



Research Article

A STUDY ON THE EVOLUTION OF THE REGULATORY FRAMEWORK ON CSR LINKING TO VARIOUS AMENDMENTS IN THE COMPANIES ACT 2013

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ABSTRACT

The concept of Corporate Social Responsibility (CSR) has gained increased significance in recent years. The growing focus on CSR has changed the attitude of businesses all over the world, and India is not an exception. The concept of CSR is not new to India; historically speaking, social responsibility of companies is a well-established phenomenon in India, and the country has one of the world's richest traditions of CSR. In its oldest forms, CSR in India included the concept of corporate philanthropy and the Gandhian Trusteeship model (Ghosh S, 1989). But the liberalization of the Indian economy in the 1990s led to a fundamental shift from the philanthropy-based model to a multi-stakeholder approach whereby companies are deemed responsible for all stakeholders, including financial stakeholders, employees and the community (Seema G Sharma, 2009). Our paper has studied how the regulatory framework on CSR has evolved over time both globally and in Indian context with special emphasis to India. The various amendments to the regulatory framework on CSR in the Companies Act 2013 have been covered to understand the legal position and how the law has been evolving with the social changes in the country. The methodology has followed both quantitative as well as qualitative study. There has been analysis of data from secondary sources and literature review of relevant papers and articles. The study has also gathered data of various recent amendments by the Government of India through press release and from online platforms. It has also reviewed papers and publications both qualitatively and quantitatively on CSR activities along with the expenditure pattern for CSR. The study concludes that the legal framework on CSR has evolved strongly in India and various amendments from time to time has strengthened the law which has made the corporates more binding from operations and governance perspective. It is also concluded that the regulatory framework would be effective only if the stakeholders and specially the corporates are serious towards larger contribution of social good in the developmental agenda.

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INTRODUCTION

Indian corporations have a very rich history of funding social causes; however, the momentum for CSR has grown during last few years. More recently, guidelines have been issued to the corporates in order to draw their attention towards specific social development activities from various agencies including the government. Some of these guidelines issued on CSR are from the Department of Public Enterprises (DPE), 2011, National Voluntary Guidelines (NVG) 2012 by Ministry of Corporate Affairs and also Security Exchange Board of India (SEBI). The recent change in the Companies Act in India makes it mandatory for companies to devote 2% of their profits to CSR activities (Kumar, 2013; Kordant Philanthropy Advisors, 2013).

India's Companies Act 2013 (Companies Act) has introduced several new provisions which change the face of Indian corporate business". One of such new provisions is Corporate Social Responsibility (CSR). The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc. from the society. By performing the task of CSR activities, the companies are giving something back to the society.

Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act as well as the provisions of the Companies 2014(CSR Rules) which has come into effect from 1 April 2014. There have been few amendments to Schedule VII in year 2016 and the latest amendment Companies (Amendment) Bill, 2019 which seeks to amend the Companies Act, 2013 has been passed by Parliament.

The CSR mandate has developed from the concept of ideals to mandate over the years from the concept of shareholders perspective to stakeholders approach with close engagement of

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legislators, judiciary and the academia providing varying interpretations of what could constitute responsibility of business corporations.

The idea of corporate social responsibility is neither new nor radical. The core principle that the corporation has responsibilities to society beyond profit maximization objectives has long historical roots since 1900. The classic case of Dodge versus Ford had the Michigan Supreme Court in 1919 observed that a business corporation is organized and carried on primarily for the benefit of the shareholders (*V Kaushik, 2017*).

Many prominent authors from Bowen, Carol, Friedman, Freeman, Johnson and others have helped to develop various theories, arguments and debates on CSR. One of the leading Economist and Nobel laureate Milton Friedman published an article in New York Times in 1970 highlighting the purpose of Corporate Social Responsibility of business is to increase its profits. Friedman distinguished a corporate executive's right as a person from the obligation they hold as a principal.

Objectives

1. To study the evolution of regulatory framework on CSR in India.
2. To critically analyse the impact of various amendments in the company's law 2013 on CSR.

METHODOLOGY

Both qualitative and quantitative methods have been applied for the study. Qualitative part is primarily exploratory research to gain understanding of underlying reasons, opinions, and motivations from available literature. It has provided insights into the problem to develop ideas for potential quantitative research. The qualitative part has led to uncover trends in thoughts and opinions, and dive deeper into the problem.

Quantitative research, has adopted a systematic investigation of phenomena by gathering quantifiable data and performing mathematical techniques. The data gathered for analysis is from Capitaline database for three financial years from 2014-2017.

DISCUSSIONS AND ANALYSIS

The discussion and analysis of the study have been provided in four parts:

1. **Discussion 1:** Evolution of regulatory framework on CSR.
2. **Discussion 2:** Increase in the number of companies due to compliance.
3. **Discussion 3:** Increase in the CSR spends of the companies.
4. **Discussion 4:** Penal provision for not spending CSR amount.

Discussion 1: Evolution of regulatory framework on CSR.

CSR as a regulatory concept evolved through decades of human progression and represents the socio-economic evolution of countries. While there is an almost universal recognition of CSR, regulatory efforts on CSR are not the same across countries and vary as per the socio-economic realities faced by them.

Globally, there have been attempts at regularizing CSR, even as majority of countries have adopted methods which is either voluntary or mandates reporting of CSR steps. The Indian model of CSR, as enunciated through the Companies Act 2013, has mandated compulsory spending in areas as defined by the government, apart from mandating reporting of activities, for specified category of companies.

In the developed world, the terms "CSR" "corporate strategic volunteerism. Social marketing and strategic philanthropy" have penetrated the mainstream literature and multinational practices". CSR can be defined as a "view of the corporation and its role in society that assumes a responsibility among firms to pursue goals in addition to profit maximization and a responsibility among a firm's stakeholders to hold firm accountable for its actions.

Courts in India have considered the role of business as not simply limited to catering the interests of its shareholders. The socialist impressions of the time, as pursued by India post-independence, ensured that Courts saw the role of companies to be acting as an enabler to social problems that the country faced.

The Supreme Court of India in *Chranjeetal vs. Union of India* in 1950 and in *National Textile Workers vs. P. R. Ramakrishnan* highlighted the duties of the corporations towards society and environment (*V Kaushik, 2017*).

The regulatory framework in Indian context took shape focusing largely for Public sector entities since the public sector undertakings function under the control and direction of the Government and such they have to function in a manner expected from "State", even in the commercial sphere".

In 2009, the Ministry of Corporate Affairs made its first formal attempt at regulating CSR with the introduction of the Voluntary Guidelines on Corporate Social responsibility (CSR). In July 2011, the Ministry of Corporate Affairs issued the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (ESG Guidelines). Since then, the Indian Government has introduced several other efforts to address CSR concerns; including instituting a requirement for CPSE's to create a CSR budget. In 2013, The Companies Act, 2013 was finally passed, and the CSR Rules were brought into force in 2014.

Several international organizations are now actively engaged with CSR, developing voluntary regulatory measures and instruments like United Nations Global Compact (UNGC), OECD Guidelines for Multinational Enterprises, ISO 26000 and ILO Tripartite Declaration of Principles concerning Multinational and Social policy.

Discussion 2: Increase in the number of the companies in the CSR net due the Companies Act 2013 and CSR amendment Bill, 2019

The companies investing on CSR covers both listed and unlisted companies. The Lok Sabha on July 26, 2019 passed the Companies (Amendment) Bill, 2019 which seeks to amend the Companies Act, 2013 and is aimed at tightening the Corporate Social Responsibility (CSR) compliance, transferring certain responsibilities to the National Company Law Tribunal and re-categorizing certain offences as civil offences. It replaced an ordinance promulgated earlier.

The amendment would lead to increase in the number of companies investing on CSR for which the details are provided:

- Data indicates that the total number of 16785 companies needed to comply on CSR for the financial Year 2014-15 whereas only 7767 companies complied on CSR.
- Data indicates that the total number of 21498 companies needed to comply on CSR for the financial Year 2015-16 whereas only 10935 companies complied on CSR.
- Data indicates that the total number of 19933 companies needed to comply on CSR for the financial Year 2016-17 whereas only 10465 companies complied on CSR (MCA 2018).

It can be argued that more than 51% of the eligible companies didn't meet the compliance on CSR for three financial years from 2014-17. The new amendment on CSR envisages to cover all the eligible companies in the CSR net and would strengthen the compliance on CSR. The companies those are engaged in CSR activities have been able to create social value, infuse new technologies and have created social development. They have also developed various social models addressing social and environmental concerns. The new amendment would be beneficial for the companies who have yet not spent on CSR as it will be able to reap the benefits being part of the social change addressing both social and environmental solutions (Thakur and Data 2019).

Discussion 3: Increase in the CSR spend of the companies due to the amendment in Companies Law 2019.

The expenditure on CSR has been increasing over the years. "India has become the first country to make CSR spending mandatory through a law. The companies will have one year to firm up the CSR proposal and another three years to spend funds. In case money remain unspent for one plus three years, it will have to be moved to an escrow account." It also said that any unspent annual CSR fund must be transferred to one of the funds under Schedule VII of the Companies Act, such as the Prime Minister's Relief Fund, within six months of the financial-year end.

The new amendment will further allow companies to spend on CSR and thereby there would be higher expenditure on CSR.

- Data indicate that the total amount spent on CSR activities for the financial year 2014-15 is Rs 10066 crore.
- Data indicate that the total amount spent for the financial year 2015-16 is Rs 14366 Crore.
- Data indicate that the total amount spent for the financial year 2016-17 is Rs 13466 crore. (MCA , 2018)

It can be argued that due to the latest amendment in the Companies Act 2013 on CSR, it would increase the CSR expenditure and it is expected that 30% additional amount would be spend on CSR. The higher fund flow would lead to increase in the social activities and social development. More companies would spend which could address reduction of poverty and unemployment. This in a way would strengthen the Sustainable Developmental Goals which aims to reduce poverty in all forms and create new opportunities for partnerships (Thakur and Datta, 2019).

Discussion 4: Penal provisions for not spending CSR amount due to the amendment in the Companies Act 2013.

The amendment in the Companies Act 2013 will now impose fine and imprisonment for 3 years or both if the CSR fund remain unspent. The Government is getting stricter on CSR and as majority of the companies are not spending on CSR. The amendment categorically intends eligible companies to spend their CSR funds on Schedule VII activities. Since larger volume of funds still remains unspent, hence this provision would force the companies to spend the entire funds. There is enough time provision in this amendment as there is 3 years window for planning and one year for executing the mandate. Since there is penalty provision for both defaulting company as well for executives hence the amendment is visualised to be too harsh. The impact of the amendment will not have immediate effect since it would be on based on rolling basis and has provided enough time frames to comply as well address the penal provisions.

There has been strong views from the Industry and the move seems to "retrograde" since "it violates the principle of minimum government and maximum governance." (Naushad Forbes, August 2, 2019). Few feel this as an additional tax burden on companies. Overall, it can be argued that, this would create higher commitment from companies to both comply and spend on CSR. The amendment to Section 135 of the Companies Act now states, "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 Rs 50,000 but which may extend to Rs 25 lakh 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 Rs 50,000 but which may extend to Rs 5 lakh, or with both" (Source: Indian Express).

Until now, the Bill required that "if the company fails to spend such amount, the Board shall, in its report (annual report), specify the reasons for not spending the amount."

CONCLUSION

It can be argued that the history of legal framework on CSR outside India started to develop during 1900 century and in India started from the DPE Guidelines, 2009, NVG, 2011, SEBI 2012 and finally got completed with the passage of the Companies Act 2013. It is evolving in nature and hence various developments and priority areas are being added from time to time through various amendments to the law. The recent amendments in 2019 related to CSR would help to both comply and penalise the companies and executives for not adhering to the provisions of the law. It will open new avenues by covering more companies, provide more budget for social development. Though the penal provision seems to be bit harsh but the decision has been imposed based on the non-compliance record over the past 5 years of the law. We feel that the progress in this part would be evaluated by the Government and hopefully if the companies meet the provisions of the amendment in the law then this provision may also be reviewed but as of now it is stricter on companies to ensure that companies focus and spend all the budget on CSR to create and strengthen the environment of social development.

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