

# CORPORATE SOCIAL RESPONSIBILITY (CSR): AN OVERVIEW OF THE INDIAN PERSPECTIVE

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## INTRODUCTION

The past twenty years have seen a radical change in the relationship between business and society. Key drivers of this change have been globalization of trade, the increased size and influence of companies, the repositioning of government and the rise of strategic importance of stakeholder relationship, knowledge and brand reputation. The relationship between companies and civil society organizations has moved from paternalistic philanthropy to re-examination of the roles, rights and responsibilities of business in society. Corporate Social Responsibility, defined in terms of the responsiveness of business to stakeholders' legal, ethical, social and environmental expectations, is one outcome of these developments. Over the decades, the concept of Corporate Social Responsibility has continued to grow in importance and significance. It has been the subject of considerable debate and research all over the world. The idea that the business enterprises have some responsibilities towards the society beyond that of making profits has been around for centuries. But Corporate Social Responsibility movement all over the domain

had gone through many phases and faces after its orientation in the corporate world with the history of 100 years in the developed country. The present concept of Corporate Social Responsibility appeared during the second half of the 1990s, after the Rio Conference on Environment and Sustainable Development of 1992, where the United Nations invited multinational enterprises to assume a commitment towards society and the environment by including, in their commercial agreement, provisions to protect basic human rights, workers' right and the environment. This Corporate Social Responsibility concept is also closely linked to the notion of sustainable development defined by the World Commission on the Environment and Development (Brundtland Commission) in 1987 as: *"development that meets the needs of the ability of future generation to meet their own need."*<sup>1</sup>

Corporate Social Responsibility, or CSR, is a shifting concept. People often talk about it

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<sup>1</sup> ITC-ILO, *International Instruments and Corporate Social Responsibility- A Booklet to Accompany Training on Promoting labour standards through Corporate Social Responsibility* 2012, (05 July 2016), <http://www.ilo.org>.

as if it was a recent phenomenon, but in reality its core is the ongoing effort to understand business as part of society and that is an effort that is as old as business endeavour.<sup>2</sup> Despite the growing awareness and popularity of the term Corporate Social Responsibility, there is no general consensus as to what it actually means. In fact, CSR is often used interchangeably with various other terms, such as corporate philanthropy, corporate citizenship, business sustainability, business ethics and corporate governance. Although these other terms do not all mean the same thing, there is one underlying thread that connects them all—the understanding that companies have a responsibility not just towards their shareholders but also towards other stakeholders, such as ‘customers, employees, executive, non-executive board members, investors, lenders, vendors, suppliers, governments, NGOs, local communities, environmentalists, charities, indigenous people, foundations, religious groups and cultural organizations.’ All of these stakeholders are equally important to a corporation, and it should therefore strive with sincerity to fulfil the varied expectations of

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<sup>2</sup> Halina Ward & Craig Smith, *Corporate Social Responsibility at a cross road : Futures for CSR in the UK to 2015*, INTERNATIONAL INSTITUTION FOR ENVIRONMENT AND DEVELOPMENT 1 (2006).

each.<sup>3</sup> Corporation does not exist in isolation. Therefore, they should feel some level of responsibility for the community of which they are a part, and should work for the development and progress of that community and society at large.<sup>4</sup>

Recent corporate scandals and the increasingly international context within which modern business operate have raised important issues concerning the roles and responsibilities of companies. Pressures on companies to behave ethically have intensified and in consequences, firms face pressure to develop policies, standards and behaviours that demonstrate their sensitivity to stakeholder concerns.<sup>5</sup> The idea of being a socially responsible company means recognizing obligations and going beyond simple compliance with the law. It is absolutely essential that corporations make sincere efforts to fulfil their obligations because development based solely on economic growth paradigm is unsustainable, and not conducive to corporate success.

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<sup>3</sup> Aayush Kumar, *Mandatory Corporate Social Responsibility: An experience Vision?*, 1(3) COMPANY LAW JOURNAL 113 (March 2013).

<sup>4</sup> United Nations Global Compact, (05 July, 2016), <http://www.unglobalcompact.org>.

<sup>5</sup> Stephan Brammer, Geoffrey Williams & John Zinkin, *Religion and Attitudes to Corporate Social Responsibility in a Large Cross-Country Sample*, (05 July, 2016), <http://ssrn.com/abstract>.

## CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY

Social Responsibility is actually a normative theory suggesting that corporation sought to take actions which promote a role which is beneficial towards society. In simple words, the corporation ought to give “something” back to society. Although the terms used may not be the same, concepts analogous to social responsibility exist for centuries. In India, in the Vedic literature as Valmiki Ramayana, the Mahabharata [ includes the Bhagavad – Gita and the Puranas and Kautilya’s Arthashastra provides an inside-out approach to Corporate Social Responsibility, which is development of the individual leader’s self conscience, contrary to the western approach that takes an outside – in perspective. CSR goes beyond the normal charity activities of an organization and this requires that the responsible organization take into full account of its impact on all stakeholders and on the environment when making decisions. In a nutshell, CSR requires the organization to balance the need of all stakeholders with its need to make a profit and reward shareholders adequately.<sup>6</sup> Despite the enormous increase in

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<sup>6</sup> Balakrishnam Muniapan and Mohan Dass, *Corporate Social Responsibility: A philosophical Approach from an ancient Indian Perspective*, INTERNATIONAL JOURNAL OF INDIAN CULTURE AND BUSINESS MANAGEMENT 408, Vol. 1 No. 4 (2008).

the literature, in recent years, which deals with CSR and related concepts, CSR is still not possible to simply define. First, it is due to the fact that CSR is a concept with relatively open application rules. Second, CSR is a kind of umbrella, which exceeds, or is becoming synonymous with other concepts of business-community relations. Third, CSR is still very dynamic phenomenon. There are therefore a large number of definitions, which attempt to capture the concept of CSR. Their content varies, and it is also often possible to see from them, whether incurred in the commercial sector, the academic sphere or the government sector.<sup>7</sup> Hence there seems to be an infinite number of definitions of CSR, ranging from the simplistic to the complex, and a range of associated terms and ideas (some used interchangeably), including ‘corporate sustainability, corporate citizenship, corporate social investment, the triple bottom line, socially responsible investment, business sustainability and corporate governance’.<sup>8</sup>

A widely quoted definition by the World Business Council for Sustainable Development

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<sup>7</sup> Ing. Klara Nesvadbova, *Theoretical Approach to CSR*, Brno University of Technology, (10 July, 2016), <http://www.konference.fbm.vutbr.cz>.

<sup>8</sup> Gail Thomas and Margaret Nowak, *Corporate Social Responsibility: A definition*, Working Paper Series No. 62 (Curtin University of Technology, Graduate School of Business) (December 2006), at 3.

states that:<sup>9</sup>“Corporate social responsibility is 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”.

Corporate Social Responsibility (CSR) can be defined as the “economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time”. So the concept of corporate social responsibility means that organizations have moral, ethical, and philanthropic responsibilities in addition to their responsibilities to earn for investors and comply with the law.<sup>10</sup> In 1953, Howard Bowen in his book, *The Social Responsibilities of the Businessman* proposed the CSR definition as “the obligation of business to pursue those policies, to make those decisions or to follow those lines of action which are desirable in terms of the objectives and values of our society”.<sup>11</sup> Milton Friedman famously proclaimed in 1970, “The business of business is to maximize profits, to earn a good return on capital invested and to be a good corporate

citizen obeying the law – no more and no less”.<sup>12</sup> In 1984, Edward Freeman introduced the stakeholder theory and argued that socially responsible activities helped business in building strong relationships with stakeholders rather than those that serve only to maximize shareholders’ interests.<sup>13</sup> In 1994, John Elkington first introduced the concept of “Triple Bottom Line” to emphasize that a company’s performance is best measured by the economic, social and environmental impact of its activities.<sup>14</sup> Triple bottom line deals with the protection of three basic elements of this universe i.e. profit, planet and plant. The European Commission has defined Corporate Social Responsibility (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”. The European Union has now put forward a new, simpler definition of CSR as “responsibility of enterprises for their impact on society”.<sup>15</sup> The International Labour Organization recognizes Corporate Social Responsibility (CSR) as “a way in which enterprises give consideration to the

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<sup>9</sup> *Id.* at 412

<sup>10</sup> . Uma Rani and M. Sarala, *A Study on Corporate Social Responsibility in Singareni Collieries Company Limited*, INTERNATIONAL JOURNAL OF RESEARCH IN MANAGEMENT 31-32, Vol. 1 No. 3 (Jan 2013).

<sup>11</sup> Shafiqur Rahman, *Evaluation of Definitions : Ten Dimensions of Corporate Social Responsibility*, WORLD REVIEW OF BUSINESS RESEARCH 167, Vol. 1 No. 1 (March 2011).

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<sup>12</sup> M. Friedman, *The Social Responsibility of Business is to increase its profits*, THE NEW YORK TIMES MAGAZINE, (13 September, 1970).

<sup>13</sup> Anders Akerstorm, *Corporate Governance and Social Responsibility: Johnson 7 Johnson*, GRIN VERLAG 2 (2009).

<sup>14</sup> Triple bottom line, (13 July 2016), <http://en.wikipedia.org>.

<sup>15</sup> Commission launches new strategy on CSR, 4 November 2011, (15 July, 2016), <https://www.aristastandard.org>.

*impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors.*"<sup>16</sup> World Business Council for Sustainable Development (WBCSD) states that CSR is the ethical behaviour of a company towards society, management acting responsibly in its relationship with other stakeholders who have a legitimate interest in the business, and it is the 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 the local community and societal at large.<sup>17</sup> According to the United Industrial Development Organization (UNIDO), "*Corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (Triple-Bottom-Line approach), While at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be strategic business management concept, and charity,*

<sup>16</sup> International Labour Organization, *The ILO and Corporate Social Responsibility*, (15 July, 2016), <http://www.ilo.org>.

<sup>17</sup> World Business Council For Sustainable Development, *Meeting Changing Expectations : Corporate Social Responsibility*, March 1999, (15 July, 2016), <http://www.wbcsd.org>.

*sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that.*"<sup>18</sup>

From the above discussion it can be concluded that the Corporate Social Responsibility (CSR) is a vehicle for discussing the obligations a business has to its immediate society, a way of proposing policy ideas on how those obligations can be met, and a tool for identifying the mutual benefits for meeting those obligations. Further above discussion also reveals that there is a wide variety of concepts and definitions associated with the term "corporate social responsibility", but no general agreement of terms. CSR is indeed concerned with establishing the capacity of responding to external pressures through appropriate 'responsive' mechanisms, procedures, arrangements and behavioural patterns.

While the definitions of CSR may differ, there is an emerging consensus on some common principles that underline CSR<sup>19</sup>:

**1. CSR is a business imperative:** Whether pursued as a voluntary corporate initiative or

<sup>18</sup> United Nations Industrial Development Organization, *What is Corporate Social Responsibility*, (15 July, 2016), <http://www.unido.org>.

<sup>19</sup> KMPG – ASSOCHAM, *Corporate Social Responsibility – Towards a Sustainable Future: A White Paper* (2008) at 7-8, (15 July, 2016), <http://www.kpmg.com>.

for legal compliance reasons, CSR will achieve its intended objectives only if businesses truly believe that CSR is beneficial to them.

**2. CSR is a link to sustainable development:**

Businesses feel that there is a need to integrate social, economic and environmental impact in their operation ; and

**3. CSR is a way to manage business:** CSR is not an optional add-on to business, but it is about the way in which businesses are managed.

The emerging concept of Corporate Social Responsibility (CSR) goes beyond the charity and requires the company to act beyond its legal obligations and to integrated social, environmental and ethical concerns into company's business process.

## CORPORATE SOCIAL RESPONSIBILITY

### DEVELOPMENT IN INDIA

Corporate social Responsibility is not an imported concept. Rather it is a part of India's cultural heritage. Our Vedas emphasized quality and social responsibility in terms of social distribution of wealth, animal welfare, plant life, non-pollution and poor feeding while condemned those who enjoyed wealth ignoring social needs. *Bhagavat Gita* Professed 'poor and needy shall be duly protected and further says,

*"Datayam iti yad danam diyate nupakarine!  
Dese kale ca patre ca tad danam saatvikam  
smrtam!"*

-Ch. XVII, Shloka 20.

*"Charity given out of duty, without expectation of return, at proper time and place, and to a worthy person is considered to be in the mode of goodness."*

Thus the concept of Corporate Social Responsibility in India is not new, though the term may be. Philosophers like Kautilya from India preached and promoted ethical principles while doing business. Religion and charity have always been linked in India with business, founded on 'giving' as a good business principle.<sup>20</sup> The term *loksamagraha*<sup>21</sup> finds mention in chapter III (20) of the Gita. Business is viewed as legitimate and an integral part of society according to Vedic philosophy but essentially it should create wealth for the society through the right means of action. 'Sarva loka hitam' in the Vedic literature referred to 'well-being of stakeholders'.<sup>22</sup> This means an ethical and social responsibility system must be

<sup>20</sup> Pooja Srivastava & Surabhi Goyal, *The pre and post legislative development of CSR in India : A case illustration of Mahindrea and Mahindra*, ASIAN JOURNAL OF MANAGEMENT RESEARCH 459, Vol. 5 Issue 3, 2015.

<sup>21</sup> *Loksamagraha* means binding men and their communities together, regulating them in such a way that they acquire strength from mutual cooperation among the serving elements, including the corporate.

<sup>22</sup> *Supra* note 6, at 415.

fundamental and functional in business undertakings. Vedic literature on business profoundly states by the following quote:

*“May we together shield each other and may we not be envious towards each other. Wealth is essentially a tool and its continuous flow must serve the welfare of the society to achieve the common good of the society.”*

-(Atharva-Veda 3-24-5)<sup>23</sup>

In India the Vedic philosophy insist that quality of work and service needs to be achieved in the business process model for long-term sustainability, besides an equitable redistribution of wealth after having acquiring it. This core principle of Corporate Social Responsibility expounded by the Vedic literature is being reengineered in the modern business models, namely, Total Quality Management (TQM), Business Process Reengineering and Triple bottom-line sustainability.<sup>24</sup>

Thus the concept of CSR has been imbibed in the society from the very beginning. It is a concept that is a part of India’s cultural heritage which Mahatma Gandhi called “Trusteeship”. For Gandhi ji, Trusteeship was a means of transforming the present capitalist order of society into an egalitarian one. His

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

trusteeship model did not recognize any right of private ownership of property except what was permitted by society for its own welfare and this did not exclude legislative regulation of ownership and use of wealth. Giving corporate social responsibility the façade of trusteeship model of Gandhi ji is only a mechanism to provide legitimacy to a Western concept.<sup>25</sup>

#### **FOUR PHASES OF CORPORATE SOCIAL RESPONSIBILITY DEVELOPMENT IN INDIA**

Today, CSR in India has gone beyond ‘charity and donations’ and is approached in a more organized fashion. It has become an integral part of the corporate strategy. The development of corporate social responsibility (CSR) in India can be discussed in its four phases which run parallel to India’s historical development and has resulted in different approaches towards corporate social responsibility.

**(1) The First Phase:** In the first phase charity and philanthropy were the main drivers of corporate social responsibility. Culture, religion, family values and tradition and industrialization had an influential effect on corporate social responsibility. In the pre-

<sup>25</sup> Seema Sharma, “Corporate Social Responsibility in India- Emerging Discourse & Concerns”, THE INDIAN JOURNAL OF INDUSTRIAL RELATIONS, VOL. 48 NO. 4 2013 at 585-586.

industrialization period which lasted till 1850, wealthy merchants shared a part of their wealth with the wider society by way of setting up temples for a religious cause. Moreover they also provide help to the society over phases of famine and epidemics by providing food from their godowns and money and thus securing an integral position in the society. 1850s onwards with the arrival of colonial rule in India the approach towards corporate social responsibility was changed. The industrial families of the 19<sup>th</sup> century such as Tata, Godrej, Bajaj, Modi, Birla, Singhanian were strongly inclined towards economic as well as social considerations. However it was observed that their efforts towards social as well as industrial development were not only driven selfless and religious motives but also influenced by caste group and political objectives.<sup>26</sup>

**(2) The Second Phase:** In the second phase, during the independence movement, there was increased stress on the Indian Industrialists to demonstrate their dedication towards the progress of the society. This was when Mahatma Gandhi introduces the notion of “trusteeship”, according to which the industry leaders had to manage their wealth so as to benefit the common man. “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.” This was Gandhi’s words which highlights his argument towards his concept of “trusteeship”. Gandhi’s influence put pressure on various Industrialists to act towards building the nation and its socio-economic development. According to Gandhi, Indian companies were supposed to be the ‘temple of modern India’. Under his influence businesses established trusts for schools and colleges and also helped in setting up training and scientific institutions.<sup>27</sup>

**(3) The Third Phase:** The third phase of corporate social responsibility (1960-80) had its relation to the element of ‘mixed economy’, emergence of Public Sector Undertakings (PSUs) and laws relating labour and environmental standards. During this period the private sector was forced to take a backseat. The public sector was seen as the prime mover of development. Because of the stringent legal rules and regulations surrounding the activities of the private sector, the period was described as an “era of command and control”. The policy of industrial licensing, high taxes and restrictions

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<sup>26</sup> Dr. Mohad. Ashraf Ali & Azam Malik, *Corporate Social Responsibility: An Indian Perspective*, INDIAN JOURNAL OF RESEARCH 26-27, Vol. 1 Issue 9 (2012).

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<sup>27</sup> *Id.*



on the private sector led to corporate malpractices. This led to enactment of legislation regarding corporate governance, labor and environmental issues. Public Sector Undertakings were set up by the state to ensure suitable distribution of resources (wealth, food etc.) to needy. However the public sector was effectively only to a certain limited extent. This led to shift of expectation from the public to the private sector and their active involvement in the socio-economic development of the country became absolutely necessary. In 1965 Indian academicians, politicians and businessmen set up a national workshop on corporate social responsibility aimed at reconciliation. They emphasized upon transparency, social accountability and regular stakeholder dialogues.<sup>28</sup>

**(4) The Fourth Phase:** In the fourth (1980 until the present) Indian companies started abandoning their traditional engagement with corporate social responsibility and integrated it into a sustainable business strategy. In 1990s the first initiation towards globalization and economic liberalization were undertaken. Controls and licensing system were partly done away which gave a boost to the economy the signs of which are very evident today. Increased growth momentum of the economy helped Indian companies grow rapidly and

this made them more willing and able to contribute towards social cause. Globalization has transformed India into an important destination in terms of production and manufacturing bases. As Western markets are becoming more and more concerned about labor and environmental standards in the developing countries, Indian companies who export and produce goods for the developed world need to pay a close attention to compliance with the international standards.<sup>29</sup>

It has been argued that the roots of corporate social responsibility mainly lie in the western world. However, a careful analysis reveals that many of the popularized western management theories and concepts have been in practice in Asian countries, especially in India for centuries. There are evidences that reflects that the philosophy of corporate social responsibility has originated in the ancient India and one can find references of corporate social responsibility in Kautilya's Arthashastra (4<sup>th</sup> Century BC).

### THE LEGALITY OF CSR IN INDIA

The concept of social responsibility has emerged as a towering influence in modern corporate day activity. This concept of CSR in India is in a very nascent stage. It is still one of the least understood initiatives in the Indian development sector. A lack of understanding,

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<sup>28</sup> *Id.*

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<sup>29</sup> *Id.*

inadequately trained personnel, non availability of authentic data and specific information on the kinds of corporate social responsibility activities, coverage, policy etc. further adds to the reach and effectiveness of the corporate social responsibility programs. But the situation is now changing, the country recently instituted the World's first mandated CSR law, requiring all companies doing business there, with a minimum net worth of Rs.500 crore, turnover of Rs.1,000 crore and net profit of at least Rs.5,crore, spend at least two percent of their profit on CSR.<sup>30</sup> With a population of 1.2 billion and more than 700 million living on \$1 per day, the CSR mandate under the Companies Act should stimulate strategic engagement with social issues. Corporation can comply at the very basic level of the law or use this historic moment to innovate for the betterment of India, its people and economy. The CSR is on expedition in India but companies have yet to realize its complete potential. "Individual and collaborative initiatives continue to be dominated by self-assertion rather than accountability."

In India, the Companies Act 1956 does not contain any provision regarding corporate social responsibility. The scene of CSR in India changed with the introduction of Section 135 of

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<sup>30</sup> India now only country with legislated CSR, (20 July, 2016), <https://www.business-standard.com>.

the Companies Act 2013. The new Companies Act has removed the weakness in the old Companies Act of 1956 in the area of corporate social responsibility activities. Of late government had a view to make it mandatory for corporate social responsibility activities and to make it funding public. With the implementation of the new company law from April 1, 2014, India has become the only country in the World with legislated corporate social responsibility (CSR) and spending threshold of up to \$ 2.5 billion (Rs. 15,000 crore).<sup>31</sup> Corporate social responsibility (CSR) has been made mandatory under the new regulation and there are provisions of penalties, in case of failure.

### **CORPORATE SOCIAL RESPONSIBILITY - LEGAL FRAMEWORK IN INDIA**

The unadulterated deliberate kind of Indian CSR has as of late been mixed with an obligatory component in it. Not at all like in some different nations, for example, Australia, Denmark, France, Holland, Norway, and Sweden, where just the CSR reporting is obligatory, India is currently the main nation on the planet where both reporting and spending has gotten to be obligatory. The main formal endeavour by the Government of India to put the CSR issue on the table was in the issuance

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<sup>31</sup> *Id.*

of Corporate Social Responsibility Voluntary Guidelines in 2009 by the Ministry of Corporate Affairs. Preceding this, the significance of CSR was examined in the connection of corporate administration changes, for example, in the Report of the Task Force on Corporate Excellence by the Ministry of Corporate Affairs. While the report put forth a business defense for CSR and also highlighted the social advantages coming from it, the talk was recommendatory in nature and there were minimal significant focuses. It is in the Voluntary Guidelines of 2009 that the center components of a CSR strategy was spelt out that included tend to all partners, moral working, regard for specialists' rights and welfare, regard for human rights, regard for the earth and exercises to advance social and comprehensive improvement.

### **CORPORATE SOCIAL RESPONSIBILITY VOLUNTARY GUIDELINES 2009**

The Ministry of Corporate Affairs has adopted the role of an enabler, facilitator and regulator for effective functioning and growth of the corporate sector. In order to assist the businesses to adopt responsible governance practices, the Ministry of Corporate Affairs has prepared a set of voluntary guidelines which indicate some of the core elements that businesses need to focus on while conducting their affairs. These guidelines have been prepared after taking onto account the

governance challenges faced in our country as well as the expectations of the society. Since the guidelines are voluntary and not prepared in the nature of a prescriptive road-map, they are not intended for regulatory or contractual use. The core elements of the guidelines provide a road map for CSR initiatives, and strategic planning, which should be integral part of overall business policy and aligned with its business goals.<sup>32</sup> Though Corporate Social Responsibility Voluntary Guidelines, 2009 was the first formal initiative from the Government towards the promotion of corporate social responsibility in the Indian corporate sector. But these guidelines were refined and new guidelines – National Voluntary Guidelines on Social, Environmental and Economic Responsibility of Business (ESG Guidelines) – were issued in 2011 which represents a significant and substantial effort in enhancing the protection of stakeholder interests in the corporate sector.<sup>33</sup> These guidelines supersede the 2009 Guidelines and involve nine core principles:

1. Business should conduct and govern themselves with Ethics, Transparency and Accountability;

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<sup>32</sup> The CSR Policy should normally cover following elements: Care of all stakeholders, Ethical functioning, Respect for workers' rights and welfare, Respect for human rights, Respect for environment and Activities for social and inclusive development.

<sup>33</sup> Dean Roy Nash, *CSR an Indian Perspective: A Review*, 09 March 2012, (28 July, 2016), <http://ssrn.com/abstract>.

2. Business should provide goods and services that are safe and contribute to sustainability throughout their life cycle;
3. Business should be promote the well-being of all employees ;
4. Business should respect the interests of , and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized ;
5. Business should respect and promote human rights ;
6. Business should respect, protect, and make efforts to restore the environment ;
7. Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner;
8. Business should support inclusive growth and equitable development ; and
9. Businesses should engage with and provide value to their customers and consumers in a responsible manner.<sup>34</sup>

By virtue of these guidelines being derived out of the unique challenges of the Indian economy and the Indian nation, it is realized that all agencies need to collaborate together, to ensure that businesses flourish, even as they contribute to the wholesome and inclusive development of the country. The

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<sup>34</sup> Ministry of Corporate Affairs, *National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business*; (29 July, 2016), <http://www.mca.gov.in>.

Guidelines emphasize that responsible businesses alone will be able to help India meet its ambitious goal of inclusive and sustainable all round development, while becoming a powerful global economy by 2020.<sup>35</sup>

### **COMPANIES ACT 2013 AND CORPORATE SOCIAL RESPONSIBILITY – SECTION 135**

The Companies Bill, 2009 and its 2011 counterpart, represents the first major effort at comprehensively overhauling corporate law in India since 1956. The Bill's Statement of Objects and Reasons' dwell on growth and international investment at some length. Its authors seem painfully eager to impress the global business community. At the same time, the Bill proceeds to in the wake of Bhopal and Dahbol, as well as more recent Satyam accounting scandal (akin to an Indian version of Enron). The rationale accompanying the Bill displays Parliament's eagerness to recruit additional foreign investment.<sup>36</sup> The Companies Act, 2013 ('2013 Act'), has replaced the nearly 60- years-old Companies Act, 1956 ('1956 Act').<sup>37</sup> The 2013 Act provides an opportunity to make our corporate regulations more

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<sup>35</sup> *Id.*

<sup>36</sup> Aayush Kumar, *Mandatory Corporate Social Responsibility: An Expansive Vision*, 1 (3) COMPANY LAW JOURNAL 115 (March 2013).

<sup>37</sup> The 2013 Act, enacted on 29 August 2013 with the President's assent, aims at improve corporate governance, simplify regulations, enhance the interests of minority investors and the first time legislates the role of the whistle-blower.

contemporary, and also to make our corporate regulatory framework a model to come at par with other economies with similar characteristics.<sup>38</sup> The 2013 Act, has introduced several provisions which would change the way Indian corporate do business and one such provision is spending on Corporate Social Responsibility (CSR) activities. Corporate Social Responsibility, which has been voluntary contribution by corporate, has now been included in law.

Sec. 135 and Schedule VII of the Companies Act as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 provides the threshold limit for applicability of the CSR to a company.<sup>39</sup> The CSR activities must be undertaken with respect to certain areas which are listed under Schedule VII of the 2013 Act, some of which include:

- Activities to eradicate hunger, poverty and malnutrition.
- Promotion of preventive healthcare, education and gender equality.
- Setting up homes for women, orphans and the senior citizens.

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<sup>38</sup> The Act is a rule-based legislation containing only 470 sections, which means that the substantial part of the legislation will be in the form of rules.

<sup>39</sup> The § 135, Schedule and Corporate Social Responsibility Rules will come into effect from the first day of April, 2014.

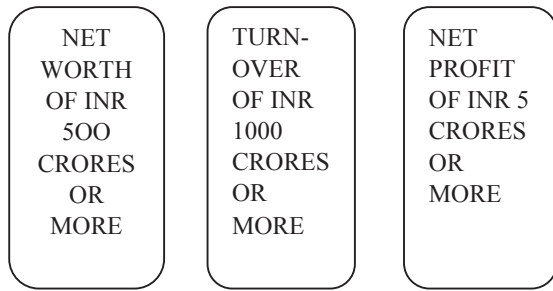
- Undertaking measures for reducing social and economic inequalities.
- Ensure environmental sustainability, balance in the ecology and welfare of animals.
- Protection of national heritage, art and culture.
- Taking measures for the benefit of armed forces veterans, war widows and their dependents.
- Provide training to promote rural, nationally recognized, Paralympics sports (Olympic Sports).
- Contribute to Prime Minister's National Relief Fund or any other fund which has been set up by the Central Government for socio-economic development, relief and welfare of SC, ST, OBCs, minorities and women.<sup>40</sup>

The provision also states that a company shall give preference to the local areas and those areas around which the company operates for undertaking the said CSR activities.<sup>41</sup> Every company having a net worth of Rs. 500 crore or more or a turnover of Rs. 1000 crore or a net profit of Rs. 5 crore, during any financial year, is required to set up a Corporate Social Responsibility Committee.

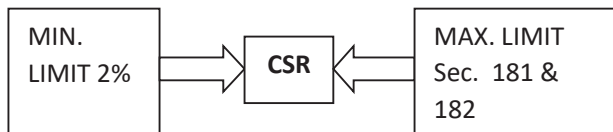
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<sup>40</sup> The Companies Act, 2013, Schedule VII.

<sup>41</sup> The Companies Act, 2013, Proviso to § 135(5).



The CSR Committee shall consist of 3 or more directors, of which at least 1 director is an independent director.<sup>42</sup> Such a company is required to spend on CSR activities, in every financial year, at least 2% of average net profits of the company in the immediately preceding three financial years.



If the company fails to spend such amount, the board shall provide reason for the same in its report attached to the financial statements laid before the general meeting.<sup>43</sup> The CSR committee is further required to frame and monitor the CSR policy and recommended the amount of expenditure to be incurred.<sup>44</sup> The CSR policy may include activities which are mentioned in the Schedule VII of The Companies Act, 2013 few of them are discussed above. This provision is a slightly controversial

one, as the main eligibility criteria do not make any distinction between public and private or domestic and foreign companies. However, here, by including the necessity of an independent director as one of the members of the CSR Committee, it is suggested that the provision would lead to even private companies appointing an independent director – a possibility not otherwise visualized under the Act.<sup>45</sup> So in whole the introduction of Corporate Social Responsibility clause in the Companies Act, 2013 has made India the first country to mandate Corporate Social Responsibility through a statutory provision. The Companies Act 2013 is a step forward in the direction of development and growth, with inclusion of Section 135 as Corporate Social Responsibility provision mandating every company including private companies to spend a minimum of 2% of their net profit on development activities. Many of the provisions have the potential to bring in transformative changes in the way private sector engages with national development; however certain provisions need clarification to facilitate smoother compliance as well as larger impact on society.<sup>46</sup> The new CSR regulations will not be a game changer in terms of enhancing overall social spending, therefore after assessing their

<sup>42</sup> The Companies Act, 2013, § 135(1).

<sup>43</sup> The Companies Act, 2013, § 135(5).

<sup>44</sup> The Companies Act, 2013, § 135(3).

<sup>45</sup> PRACHI MANEKAR, INSIGHTS INTO THE NEW COMPANY LAW 295-296 (2013).

<sup>46</sup> See, National Foundation for India, *Comment On Draft CSR Rules Under Section 135 of Companies Act 2013*, (04 August 2016), <http://www.nfi.org.in>.

pros and cons – it can be argued that the CSR regulations are a step in the right direction. The implementation of the new CSR regulations, however, entails certain challenges, which would require measures such as improved regulatory oversight, further clarity on what constitutes CSR spending and coordination among companies. The success of the CSR regulations would depend mainly on how well these challenges are addressed.<sup>47</sup>

### **CORPORATE SOCIAL RESPONSIBILITY IN INDIA: RISKS OPPROBRIUM**

In India Corporate Social Responsibility is in developing phase and gradually the challenges that it has to be faced in the coming years will have to be addressed at this initial stage. The inclusion of mandatory limits of spending in the Act to achieve CSR objectives has come in for some very serious criticism. Firstly, it has been argued that at a time when most corporate are planning leaner corporate structures and eliminating layers of processes, this provision adds another committee to an already complex compliance checklist, which is unlikely to help lead to greater or better CSR.<sup>48</sup> Additionally, there is no clarity from the taxation angle. The law provides for a calculation of the amount to be

<sup>47</sup> Subrata Sarkar, *Corporate Social Responsibility under Companies Act, 2013*, NSE Quarterly Briefing, July 2014/ No. 6, at 1.

<sup>48</sup> *Supra* note 45.

spent. However, it does not explicitly describe its accounting treatment and eligibility for deduction for taxation purposes<sup>49</sup>. It also does little to dispel the notion that the CSR provisions have been introduced to make private participation essential from a legal standpoint in achieving public objectives. From a public policy perspective, The CSR provisions are tantamount to the Government trying to ‘outsource’ to the corporate sector its own responsibility towards the people. The Constitution of India through the Directive Principles of State Policy and Preamble tries to set up a welfare state. Directive principles contained in Part IV of the Constitution of India are concerned with the welfare of the citizen. Thus according to the Constitution, welfare is prerogative of the state and imposing it on companies is actually encroachment into the arena of working of the state.<sup>50</sup> Furthermore, while taxes are as it is a price being paid by corporate to enable the Government meet its public objectives, aren’t there enough means already to burden corporations with not just raising money, but also spending such money.<sup>51</sup> So taxes could have been increased in the name of social development activities, but it should

<sup>49</sup> *Id.*

<sup>50</sup> Divya Mehta & Monica Aggarwal, *Making Corporate Social Responsibility Mandatory in India : Prospects and Problems*, *IMPACT : INTERNATIONAL JOURNAL OF RESEARCH IN BUSINESS MANAGEMENT* 26, Vol. 3 Issue 5, (May 2015).

<sup>51</sup> *Supra* note 48.

have been the task of the state. Although, the introduction of CSR provisions in the Companies Act is a welcome step, however, the current discourse of corporate philanthropy without giving any express autonomy to Companies in choosing their CSR activities may not yield desired outcome. By allowing only selected list of activities within the Schedule in a sectional manner may end up encouraging only a passive participation by corporate towards CSR activities.<sup>52</sup> Further the law on CSR has generated considerable debate, while the law is prima facie appealing because it mandates corporate spending on socially relevant causes, in the mean while it is difficult to implement the law, especially when the Indian social sector may not be fully ready to absorb these funds in effective manner.<sup>53</sup> Another issue is regarding the lack of knowledge and expertise of the companies towards societal development and needs. Endeavours by the companies towards CSR may not be fruitful as they won't be aware of the priority requirements of the society as well as the initiatives of other companies

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<sup>52</sup> Rahul Rishi, Ankit Srivastava & Dr. Miland Antani, *New Rules for Corporate Social Responsibility announced*, (12 Aug 2016), <https://www.nisthithdesai.com>.

<sup>53</sup> *Id.*

simultaneously. Thus such efforts may be lopsided.<sup>54</sup>

## CONCLUSION

CSR holds a vital spot in the advancement situation of the World today and can act like an apparatus for reasonable improvement. As we probably are aware corporate can't remain solitary they additionally require the backing of their general public everywhere which is essential for their improvement and goodwill. Numerous organizations are finding a way to enhance their natural and social execution using intentional activities, for example, sets of accepted rules, ecological affirmation and reporting, social reviews, reasonable exchanging plans and social venture programs. The new CSR arrangements in India are not an instance of government annulling its obligation to the private part. The evaluated yearly measure of CSR spending by the corporate judged in connection of aggregate social area spending by the legislature is just around two percent of what recorded organizations would have spent in the wake of applying the criteria under Section 135. Or maybe, the new CSR arrangement ought to be taken a gander at as an exertion by the administration to make the corporate segment assume a correlative part in meeting the more

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<sup>54</sup> *Supra* note 50.



extensive society objective of enveloping improvement. Under the new CSR rules, the adaptability given to the organizations in picking and checking the tasks is prone to advance productivity and viability in venture usage without the CSR rules coming into genuine clashes with the essential target of shareholder worth boost of organizations. Social and financial motivating forces appear to have been all around adjusted in the new CSR principles and one can trust that the corporate division will energetically loan some assistance to the administration in adding to the comprehensive development of the country.