

# CONQUERING THE CHALLENGES AND ISSUES FOR THE CSR IMPLEMENTATION UNDER THE COMPANIES ACT, 2013 - ONE OF THE TOOLS FOR ACHIEVING A BALANCED GROWTH OF INDIA

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## ABSTRACT

*Looking to the present social stratum of the Country and a dire need for the balanced growth of the country, there needs a broader vision by moving ahead from the triple bottom line ("People, Planet and Profit") to "Partnership, Progress and Prosperity". CSR is need of an hour so as to contribute to the social innovation and development in India. India is the first and only country across the globe having mandatory enforcement of provisions relating to CSR for certain corporate entities vide Companies Act, 2013. India is ranked 3rd (third) in the list, according to social enterprise CSR Asia's Asian Sustainability Ranking (ASR).*

*Origin of CSR [Corporate Social Responsibility] can be traced from the ancient scriptures and it is not a concept borrowed from the foreign country. Now, it's a right time to ensure that while dealing with CSR, approach should be that of participatory and not a contributory. Let, CSR be part of company strategy and budget and be treated like an actionable business agenda. CSR agenda should carry the stake holder approach by a corporate and not a charity oriented approach.*

*Many expectations are carved out from the corporate sector ensuring best corporate governance practices. So, such ideal and effective corporate governance practices will ensure a means to an end of balanced growth of the country. Sustainable functioning with a philosophy of "Vasudhaiva Kutumbakam" [entire universe belongs to the same family] is need of an hour. It's a time to revert to our ancient scriptures, Upnishadas, Puranas and Vedic literatures for the holistic living and the same can only be the means to an end of balanced growth.*

**Key Words :** Balanced growth of India, Companies Act, CSR, Governance

## INTRODUCTION

The Companies Act, 2013 was the most awaited legislation by the corporate sector in India. It replaced the Companies Act, 1956. The Act is more a kind of delegated legislation. The Act comprises 470 sections and 8 schedules in total and apart 29 rules are issued by the Ministry of Corporate Affairs [MCA]. Introduction of the

Act is a humble attempt to align the dynamics involved in Corporate Sector and that of growth potentials in India. With a passage of time and with an advent of information technology MCA has tried level best to ensure best Corporate Governance practices through the implementation of the new Act. The Act is much famous for introducing contemporary concepts of CSR viz.

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Corporate Social Responsibility [CSR], extensive usage of Information Technology driven system etc. One striking feature of the Act is the object of the Government to ensure proper implementation thereof by introducing penal as well as charge of criminal offence punishable with imprisonment due to non compliance in majority of sections.

India is the first and only country across the globe having mandatory enforcement of provisions relating to CSR for certain corporate entities vide Companies Act, 2013.

Corporate Sector is definitely a crucial segment of any economy and India being developing country many expectations are carved out from the corporate sector ensuring best corporate governance practices. So, such ideal and effective corporate governance practices will ensure a means to an end of balanced growth of the country. Unless and until all the segment of an economy flourishes to best of its potentials, the dream of balanced growth of India will still remain a far ahead destination.

Rule 2(c) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 defines the term "Corporate Social Responsibility (CSR)" which means and includes but is not limited to:—

(i) Projects or programs relating to activities specified in Schedule VII to the Act; or Projects or programs relating to activities undertaken by the board of directors of a Company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

Further, Section 135 of the Companies Act, 2013 requires that every company having net worth of Rs. 500 crores or more, or turnover of Rs. 1,000 crore or more or a net profit of Rs. 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board

Section 135(3) provides that the CSR committee shall:

(a) Formulate and recommend to the Board,

a CSR policy, which will indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) Recommend the amount of expenditure to be incurred on the activities referred to in the CSR policy;

(c) Monitor CSR policy from time to time.

### Role of Board of Directors

Section 135(4) provides that the Board of Directors shall :

(a) after taking into account the recommendations made by the CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in the Directors' Report and also place it on the company's website, if any in the Form specified under Companies (CSR) Rules, 2014; and

(b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company;

(c) ensure 2% spending on CSR activities;

(d) report CSR activities in Board's report and

(e) disclose non-compliance (if any) with the CSR provisions CSR Rules, 2014 provide the format in which all qualifying companies shall report the details of their CSR initiatives in the Director's report and in the company's website.

### Responsibility of the Board of Directors

(a) To ensure that at least 2% of average net profit of last 3 preceding years is spent on CSR activities every year. 'Net Profit' shall mean, net profit *before* tax as per books of accounts and shall not include profits arising from branches outside India.

(b) 2% CSR spending would be computed as 2% of the average net profits made by the company during every block of three years. For the purpose of First CSR reporting the Net Profit shall mean average of the annual net profit of the preceding three financial years ending on or before 31 March 2014.

(c) To approve the CSR Policy after considering recommendations of CSR Committee.

(d) To disclose CSR policy and initiatives in Board's report and Company's website

(e) To ensure that activities reflected in CSR policy are actually undertaken by company.

(f) If the company does not spend 2% of net profits as required, then Board to report the reasons in the Board's report.

The Act also provides for contravention and repeat offences toward CSR implementation.

It's very interesting to notice the pathway through which Government of India can avail the benefit of achieving balanced growth of India from the Act.

### **Process flow for realising the aim of balanced growth is as under**

Corporate sector is having highly and professionally qualified personnel with a flare of having highly motivated and best talent of Human Resource assets, combustible passion for result oriented working, strategic thinking and mindset, considerable resources to the best of kitty, administrative skills is quite noteworthy and public-partnership is also quite tried and tested option so, with these much we can say that Corporate Sector is a very promising sector having been properly attended by the most talented business leaders. It's pertinent to note that such business leadership if moulded with a flare of an attitude of "something to give back to the society" and more specifically termed as CSR then a vision of realising the growth of India can be nourished with somewhat ease and in a result oriented way.

The main object of compliance of the Act is to ensure model Corporate Governance practices and CSR implementation in letter and spirit and that ensures balanced growth of India.

Schedule VII of the Companies Act, 2013 sets out the activities, which may be included by companies in their CSR policies. These activities relate to:

(i) eradicating hunger, poverty and malnutrition, promoting health care including preventive healthcare and sanitation and making available safe drinking water;

(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;

(iii) 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;

(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;

(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(vi) measures for the benefit of armed forces veterans, war widows and their dependents;

(vii) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;

(viii) 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;

(ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

(x) rural development projects.

(xi) Slum area development

Above listed activities are quite comprehensive in nature so as to cater to the need of almost of segment of society which is having a tag of underprivileged section of society.

### **CSR IMPLEMENTATION - CHALLENGES AND ISSUES**

India is ranked 3<sup>rd</sup> (third) in the list,

according to social enterprise CSR Asia's Asian Sustainability Ranking (ASR), released in 2015. China is having 1<sup>st</sup> rank and Hongkong at 2<sup>nd</sup> in rank. For India, Wipro Ltd., Tech Mahindra Ltd., and TCS have been acknowledged in ranking procedure.

In spite of above, CSR implementation has been posed with following issues :-

- Most crucial is an attitude, still CSR has been a cup of tea for renowned few big corporate houses which really fulfils the very essence and purpose of CSR but, unfortunately for most companies having been compulsorily required to comply with the Act, CSR is being perceived as an expenditure and not much attention having been paid to include the same as a part of actionable business agenda practices.
- At ground level companies should be involved in CSR implementation and the route of only disbursing donations to NGOs or Trusts and remaining a silent spectator should not be the case.

In fact, CSR Rules says that CSR activities should be in a programme and project mode. Mere donations for doing charity is not permissible expenditure.

High Level Committee [HLC] framed by the MCA in its report has mentioned that HLC has been suggested not to take actions against companies, at least for the initial two to three years, for non compliance of CSR provisions of the Companies Act, 2013.

Further, in the aforesaid report it has been very mentioned that the rationale behind CSR legislation is not to generate financial resources for social and human development since the resource gap, if any, for such development or social infrastructure, could as well have been met by levying additional taxes/cess on these Corporates. The objective of this provision is indeed to involve the Corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing

the gaps in inclusive growth. Use of corporate innovations and management skills in the delivery of 'public goods' is at the core of CSR implementation by the companies.

Further, said report exhibits that CSR activities must be for larger public good and for any activity that serves public purpose and / or promotes the wellbeing of the people, with special attention to the needs of underprivileged. The mandatory provision of CSR is likely to generate substantial funds for the benefit of the deserving poor and under-privileged sections of society. To ensure that this opportunity is not frittered away by thinly spreading the resources so generated; and that only sustainable programmes / projects are taken up for optimal benefits of the poor and under-privileged sections of the society, the Committee strongly feels that there is a need to ring-fence the companies' CSR resources so that this objective is not defeated,

In general it is said that instead of driving anything out of compulsion it is good if causing anything to be done by self motivation. In general this is perfectly should be the case but, when object and vision is for the sustainable development at macro level and a push is required then for initial stage a sort of compulsion by implementing relevant rules and regulations should be welcomed because it would be in the interest of the society at larger and for being a mean to the end of sustainable living. Instead of draining mind by perceiving CSR as a compulsion an attitude of taking up CSR a challenge for the sustainable living. In India we still face meeting the very basic necessity like water, food, shelter, cloths, sanitation as a challenge for many and a reasonable portion of the entire population, regional disparities have not been exploited to the benefit of large and regional underdevelopment along with less access to the opportunities to the development and growth to all are still a big question. In India we perceive a descent living and a sizeable possession of materialistic things as an achievement whereas it is the basic birth right for a human being to have an access to the descent living. So, in such a type

of environment we cannot leave everything under the domain and to the mercy of politicians and Government and the fact is the very basic qualities of politicians are questionable for most of. So, for the societal good cause Corporates which has demonstrated and proved the most qualitative skills, dynamic brain and goal achievable working force should come ahead and share their dynamic skills and profound knowledge for the betterment of society and underprivileged part of the nation.

### CHALLENGES

Two ways to look at the problem, one is to perceive as an obstacle and surrender to the situation by proclaiming – “nothing can be done” whereas the right approach should be to take up the same as a challenge and an opportunity to excel by exploiting the total potentials.

Undoubtedly number of NGOs, Government organisations and Public-Private Partnerships have already entered into the segment for gearing of the CSR implementation and effectiveness but, in major funding comes from Corporates and also take lead for CSR contribution therefore, Corporates have much larger role to play so as to realise the vision of balanced growth through the tool of CSR. Corporates are equipped with sizeable fund, latest management techniques and dynamics inherent in top level management and professionals working with such top level in a corporate organisation.

Strategic approach to Corporate Social Responsibility should be the instrument to overcome any hurdles to the pathway. Strategic CSR is all about integrating the societal issues into the core business strategies to gain competitive advantage. While dealing with CSR approach should be that of participatory and not contributory. CSR be part of company strategy and budget and be treated like an actionable business agenda. CSR agenda should carry the stake holder approach by a corporate and not a charity oriented approach. Well being and uplifting target group should be an integral part of agenda. Just like social audit CSR audit should be introduced which examines the sustainability of the work done. In addition, due diligence,

benchmarking, ratings and various standards should be adhered to for the sensible implementation of CSR agenda.

At this juncture it is worthwhile to take note of EFQM framework for CSR and ISO 26000.

### EFQM framework for CSR

In 2004 EFQM (formerly known as the European Foundation for Quality Management) produced the framework for CSR to provide organisations with a framework to help assess and improve the approaches they had adopted to managing their Corporate Social Responsibilities. This framework drew together the expertise from a number of leading companies, as well as including the then recently formed United Nations Global Compact. The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anticorruption.

### Human Rights

*Principle 1:* Businesses should support and respect the protection of internationally proclaimed human rights;

*Principle 2:* make sure that they are not complicit in human rights abuses.

### Labour

*Principle 3:* Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining~

*Principle 4:* the elimination of all forms of forced and compulsory labour;

*Principle 5:* the effective abolition of child labour;

*Principle 6:* the elimination of discrimination in respect of employment and occupation.

### Environment

*Principle 7:* Businesses should support a precautionary approach to environmental challenge;

*Principle 8:* undertake initiatives to promote greater environmental responsibility;

*Principle 9:* encourage the development and

diffusion of environmentally friendly technologies.

### Anti-Corruption

*Principle 10:* Businesses should work against corruption in all its forms, including extortion and bribery.

### ISO 26000

ISO 26000 on Social Responsibility is a guidance standard and is not mandatory but, on voluntary basis can be adopted. ISO 26000 was prepared by ISO/TMB Working group on Social Responsibility which released on 1st November, 2010. It was one of the most comprehensive standards ever developed by ISO and received global attention and acceptance. The International Standard ISO 26000 provides guidance on understanding, implementing and continuously improving the social responsibility of organizations, which is understood as the impacts of an organization's actions on society and the environment. The ISO 26000 standard is expected to set the norm for Social Responsibility in the time to come.

ISO 26000 defines seven principles of social responsibility :

- Accountability: being answerable for decisions and activities and their impacts on society, the economy and the environment.
- Transparency: openness about decisions and activities that impact on society and the environment.
- Ethical behavior: in accordance with accepted principles of right or good conduct
- Respect for stakeholder interest: respect, consider and respond to the interests of its stakeholders.
- Respect for rule of law: mandatory
- Respect for international norms of behaviour
- Respect for human rights

The Seven Core Subjects, which every user of ISO 26000 should consider, are :

- Organizational governance
- Human rights
- Labor practices
- Environment

- Fair operating practices
- Consumer issues
- Community involvement and development

### WHAT NEXT ?

Report of the High Level Committee to suggest measures for improved monitoring of the implementation of CSR very clearly enumerate that Keeping in view the intent of the law, the Committee is convinced that the main thrust and spirit of the law is not to monitor but to generate conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country. So, as a responsible corporate citizen of the country corporate should try level best to contribute to the balanced growth of India by overcoming to the limitations for effective CSR implementation.

Few recommendations (Khurana, 2011) are as follows :-

- 1) Small & Medium Enterprises (SME) segment be also given due focus so as to channelize the overall efforts and inputs towards CSR. SME segment can contribute in major due to shorter decision process, stakeholders more closely interwoven in day to day operation and at ground level workings.
- 2) HR can play the very crucial role by cultivating an attitude of becoming a change agent through collective efforts by participating in CSR agenda of the firm and implementing strategic CSR being the part and parcel of Board practices.
- 3) Rural segment most needy part of the country is having a tremendous potentials for the growth, numerous things yet to be done. If the rural sector is given enough attention under CSR then major work towards balanced growth of nation will be done. Agricultural-SEZ, intensive Intellectual Property Rights awareness and implementation thereof in Agricultural products and services are few stepping stones.
- 4) There are ample scope for Corporate to initiate innovation and research so as to

finalise cost effective products and services which caters to needs of rural sector as well as underprivileged sections of the society at a very affordable price and that could be the best contribution towards the CSR and ultimate long term goal of balanced growth of nation.

### CONCLUSION

Rabindranath Tagore once narrated having essence that man is the most senior capable entity of this planet earth and therefore must behave and prove as the guardian of other living creature and environment. So, CSR is need of an hour so as to contribute to the balanced growth of the nation. Sustainable functioning with a philosophy of "VasudhaivaKutumbakam" [entire universe belongs to the same family] is need of an hour. It's a time to revert to our ancient scriptures, Upanishadas, Puranas and Vedic literatures like Ramayana, Mahabharata, Bhagvat Gita which are

foundations for the holistic living and the same can only be the means to an end of balanced growth.

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