

Assignment 2

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Section	1	
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Is mandatory Corporate Social Responsibility a good legal provision?

Corporate Social Responsibility (CSR) has no one single universal definition but it may be defined as a tool for businesses to integrate social, economic and environmental concerns in their operations. Businesses around the world face global environment challenges and have to look beyond financial performance, to integrate social and environmental concerns into their strategic management. CSR is more than just philanthropy. Philanthropy is often just reinvestment of profits while CSR is about making those profits responsibly. This would include being concerned about not only the shareholders of the company but also the stakeholders, which are the employees, the consumers, the local community and also the environment and society at large.

Early 90's saw the integration of Mahatma Gandhi's philosophy of trusteeship to help socio-economic growth in India. Family values, traditions, culture and religion have traditionally played a very important role in the concept of CSR in India. It has been mainly seen as a philanthropic activity that was believed to be a moral duty to be discharged by every company according to its financial standing.

It was in 2013 that India became the first country to make the undertaking and reporting of CSR activities and initiatives a statutory requirement. Under the Companies (Amendment) Act 2013, corporations have to mandatorily allocate a certain percentage of profits for CSR activities every year. Key amendments included the introduction of Section 135 that outlined mandatory spends, a structured program with a dedicated committee to administer and monitor it and mandatory

reporting. With legalization of CSR in India, it became a structured, organized and institutionalised program whereas before it was voluntary, unorganized and unsystematic.

The 2013 act made CSR from an encouraged voluntary activity to a compulsory activity of the corporate sector. The 2019 amendments extended and moved from a comply-or-explain policy to penalization for non-compliance. This included provisions for heavy fines on the company and the officer in default; and jail time for key officers of the company. A committee headed by the Corporate Affairs Secretary submitted its report after the Parliament had already passed the amendments proposing that non-compliance to be decriminalised and made into a civil offence. Instead it suggested incentivizing CSR activities by offering tax breaks to companies.

The debate in India is mainly about whether CSR should be mandatory with penal implications as against the traditional viewpoint of it being a voluntary philanthropic work.

Arguments in favour of mandating of CSR

India being a developing country, if the onus lies solely on the government for the socio-economic welfare of its masses, it faces major financial hindrances. Thus, mandatory CSR will help the Indian government to garner resources from its well organized banking, tech and tech sectors. This helps to ease out its own burden and supplement its own social development goals and programmes.

Without the government mandate many companies, especially smaller ones, don't bother about social development at all or just do some ad hoc and sporadic work around their areas of operation. With this act and the strict monitoring of CSR obligations such as reporting and better governance has made for a more organized approach to social development, encouraging companies to look at policy, structures, processes and projects as an integrated whole instead of just trying to meet targets.

The mandatory spending rule has led to more initiatives to train social development professionals, so enlarging the pool from which NGOs and government can also draw.

The addition of the penal provisions also tackle the issue of free-riding and hoarders that has been brought about due to the mandatory spending rule. In the absence of mandatory penal provisions on firms that satisfy the conditions laid down in section 135, few companies that undertake CSR activities out of purely humanitarian and philanthropic objectives, are put to disadvantage by other firms that seek to benefit from such measures, without incurring any costs on the CSR front. With the mandatory statutory provision with strict compliance of it should ensure a ground for all companies that satisfy section 135, without disturbing the delicate

stakeholder obligations of existing corporate culture. Thus the free-rider concern has been addressed to some extent.

Arguments against the mandating of CSR

In the seven years of the Act's existence, there has been an underwhelming response by companies. Much of the CSR funds remain unspent because many companies do not have a proactive approach to CSR activities and instead only aim to tick the boxes as required by the law.

The coercive nature of the CSR provisions due to penalizations is said to create hostilities between corporate culture and governance. There is a lack of incentive for companies to comply with the provisions, especially when the government itself has had a less than exceptional record implementation of programs and spending of delegated funds. While there is great significance of stakeholder welfare in Indian society, the government's ironfisted approach and high standards for the corporate sector keeping in mind its own lackluster performance with implementation of social programs and spending of delegated fundings is nothing but absurd and ironic in nature.

Due to a counter productive deadline of 3 years and yearly quota to fulfill, many companies in their hurry to meet targets work with the same couple of NGOs and don't bother to locate more worthy, grassroots organizations to work with. Many a times the companies also fail to do their due diligence on the NGOs which has been creating a lure for some organizations to deal in unethical practices. Companies often fund new projects to meet short term goals instead of committing to long term goals by nurturing projects and expanding partner organizations capabilities.

As unspent CSR funds can be just transferred to government specified funding projects, CSR is viewed to be a backdoor tax on the corporate sector. This creates more pressure on Small and Medium Enterprises (SMEs) of India which contribute heavily to India's economic growth. Making it compulsory for SMEs to contribute to CSR, with their already fluctuating profit margins, makes it harder for them to concentrate on their bottom line which may lead to harm for the overall economic growth of India. SMEs also often lack institutional capacity to implement CSR programs on their own and require help in capacity building and incentivization among other things.

Possible solutions to overcome legal shortcomings

Though the benefits of CSR are undisputed, penalizing for non-compliance is a step too far. Penalization may push the companies to meet the targets but without much care for actual results

showing up on ground. Rather positive incentives like tax benefits, awarding companies, highlighting their work etc will help the integration of CSR with business practices.

A shift from meeting yearly targets to long term implementation policy might make a significant impact at the ground level. It will help SMEs to focus on capacity building and large corporations to make a sincere effort to a cause.

Rather than just being a financial commitment, CSR is more of working for a cause. Not only financial contribution should be measured, other measures should be created to calculate a more holistic approach.

So, the question of whether mandating CSR is a good legal provision can be answered thus, it is a good concept but with a poor execution. The success of any idea or concept depends on its implementation to its minutest details. Alas, India suffers from a chronic problem in this area. The government of India also needs to build a comprehensive regulatory framework in concurrence with India Inc to build a support structure so that it helps SMEs to also participate safely in taking corporate social responsibility.

References

- [1]. Srishti Suresh (2019). Corporate Social Responsibility: Philanthropy – a boon or a bane?. Retrieved from <https://indiacsr.in/corporate-social-responsibility-philanthropy-a-boon-or-a-bane/>
- [2]. Editorial article (2019). Making CSR work: On Companies Act amendments. Retrieved from <https://www.thehindu.com/opinion/editorial/making-csr-work/article29112880.ece>
- [3]. Pushpa Sundar (2018). Five Years After CSR Became Mandatory, What Has It Really Achieved?. Retrieved from <https://thewire.in/business/five-years-after-csr-became-mandatory-what-has-it-really-achieved>