

Laws on Corporate Social Responsibility in India

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*'I desire to end capitalism almost, if not quite, as much as the most advanced socialist. But our methods differ. My theory of trusteeship is no make-shift, certainly no camouflage. I am confident that it will survive all other theories.'*¹

Abstract--- In recent years, increasing attention has been given to the concept of corporate social responsibility (CSR) as a postulate for ethical behaviour of business and as a basis for good corporate citizenship. Corporations around the world are struggling with a new role, which is to meet the needs of the present generation without compromising the ability of the next generations to meet their own needs. Organizations are being called upon to take responsibility for the ways their operations impact societies and the natural environment. The term corporate social responsibility came into common use in the late 1960s and early 1970s after many multinational corporations formed the term stakeholder, meaning those on whom an organization's activities have an impact. Corporate social responsibility is a form of corporate self-regulation integrated into a business model. CSR policy functions as a built-in, self-regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norms. This paper is intended to discuss existing laws concerning to CSR main focuses on new companies Act 2013. The paper is of value to corporate managers, public regulators, NGOs and individuals with an interest in CSR, including as an aspect of corporate governance.

I. INTRODUCTION

Mahatma Gandhi's view on the ownership of capital was one of trusteeship, motivated by the belief that essentially society was providing capitalists with an opportunity to manage resources that should really be seen as a form of trusteeship on behalf of society in general. The social contract theory also has been advanced as a theoretical basis upon which to explain the current practice of Corporate Social Responsibility (CSR) by corporations. Similarly starting from the 17th century the social contract concept has been used to justify human rights. The concept was the foundation of the constitution/ legal basis of many western states starting with England, U.S and France. Business ethicists and philosophers have tried to construct and analyse the social responsibility of corporations from a social contract perspective without linking it to human rights or the political social contract. The age of widespread communication and growing emphasis on transparency, customers of any product or service are unlikely to feel satisfied in buying from an organization that is seen to violate the expectations of what is deemed to be ethically and socially responsible behaviour. It is becoming increasingly evident that organizations that pay genuine attention to the principles of socially responsible behaviour are also finding favour with the public and are the preferred choice for their goods and services. Therefore, clearly establishes the stake of a business organization in the good health and well

¹ Mahatma Gandhiji (1939), cited in Bose (1947).

being of a society of which it is a part². The study and practice of corporate social responsibility appear to be alive and well, as thousands of companies are vying to gain recognition by adopting the CSR label. Since 2000, over 5300 businesses and 130 countries have joined the United Nations' Global Compact, the largest extant international CSR initiative³. The World Bank, OECD, and the International Labour Organization all run similar initiatives with thousands of members⁴. The major challenges of CSR in the current business activities are the business case for CSR, monitoring, certification and reporting, mainstreaming CSR in the supply chain, the role of public policy in CSR.

The concept of Corporate Social Responsibility was first mentioned 1953⁵. However, the term CSR became only popular in the 1990s, when the German Betapharm, a generic pharmaceutical company decided to implement CSR. The generic market is characterized by an interchangeability of products. In 1997 a halt in sales growth led the company to the realization that in the generic drugs market companies could not differentiate on price or quality. This was the prelude for the company to adopt CSR as an expression of the company's values and as a part of its corporate strategies. The Term Corporate Social Responsibility is imprecise and its application differs. CSR can not only refer to the compliance of human right standards, labour and social security arrangements, but also to the fight against climate change, sustainable

management of natural resources and consumer protection. Several terms have been used interchangeably with CSR, they include, business ethics, corporate citizenship, corporate accountability, sustainability and corporate responsibility⁶.

The legal focus on corporate social responsibility is strictly speaking a recent phenomenon. International legal consequences of multinational operations are deemed to be most relevant, at least with regard to obligations, in areas such as human rights and damages arising from inadequate environmental, health, labour, and safety standards. Those are the policy domains that have attracted the greatest attention on the part of international legal theoreticians and practitioners working in this specific field. By implication, that is where examples of emerging patterns of problem conceptualization and management are found. Under the banner of CSR, these institutions⁷ have sought to raise public awareness about the necessity for TNCs to abide by certain health, environmental, and social standards. The European Union ('EU') has been at the forefront of soft law developments in the field of CSR. EU institutions have taken an active role in encouraging, by means of resolutions, communications, and recommendations, the voluntary adoption of codes of conduct by transnational corporations ('TNCs').

The key legal and policy instruments have been scrutinized for that purpose and their task is to make sure that the process of global and economic and social change is managed properly and fairly. Several guidelines or standards have been developed to serve as frameworks for CSR they are: the Draft UN Code of Conduct on Transnational Corporations, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, UN Agenda 21, the UN Global Compact, and the UN Norms on the

² The Importance of Corporate Social Responsibility and Its Limits, María de-los Ángeles Gil Estallo & Fernando Giner de-la Fuente & Carles Grifol-Miquela, Published online: 6 June 2007# International Atlantic Economic Society 2007.

³See Participants and Stakeholders, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html>.

⁴ See Owen E. Herrnstadt, Are International Framework Agreements a Path to Corporate Social Responsibility, 10 U. PENN. J. BUS. & EMP. L. 187, 196-200 (2007); see also Pieter De Koster & Peter Van den Eynde, International Framework Agreements on Corporate Social Responsibility: Conflict of Laws and Enforcement, 10(2) BUS. L. INT'L 128, 128-34 (2009)).

⁵ 'Social Responsibilities of the Businessman' by William J. Bowen.

⁶ Research capsule : The status of corporate social responsibility in India – a note, environmental management centre, May 2005
⁷ mainly the European Parliament and the Commission

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Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, and EC Directives on equal treatment. Since international law still struggles with issues of enforcement and legitimacy, many companies have simply crafted their own codes or signed on to voluntary agreements to indicate to consumers that they intend to be "socially responsible" wherever they operate. While the codes are essentially unenforceable, the idea is that they will be ethically binding on the companies and monitored closely by consumers and NGOs. And these Guidelines' recommendations express the shared values of the governments of countries from which a large share of international direct investment originates and which are home to many of the largest multinational enterprises. The Guidelines aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide. The United Nations Special Representative on Transnational Corporations and Human Rights that is the Ruggie Report 2008 made clear that corporations have a responsibility to protect human rights. This responsibility is defined as follows: [The corporate] responsibility to respect is defined by social expectations - as part of what is sometimes called a company's social licence to operate and "doing no harm" is not merely a passive responsibility for firms but may entail positive steps. To discharge the responsibility to respect requires due diligence. This concept describes the steps a company must take to become aware of, prevent and address adverse human rights impacts⁸. This is a strong and important statement, especially as it is supported by key business organisations. It also recognises that the responsibility to respect is expected of all corporations, and not just a few large transnational corporations.

Indian context

In India there are an existent but small number of companies which practice CSR. CSR is not a new

concept in India. Ever since their inception, corporate like the Tata Group, the Aditya Birla Group, and Indian Oil Corporation, to name a few have been involved in serving the community. Through donations and charity events, many other organizations have been doing their part for the society. The basic objective of CSR in these days is to maximize the company's overall impact on the society and stakeholders. CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations and processes. A growing number of corporate feel that CSR is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness. Over the past several decades, the Tatas have established Trusts, which enabled setting up of institutions like the Indian Institute of Science (IISc) and the Tata Institute for Fundamental Research (TIFR) and TATA's CSR activities in Jamshedpur include the provision of full health and education expenses for all employees and the management of schools and hospitals.. Wipro Chairman Azim Premji has pledged to donate nearly Rs 10,000 crores for improving school education in the country. Infosys commits one per cent of its profits every year to social causes through the Infosys Foundation. The Birlas, the Mahindras, the Kalyanis and several other large corporations have been spending a fraction of their profits on social causes.

The supreme legal document concerning to CSR, the Constitution of India under Art. 297 vests natural resources in the Union govt and Art 39(b) requires distribution of resources to sub serve the common good, commercial practice in the oil and gas industry¹. And the section 135 and schedule VI of the Companies Act 2013, and other legal norms are the human rights⁹, environmental protection, consumer protection, taxation laws, and minimum standards set by law in other matters are also governs this. These are universal principles

⁸ Ruggie Report , 2008, paras. S4--61

⁹ International Journal of Applied Research and Studies (iJARS) ISSN: 2278-9480 Volume 2, Issue 4 (April- 2013) www.ijars.in

that are irreversible and have found an important niche in almost all the nations. So any corporation, indigenous or international, shall have to comply with the legal norms of the nation. The new Companies law in India which the Parliament received the assent of the President on the 29th August, 2013 makes it mandatory for companies to earmark at least 2 percent of their average net profits for the preceding three financial years, for implementing a corporate social responsibility (CSR) strategy. The idea is that if we could divert some corporate energy and the corporate way of doing business into our development sector, for a country like India it could help enormously. According to Union Minister, this stipulation makes India the first country in the world to legally mandate corporate spending on social welfare.

THE COMPANIES ACT 2013

The sections 135 and Schedule VII of the Companies act 2013 deal with CSR. The term "CSR" itself is not defined in the Companies act 2013. However, Schedule VII of the Companies act, stated that, requires the CSR policy created by the CSR Committee to involve at least one of the focus areas which is mentioned in VI schedule. New Act on companies came in to force this year. Under Section 135 (1) of the companies Act 2013¹⁰ mandates that, 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. And under section 135 (2) deals with the Board's responsibility on reporting under sub-section (3) of section 134 mandates that, disclose the composition of the Corporate Social Responsibility Committee. On the quantum of responsibility Section 135 (5) states that, the Board of every company referred to in sub-section (1) of

section 135, shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy: 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: Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Under Section 135 (3) of the Act state Committee is mandated that it should, formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII. Recommend the amount of expenditure to be incurred on the activities referred. And it should monitor the Corporate Social Responsibility Policy of the company from time to time. Under section 135 (4) The Board of every company referred to in sub-section (1) of section 135 shall, after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed. And it should be ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

Schedule VI of the new Companies Act 2013¹¹ speaks about the Activities which may be included by companies in their Corporate Social

¹⁰ Companies Act 2013, Notification, *New Delhi, the 30th August, 2013*

¹¹ Companies Act 2013, Notification, *New Delhi, the 30th August, 2013*

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Responsibility Policies. The followings are stated activities under schedule VI¹² of this act

1. Eradicating extreme hunger and poverty
2. Promotion of education
3. Promoting gender equality and empowering women
4. Reducing child mortality and improving maternal health
5. Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases
6. Ensuring environmental sustainability
7. Employment enhancing vocational skills
8. Social business projects
9. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women
10. Such other matters as may be prescribed.

This Act has two important provisions with regard to CSR. The first is that the board is mandated to ensure that the company will spend on the CSR. Second being that they have to give an explanation regarding the spending. So, effectively although there is no mandatory obligation on the company, but a responsibility is cast upon the board members¹³. An explanation that is unsatisfactory can empower the regulator to question the roles and duties of the directors making it not just a provision on paper but an obligation on the board, which they may not be able to get away from easily.

With CSR spending become mandatory for prescribed class of companies, there is bound to be increased engagement of companies with social and development projects. The rationale for CSR

activity is that corporate earn their profit by exploiting different resources of the society, and so a portion of the benefit derived by them should be channelled for the betterment of society. Though compulsory CSR spending may seem burdensome for some class of companies, it will create of a sense of responsibility among Corporates, especially when they see benefits in the long term. Children, women, uneducated, and unemployed would be among the beneficiaries as CSR activities may be focused on them. The intention of policy makers is quite clear - to report business community's contribution for fulfilment of social, environmental and economic responsibilities. While contribution to the local community is a good objective, businesses should choose social, environmental and economic activities that contribute to society at large. CSR activities will also help improve the image of a company within the society as one that cares for the community. Significantly, there is no penalty for defaulting on CSR norms. Only an explanation is to be given by the board in its report for such non-compliance. So, it seems there is no real coercive factor. The new CSR Clause will only apply to some of the over 800,000 companies in India, including over 8,000 publicly listed companies and multinational companies. The accounting firm Ernst & Young estimates that the law would cover over 2,500 companies in India and generate over U.S. \$2 billion of CSR spending in local communities.

Expected contribution for CSR after the CSR provisions are enforced

Name of the companies	Average Profits ¹⁴ (Amt in Rs. millions)	Proposed contribution in CSR ¹⁵ (Amt in Rs. millions)
Gail (india) Limited	34,516.03	690.32

¹²Ibid

¹³ The 2% CSR Clause: New Requirements for Companies in India, Kordant Report Series, © 2013 Kordant Philanthropy Advisors.

¹⁴ the Financial Year 2009-10, 2010-11, 2011-12

¹⁵ 2% of the Average Profits

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Hindustan Unilever Ltd	23,998.00	479.96
Infosys	69,053.33	1,381.07
Larsen & Tourbo Ltd	42,633.03	852.66
NTPC Ltd	90,181.73	1,803.63

CONCLUSIONS

The practical application of CSR differs and CSR Strategies within most companies still show major deficiencies. There are still complaints about multinational companies wasting the environment and NGOs still denouncing human rights abuses in companies. Some critics believe that CSR programs are undertaken by especially multinational companies to distract the public from ethical questions posed by their core operations. That meanwhile even multinational companies such as Microsoft or Pepsi confess to their social responsibility, is discussed quite controversial. While companies increasingly recognize their social responsibility, many of them have yet to adopt management practices that reflect it: company employees and managers need training in order to acquire the necessary skills and competence. According to the new socio-economic thinking, a company is a social institution having duties and responsibilities towards the community in which it functions¹⁶. On the international stage, as of now India at the forefront of CSR law. But the new law while a company is not subject to liable for failing to spend on CSR, a company and its officers are subject to liable only for not explaining such a failure in the annual report of the board of directors. There is currently no guidance as to what constitutes a sufficient or statutorily valid explanation for failure to spend in the board report. In addition, a company and its directors are liable even if they fail to report on CSR activities that actually were conducted. However certain judicial pronouncements are a positive indication that the country is slowly getting ready for such a law.

Legal compliance will be hard to achieve, whether within the CSR fabric or not, but extracting legal compliance from CSR has the advantage of bringing to light a range of workplace and wage issues that companies are required by law to attend to Sustainable CSR programmes mean a cohesive mix of economic, legal, ethical and philanthropic tenets. The best technique to match up to the challenges brought about by globalization is to anticipate the future commitments under international treaties and obligations. Corporate no doubt have made significant contributions towards the sustainable development of our country. Considering the limitations of the corporate in their CSR activities, some recommendations which can be used towards satisfaction like companies should extend their CSR activities in less privileged states rather than concentrate in resource rich states.

¹⁶ *National Textile Worker's Union vs. P.R. Ramakrishnan* 23 SCC pp. 529-30, para 9 (13 February, 2003)