

# **CORPORATE SOCIAL RESPONSIBILITY VIS A VIS INDIAN CORPORATE STRUCTURE**

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## **INTRODUCTION**

In the age of globalisation when the economic boundaries between the countries have diminished, the market players (especially the consumers) favour corporations which imbibe a strong belief in business and ethical sense. This notion is often addressed as ‘Corporate Social Responsibility’ or CSR. Gone are the days when the success of any business or corporation was judged on the profit that it made. For a corporation to be treated as successful one it is equally relevant on how ethical its business practices are. As a result businesses in the 21<sup>st</sup> century have undergone a sea change since the turn of the century. This change is not only apparent in the use of new technology but can also be seen in the policies that drive their investments.

The fundamentals of the CSR rest on the fact that it is not only the duty of the State and its agencies to take care of its people, but of every other stakeholder who through its activities can cause a significant impact on the lives of the people around it. It is no longer encouraged for the Corporations to make profit in isolation, without involving their key players, namely their employees and the local community. The concept of CSR makes no distinction between the private and the public enterprises for the purpose of contributing to the society and creating positive impact on the community and the environment in which they operate. In simple words, CSR policies framed by the companies/businesses themselves and/or imposed upon them by the government focuses on adoption of ethical business practices along with profit making.

## **MEANING AND CONCEPT OF CSR**

The term Corporate Social Responsibility is a difficult term to define, for the simple reason that though the basic notion of CSR is common to almost all the countries and the Multi

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National Corporations (MNC), yet its different government regulations of what is expected as a CSR practice and what is not, that makes all the difference. With globalization the concept of CSR now incorporates business, legal, social, educational and other related aspects. Another issue that defines CSR is the jurisdiction issue, i.e. where does it apply? What CSR means in the context of developing countries differ to a large extent as how it is perceived in the developed countries.<sup>1</sup> Whether it is the developed economies of the West or the emerging business destinations of the East, adoption of CSR practices are encouraged and non-compliance of CSR is often penalised by most of the countries. Yet, the basic question still remains: What exactly is CSR?

CSR has been defined differently by different authorities. The European Union (EU) defines CSR as, “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis as they are increasingly aware that responsible behaviour leads to sustainable business success.”<sup>2</sup> The World Business Council for Sustainable Development (WBCSD) in 2002 defined CSR<sup>3</sup> as, “the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life”.<sup>4</sup>

Business Dictionary defines CSR as, “A company’s sense of responsibility towards the community and environment (both ecological and social) in which it operates. Companies express this citizenship (1) through their waste and pollution reduction processes, (2) by contributing to educational and social programs, and (3) by earning adequate returns on the employed resources.”<sup>5</sup>

A perusal of the above mentioned definitions makes it clear that CSR signify those practices whereby companies are encouraged to give back to the society. They are encouraged to adopt practices which allow them to work in collaboration with the various

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<sup>1</sup> Bryan Horrigan, *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business*, 37 (Edward Elgar Publishing, 2010).

<sup>2</sup> Kenneth Amaeshi, Paul Nnodim, et.al., *Corporate Social Responsibility, Entrepreneurship, and Innovation*, 7 (Routledge, 2013).

<sup>3</sup> It had defined this concept earlier in 1998 as “the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large”. In 2002 it incorporated the concept of sustainable development. This goes on to show the adaptability of the concept to changing times.

<sup>4</sup> Olufemi Amao, *Corporate Social Responsibility, Human Rights and the Law: Multinational Corporations in Developing Countries*, 68 (Taylor & Francis, 2011).

<sup>5</sup> Available at: <http://www.businessdictionary.com/definition/corporate-social-responsibility.html#ixzz3VES3ua22> (Visited on March 18, 2015).

stakeholders involved, i.e. their employees, customers, government agencies and NGOs. Adoption of CSR practices have often yielded profitable results for the company involved vis- a- vis its stakeholders.

## **DEVELOPMENT OF CSR IN INDIA**

The concept of CSR in India is not of a recent origin. Adherence to the principles of CSR can be found in the early Vedas. They by employing religious and spiritual teachings have always stressed upon the virtue of *Dharma*. With the changing times and strengthening of legal and regulatory framework, CSR which was earlier treated as philanthropy (encouraged but not always followed) has now evolved in stature to include legal, environmental, social and economic concerns of the society, which ought to be addressed by the corporations in their respective capacity. As a result, with the emergence of Indian companies at the global level, it has been observed that many of them have incorporated sound CSR practices and are very enthusiastic about the same.

The statutory framework of the country which was a few years back silent on the strengthening CSR practices has now in its kitty ‘The Companies Act, 2013’. On 27th February, 2014, the Government of India has notified the rules for CSR spending u/s 135 of the New Companies Act 2013 along with Companies (Corporate Social Responsibility Policy) Rules, 2014 effective from 1st April 2014, thereby turning the CSR from voluntary activities to the mandated responsibilities.<sup>6</sup> Following are the provisions governing CSR in India now:<sup>7</sup>

### **The Companies Act, 2013, Section 135 covers the following:**

#### *APPLICABILITY*

It covers all companies in India meeting any one or more of the following conditions:

- Turnover of INR 1,000 crores or more.
- Net worth of INR 500 crores or more.

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<sup>6</sup> Hemant Goyal & Sandhya Gupta, “Corporate Social Responsibility As per New Indian Companies Act 2013”, available at: [http://www.globaljurix.com/our-publications/corporate-social-responsibility-as-per-new-indian-act-2013.pdf?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=View-Original](http://www.globaljurix.com/our-publications/corporate-social-responsibility-as-per-new-indian-act-2013.pdf?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original) (Visited on March 20, 2015).

<sup>7</sup> First Notes, KPMG in India, available at: [https://www.kpmg.com/IN/en/IssuesAndInsights/first-notes/Documents/First\\_Notes\\_28Feb14\\_CSR\\_Rules.pdf](https://www.kpmg.com/IN/en/IssuesAndInsights/first-notes/Documents/First_Notes_28Feb14_CSR_Rules.pdf) (Visited on March 20, 2015).

- Net Profit of INR 5 crores or more.

The corporate social responsibility (CSR) contribution would have to be at least two per cent of the average net profit, made during the three immediately preceding financial years.

#### *ADMINISTRATION AND REPORTING*

- The Board would appoint a three member CSR committee including one Independent Director.
- The CSR committee would be responsible to formulate CSR policy, recommend CSR initiatives and monitor CSR expenditure.
- The Board would be required to mandatorily report on CSR in the Board's report. In case of failure to spend the prescribed amount, reasons would have to be disclosed in the Board's report.

#### *IMPLEMENTATION*

- CSR committee is to develop CSR policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.
- The company shall give preference to the local area and areas around it where it operates for spending.

#### *RESTRICTIONS/ EXCLUSIONS*

Following are the restrictions:-<sup>8</sup>

- Programs or activities undertaken exclusively for employees or their families shall not be considered as CSR
- Any contributions made to political parties u/s 182 of CA,2013 shall not be given credit
- Projects or activities undertaken in India will only be given credit or counted for the purpose of mandatory spend limit
- Companies are allowed to spend up to 5% of total spend in any financial year to build capacities of their own CSR personnel or the agencies through whom CSR activities are undertaken

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<sup>8</sup> G.S. Rao, "New Rules of Corporate Social Responsibility", available at: <http://taxguru.in/company-law/rules-corporate-social-responsibility.html> (Visited on March 21, 2015.)

## **Companies (Corporate Social responsibility Policy) Rules, 2014**

The MCA has also notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 to be effective from 1 April 2014. The salient features of the Rules are as follows:

- A private company or an unlisted public company is exempted from the requirement of having independent directors for CSR committee.
- CSR expenditure should exclude those incurred in the normal course of business.
- Companies belonging to the same group can set up a registered trust or a registered society to undertake CSR activities. Companies can also join hands with other companies to undertake CSR projects jointly, in such a manner that such companies can report separately on such projects.
- Only expenditure incurred on projects or activities in India to qualify as CSR expenditure.
- Contribution, directly or indirectly, to any political party shall not be considered as CSR expenditure.
- The Rules also specify that the surplus arising from CSR activities are not to be considered as business profits of the company.
- Companies will be required to display the CSR policy and projects undertaken and amount spent in the Board Report and on the Company's website.
- CSR expenditure of the concerned company should be in line with the amended Schedule VII of the Companies Act 2013. Schedule VII lays down the following activities to which the company can apply its CSR funds:
  1. Eradicating hunger and poverty and malnutrition, promoting preventive healthcare and sanitation and making available safe drinking water.
  2. Promoting education; including special education and employment enhancing vocation skills especially among children, woman, elderly and the differently abled and livelihood enhancement projects.
  3. 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.

4. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining of quality of soil, air and water.
5. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.
6. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up of public libraries; promotion and development of traditional arts and handicrafts. CSR may also include measures for the benefit of armed forces veterans, war widows and their dependents; and training to promote rural sports, nationally recognised sports, and Paralympics sports and Olympic sports.

### **Penalty for violation of new CSR provisions**

The Companies Act, 2013 does not per se contain penal provisions for not adopting CSR practices. Its penal provisions are concentrated more on divulging of information on CSR activities. Section 134 (3) (o) imposes a duty on the board of directors to disclose all the relevant information about its CSR policy and its implementation on an annual basis. Moreover, Section 134 (8) of the Act states that if the company fails to comply with the aforementioned provision, it shall be liable to pay fine which shall not be less than Rs. 50,000 but may extend to Rs. 25,00,000. Similarly, every defaulting officer shall be imprisoned for a period not exceeding 3 years and may also be asked to pay fine which shall not be less than Rs. 50,000 but may extend to Rs. 5,00,000. This essentially implies that the Act punishes a company for not disclosing information about its CSR policy but it does not hold them liable for not undertaking CSR activities.<sup>9</sup>

However, Section 450 of the Act contains a hidden provision for punishing a company or its officers in case no specific punishment is provided for a particular offence. More specifically, it states that if a company fails to comply with any provisions of the Act or any rules there under, the company and any defaulting officer can be asked to pay a fine which may extend to Rs. 10,000 and Rs. 1,000 per day if the contravention continues after the first

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<sup>9</sup> Rahul Bajaj, "What you need to know about Corporate Social Responsibility (CSR) under Companies Act, 2013", *available at*: <http://blog.ipleaders.in/provisions-pertaining-to-corporate-social-responsibility-in-the-companies-act-2013-a-paradigm-shift/#ixzz3VGTwVBDw> (Visited on March 21, 2015).

fine.<sup>10</sup> However, it is expected that the government may go soft on the Companies during the first few years so that they can be brought on board to adopt CSR practices.

## **INDIAN CORPORATIONS AND THEIR CSR PRACTICES**

### **AMUL**

The Amul Cooperative Society is one of the pioneers in CSR initiatives. It seeks to empower the milk producers by offering them fair price for their product. In 2001, after the Gujarat earthquake, "Amul Relief Trust" (ART) under the Chairmanship of Dr. V. Kurien in 2001 with a donation of Rs. 50 Millions for reconstruction of the school buildings damaged in the 2001 earthquake in Kutch District. The Trust reconstructed 6 schools damaged by the above earthquake at a cost of Rs. 41.1 millions in Kutch area. The members of Amul family (including the milk producers) have been celebrating Independence Day since 2007 by planting saplings across Gujarat, to reduce the effect of Global Warming. "Amul Green" movement has also been awarded by International Dairy Federation for best environment initiative in the "sustainability category" during the 4th Global Dairy Conference held at Salzburg Congress Centre, Austria on 28th April, 2010.<sup>11</sup>

### **Tata Group**

Indian conglomerate, the Tata Group spent Rs 1,000 crore on corporate social responsibility (CSR) in 2013-14. If one were to exclude the salt-to-software enterprise's philanthropic trusts, the Tata Group companies spent Rs 660 crore on CSR in the just ended fiscal. The diversified Indian multinational's CSR spend was well above 2% of its net profit, a minimum requirement for an Indian company under the Companies Act. A significant amount of the total CSR spend by the Tata Group has gone into skill development, health and education, with Tata Steel emerging as the biggest spender within the group.<sup>12</sup>

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<sup>10</sup> Supra note 9.

<sup>11</sup> Sameer Sheikh, "A Project Report on Corporate Social Responsibility on Amul", *available at*: [http://www.academia.edu/6867283/A\\_PROJECT\\_REPORT\\_ON\\_CORPORATE\\_SOCIAL\\_RESPONSIBILITY\\_ON\\_AMUL\\_SUBMITTED\\_TO](http://www.academia.edu/6867283/A_PROJECT_REPORT_ON_CORPORATE_SOCIAL_RESPONSIBILITY_ON_AMUL_SUBMITTED_TO) (Visited on March 23, 2015).

<sup>12</sup> *Available at*: <http://timesofindia.indiatimes.com/business/india-business/Tatas-spent-Rs-1k-cr-on-corporate-social-responsibility-activities-in-FY14/articleshow/38444133.cms> (Visited on March 23, 2015).

## **ONGC**

CSR activities of ONGC are essentially guided by project based approach in line with the guidelines issued by the Department of Public Enterprises and Ministry of Corporate Affairs of the Government of India. ONGC along with HelpAge India continues its efforts to take healthcare to the doorsteps of the elderly through Mobile Medicare Units. Another CSR initiative of ONGC aims at economically empowering the women tribal handloom artisans in Assam to facilitate cluster development for economically marginalized tribal populations. The company also works towards the conservation of the species of the Eastern Swamp Deer.<sup>13</sup> On 17<sup>th</sup> February, 2014 ONGC was the solitary winner in the category of ‘Best CSR Practices in the Areas of Health’.

## **ITC**

The company has been able to generate sustainable livelihood opportunities for around 6 million people through its CSR initiatives. ITC has also achieved the unique global distinction of being carbon positive for nine successive years, water positive for 12 consecutive years and solid waste recycling positive for the last seven years.<sup>14</sup> In the last few years, the company has spent considerable money on developing renewable energy infrastructure. And now, renewable energy meets almost 38% of ITC's total energy requirements which is indeed remarkable considering the huge manufacturing base and hotels. The target is to increase this to 50% over the next five years. All the premium luxury hotels are certified green buildings making ITC the greenest luxury hotel chain in the world.<sup>15</sup>

## **CONCLUSION AND SUGGESTIONS**

The concept of CSR has grown in stature and applicability over the last few decades. It is considered as hallmark for any business house. With the change in times, the corporations have understood that adoption of CSR in the long run only increases the profit earned. The corporation adopting equitable and just practices will stand to increase its customer base, thereby earning a lot more than what it had spent on these initiatives.

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<sup>13</sup> Available at: <https://tenders.ongc.co.in/wps/wcm/connect/ongcindia/Home/CSR/> (Visited on March 23, 2015).

<sup>14</sup> Writankar Mukherjee, “The Economic Times”, available at: <http://economictimes.indiatimes.com/magazines/corporate-dossier/indias-best-companies-for-csr-2014-heres-how-itcs-social-outreach-programme-works/articleshow/45372587.cms> (Visited on March 23, 2015).

<sup>15</sup> Ibid.



Hence, it is suggested that CSR activities should go beyond the prescribed law and exceed its 'minimum obligations' threshold. Thus, a corporation that meets environmental legal requirements in terms of its emissions is not necessarily a socially responsible corporation because it is merely abiding by the law. However, if it contributes corporate resources to promote community welfare such as providing free day care for its employees or lowering its emissions beyond the legal requirement then these actions can be termed as socially responsible.<sup>16</sup> In addition to this, in the Indian sector, companies which do not fall within the CSR threshold as per the new Companies Act, 2013 should also be encouraged to adopt such business practices which are geared towards the protection and upliftment of the society at large.

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<sup>16</sup> Subhabrata Bobby Banerjee, *Corporate Social Responsibility: The Good, the Bad and the Ugly*, 17-18 (Edward Elgar Publishing, 2009).