurring losses in previous years. In 2015 - 16 the total expenditure of Corporate Social Responsibility by 5097 companies who have filed their Annual Financial Statement till Dec 2016 was 9822 crores⁷ The Ministry of Corporate Affairs has instituted National CSR Award to recognize and promote corporate initiatives in the area of Corporate Social Responsibility and promote inclusive growth and Sustainable Development's

1.3 Conclusion

Corporate sustainability is imperative for business today essential to long-term corporate success and for ensuring that markets deliver value across society. The Companies Act, 2013 has introduced the idea of 21st Century Corporate Social Responsibility to the forefront and through its mandate, is promoting greater transparency and disclosure. Schedule VII of the Act, which lists out the Corporate Social Responsibility activities, suggests communities to be the focal point. On the

⁴ Avtar Singh, Contract Act & Specific Relief, 5 (10th edn, 2008, Eastern Book Company, Lucknow)

⁵ Raja Banerjee & Dinesh J A, Evolution of CSR in India, 6 (Jana Urban Foundation, Bangalore, India)

⁶ Section 135, The companies Act, 2013

⁷ CSR Data and Summary, Ministry of Corporate Affairs, Govt of India, New Delhi

other hand, by discussing a company's relationship to its stakeholders and integrating Corporate Social Responsibility into its core operations, the draft rules suggest that Corporate Social Responsibility needs to go beyond communities and beyond the concept of philanthropy. It will be interesting to observe the ways in which this will translate into action at the ground level, and how the understanding of Corporate Social Responsibility is set to undergo a change. Today corporations are expected to provide donations out of their earnings to social educational institutions, charitable institutions, hospital, sport and others social welfare institutions under the legislative scheme. But the idea that a business has a societal obligation attached to Corporate Social Responsibility was as old as business itself and is a voluntarily practice. When a corporate offers an appropriate monetary salary to its men along with various other facilities and incentives, the men will be motivated to work effectively and efficiently. Thus taking care of its work force by any means and source is the first responsibility which is termed as a corporate social responsibility, a responsibility to provide all basic necessities of daily life to each and every single workman. To satisfy the market demand and consumer satisfaction is the second corporate responsibility which is termed as "Social" as the

goods produced by the corporation will the needs of society. To maintain the standard of quality of product as the product is to be consumed by the society, thus this will be the 3rd responsibility of a corporate termed as "Social" and further availability of produced good at affordable price to public at large is the 4th responsibility a corporation termed as "Social" and so on. In totality from the initial stage of its incorporation a corporate purely performs social responsibility and such a conduct is voluntarily initiated by the corporation and if all the above said factors combine together they earn profits to the corporate. If the corporate earns profit it will be able to provide better living conditions to its employees and an upgraded product quality for the society. In practical sense corporations are always socially responsible but in theory they are expected to be socially responsible towards the society from which they earn profits under the shadow of the State Legislation supported with numbers of international law instruments that regulates the MNC's activities related with Corporate Social Responsibility which is human right fulfillment, labor rights, environmental rights and sustainable development.

ⁱ Samal Chand Tiwari Son of Late Prem v. State Of U.P., ⁱⁱ (1996) 2 SCC 549
Through Secretary, Allahabad High Court , 6, Dec 2005