

Corporate Social Responsibility and Freedom of Trade of Companies

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Abstract: Corporate social responsibility (CSR) is a self-regulating business model that helps a company be socially accountable—to itself, its stakeholders, and the public. By practicing corporate social responsibility, also called corporate citizenship, companies can be conscious of the kind of impact they are having on all aspects of society, including economic, social, and environmental. When we talk about the commercial aspect of this, companies have been granted fundamental freedom of trade under Art. 19(1)(g) of the Constitution of India. While making contributions under CSR policy which is a mandate for the companies the profitability of companies gets affected many a times. The deliberate inclusion of CSR principles in the corporate decision-making processes ensures that companies are mindful of public interests. The increasing emphasis on Corporate Social Responsibility has raised questions about its impact on this fundamental right. The potential conflict between freedom of trade and CSR has sparked debate on the role of businesses in society. One of the primary concerns is the mandatory CSR spending requirement introduced by the Companies Act, 2013. This regulation potentially limits companies' freedom to allocate resources, as they are required to spend at least 2% of their average net profit on CSR activities. Additionally, overly prescriptive CSR regulations can stifle business growth and innovation, while compliance requirements can divert resources away from core business activities. The impact of CSR on freedom of trade is multifaceted. Freedom of trade and CSR are intertwined in India's business landscape. As companies exercise their freedom to operate, they must also acknowledge their social responsibility. Today, the concept of corporate social responsibility is firmly rooted on the global business agenda. In order to move from theory to concrete action, many obstacles need to be overcome.

Keywords: Corporate social responsibility, freedom of trade, sustainable development, social development, balanced approach.

INTRODUCTION

Corporate social responsibility (CSR) is a self-regulating business model that helps a company be

socially accountable to itself, its stakeholders, and the public. By practicing corporate social responsibility, also called corporate citizenship, companies can be conscious of the kind of impact they are having on all aspects of society, including economic, social, and environmental. To engage in CSR means that, in the ordinary course of business, a company is operating in ways that enhance society and the environment, instead of contributing negatively to them. This concept of CSR does not have a clear cut definition yet, still can be defined accordingly. Corporate Social Responsibility is about companies having responsibilities and taking actions beyond their legal obligations and economic/business aims. These wider responsibilities cover a range of areas but are frequently summed up as social and environmental - where social means society broadly defined, rather than simply social policy issues. This can be summed up as the triple bottom line approach: i.e. economic, social and environmental. Corporate social responsibility (CSR) also called corporate responsibility, corporate citizenship, responsible business and corporate social opportunity is a concept whereby organizations consider the interests of society by taking responsibility for the impact of their activities on customers, suppliers, employees, shareholders, communities and other stakeholders, as well as the environment. CSR is about businesses and other organizations going beyond the legal obligations to manage the impact they have on the environment and society. In particular, this could include how organisations interact with their employees, suppliers, customers and communities in which they operate, as well as the extent they attempt to protect the environment.¹ A concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment, this is done by integrating social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.²

¹ The Institute of Directors, UK (2002)

² The European Union (2004)

CSR and S.135 of Companies Act.

All companies with a turnover of Rs.1,000 crore and more – or a net worth of Rs.500 crore and more or net profit of Rs.5 crore and more – will have to spend at least two percent of their three-year average net profit every year on CSR activities; and/or report the reason for spending or non-expenditure Section 135(1).

The institutional coverage is Indian Companies and foreign companies operational in India. The activities undertaken by conducting CSR can be undertaken through a registered society or trust/ NGO or a Section 8 Company or company self under the Companies Act. However, the implementing partner should have three years track record. The Nature of expenditure incurred on specified activities that are carried out in India will qualify as CSR expenditure. Expenditure incurred in undertaking normal course of business will not form a part of the CSR expenditure. Any expenditure incurred in providing such training up to a ceiling of five percent in one financial year is permitted under the CSR budget.

Companies need to spend CSR money in project mode with pre-defined indicators, budget, duration etc. It is mandatory for companies to disclose their CSR Policy, programs/projects undertaken and amount spent in their report and the CSR Rules provide for a separate format. The report containing details of such activities and CSR policies have to be made available on the company's website for informational purposes. The activities which may be included by companies in their CSR policies according to Schedule VII eradicating extreme hunger and poverty and malnutrition, promoting preventive healthcare and sanitation and making available safe drinking water; promotion of education; including special education and employment enhancing vocation skills especially among children, woman, elderly and the differently abled and livelihood enhancement projects; promoting gender equality and 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, ensuring environmental sustainability ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and various other activities follow.

³ Vasanthi Srinivasan (2010)

Need of CSR

The concept of Corporate Social Responsibility also known as “CSR”, in India is not new, the term may be. The process though claimed recently, has been followed since ancient times. Philosophers like Kautilya from India and pre-Christian era philosophers in the West preached and promoted ethical principles while doing business. The concept of helping the poor and disadvantaged was cited in much of the ancient literature. The idea was also supported by several religions where it had been intertwined with religious laws. “Zakaat”, followed by Muslims, is a donation from one's earnings which is specifically given to the poor and disadvantaged. Similarly, Hindus follow the principle of “Dhramada” and Sikhs the “Daswandh”. There exists a large growing literature that analyzes the benefits of corporate social responsibility and investigates the positive relationship it has with high financial performance and many other advantages it brings to companies.

The debates regarding CSR have gained increasing importance over the last two decades with the expansion of globalization, privatization and deregulation. CSR spending is not just important for companies but is undoubtedly extremely vital and valuable for the planet and its people³(community at large, customers and employees). There is a lot of discussion around this concept and an adequate amount of evidence which proves that corporate social responsibility is in harmony with modernization, sustainable development. Socially sustainable companies add value to the communities within which they operate by increasing the human capital of individual partners as well as furthering the societal capital of these communities. They manage social capital in such a way that stakeholders can understand its motivations and can broadly agree with the company's value system.⁴

The UN Global Compact seeks to promote the CSR activities of businesses in India. However, it has not succeeded in involving important NGOs, or most importantly, the unions. Moreover, the UN Global Compact is not well known within the business sector or the NGO community.

Corporate social responsibility (CSR) has been transformed from an irrelevant idea to one of the most

⁴ D.Y. Chacharkar and A. V. Shukla (2004)

popular and widely accepted concepts in the business world today. As globalization accelerates and large corporations serve as global providers, these corporations have progressively recognized the benefits of providing CSR programs in their various locations. CSR activities are now being undertaken throughout the globe. CSR has become not only the right thing to do, but it has also become the competitive thing to do. The deliberate inclusion of CSR principles in the corporate decision-making processes ensures that companies are mindful of public interests.

Increasingly, stakeholders in the world's largest corporations are demanding that their companies become more socially responsible and expect them to understand and address the social and community issues that are relevant to them. These issues encompass not only our limited natural resources and global climate change but also ethical and other neglected factors in the public sphere. Businesses are increasingly implementing CSR policies like promoting favourable environmental and human resource regulations. CSR should be more than just doing 'something good, it should rather be about making a sustainable social impact. Nobel prize winner, Mr. Muhammad Yunus in a lecture he gave in Boston University, touched on the point, apart from various other discussions, the shortcoming of a single dollar (in our case a rupee) placed in charity by saying that it only has a single life cycle, i.e., it does not use itself. Drawing from this idea, CSR for us should be aimed such that a single unit currency has multiple lives. That means that it should be invested in such a way that it gives an outcome, which in turn is actually another unit itself, so that it keeps on recycling itself.

CSR's contribution in social development

CSR is an important tool amongst various other methods and initiatives of social development. In our country, the divide between the rich and the poor is reaching alarming proportions. Taking a single case of elevating people out of the poverty line. A non-humanitarian might ask what good comes out of doing that. There are plenty of reasons involved if one asks. Peace, for instance is one of them as it is generally dependant on the level of poverty. Peace is an indicator of national prosperity and stability which affects all. Reduced corruption, reversal of vote-bank politics, increase in government accountability and

more similar affects are all natural outcomes that evolve out of a wholesome society and CSR plays an important role in achieving this minimum social status for all.⁵

Profit making & Social Responsibility is an oxymoron and can be strongly debated. Profit making is the essential reason for an enterprise to prolong and grow. Social responsibility is the fundamental duty of the "state" that must focus upon the upbringing of its stake holders with social justice. This includes proactive participation by the governance in elevating "quality in work life" of its citizens. Thus, attempting the balance of wealth and social justice/empowerment, shall invite a synergy between the Public-Private partnership in enhancing the competitive existence & growth of national economy. State is a necessary evil. The primordial responsibility is governance and to bring order from disorder. The concept of "city-states" like Greece existed, which portrayed high level of self-governance and self-sustenance. Besides this, for a nation to be healthy and prosperous, the state must not hinder "Liberty". The world has witnessed social unrest as a cause of economic disparity, inequality, social injustice etc. resulting into worldwide protests, cross border and internal disputes, civil wars, battles, regional and the world wars.⁶

Hence, there must be continuous efforts to reduce this economic disparity amongst the country men but the irony being that the State is unable to execute its primary duties in the form of social responsibilities, either because (i) it is not able to mobilize funds, (ii) funds available are not adequate against the requirement, (iii) it is not able to utilize the funds or/and (iv) there is lack of governance and will power. As a result, the entrepreneurs in the micro community or corporate, emerge as "entrepreneur cartel(s)" to carry out this important assignment. They participate as "social entrepreneurs" and emerge as drivers to engine of economic and social growth. Strategic innovation, hence, emerges as an imperative tool towards a globally competitive existence and performance.

CSR and Sustainable development.

The sole purpose of CSR is to identify and improve a company's impact on society and the environment, while driving stronger business results such as brand enhancement, market differentiation and employee satisfaction.

⁵ Sen, S., & Bhattacharya, C. B. (2001)

⁶ Kumar, V., & Bhattacharya, C. B. (2006)

One of the most complete and frequently cited definitions comes from Archie Carroll⁷

The social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time”.

Carroll presents these different responsibilities as consecutive layers within a pyramid, such that “true” social responsibility requires the meeting of all four levels consecutively. This definition probably is the most accepted and established one. In the opposite, Frederick explained a move from Corporate Social Responsibility to “Corporate Social Responsiveness” defined as “the capacity of a corporation to respond to social pressures”.⁸ According to Frooman the definition of what would exemplify CSR is the following: “An action by a firm, which the firm chooses to take, that substantially affects an identifiable social stakeholder’s welfare.”⁹ Corporate Social responsibility is best defined by the World Business Council as, “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”.¹⁰ The World Business Council for Sustainable Development, in its publication "Corporate Social Responsibility: making good business sense" by Holme and Watts (2002) provided different perceptions of what CSR should mean from a number of different societies. For example, "CSR is about capacity building for sustainable livelihoods. It respects cultural differences and finds the business opportunities in building the skills of employees, the community and the government." The concept of social responsibility has very high important components of ethics that are the guidelines to improve the quality of life of the people in organizations and, at the same time it provides an industrial competitive advantage for the firm. Thus, it needs to be developed as a corporate strategy of the

firm focusing on social, environmental and economic issues. According to Egels, the area defined by advocates of CSR increasingly covers a wide range of issues such as plant closures, employee relations, human rights, corporate ethics, community relations and the environment¹¹. According to Ruggie, CSR is a strategy for demonstrating good faith, social legitimacy and a commitment that goes beyond the financial bottom line.¹²

Freedom of Trade and Corporate Social Responsibility in India.

India's constitutional framework guarantees freedom of trade and commerce to its citizens and companies. Article 19(1)(g) of the Indian Constitution ensures the right to practice any profession, or to carry on any occupation, trade or business. However, this freedom is not absolute and is subject to reasonable restrictions. Article 19(1)(g), ensures that businesses can operate without undue restrictions. However, the increasing emphasis on Corporate Social Responsibility (CSR) has raised questions about its impact on this fundamental right. The potential conflict between freedom of trade and CSR has sparked debate on the role of businesses in society.

One of the primary concerns is the mandatory CSR spending requirement introduced by the Companies Act, 2013. This regulation potentially limits companies' freedom to allocate resources, as they are required to spend at least 2% of their average net profit on CSR activities. Additionally, overly prescriptive CSR regulations can stifle business growth and innovation, while compliance requirements can divert resources away from core business activities. The impact of CSR on freedom of trade is multifaceted. The mandatory CSR expenditures can increase business costs, affecting competitiveness, and limit companies' ability to respond to changing market conditions. Furthermore, CSR regulations may

⁷ Carroll, Archie, “The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders”, Vol.34, Issue 4 , Business Horizons(1991).

⁸ Frederick ,W.C., “From CSR1 to CSR2”, Vol. 33, Business and Society, 150-166 (1994)

⁹ Frooman, J., “Socially Irresponsible and Illegal Behaviour and shareholder wealth: A metaanalysis of eventstudies”, 36,Business and Society, 221-249 (1997).

¹⁰Lord Holme and Watts, Richard, “Making Good Business Sense”, WBCSD (2005)

¹¹ Egels,N, “Sorting out the mess: A review of definitions of ethical issues in business”, 4.60, Centre For Business in Society, Gothenburg Research Institute (2005).

¹² Ruggie, J.G, “The theory and Practice of Learning Networks: Corporate Social Responsibility and the GlobalCompact”, 5,Journal of Corporate Citizenship, 27-36 (2002)

unfairly impact certain industries or companies, leading to discrimination. Well-intentioned CSR initiatives can also have unintended consequences, such as disrupting local economies. Indian courts have addressed the tension between freedom of trade and CSR. In *Narala v. APIIC*¹³, the Andhra Pradesh High Court upheld the constitutionality of mandatory CSR spending. The Supreme Court, in *Sterlite Industries v. Union of India*¹⁴, emphasized the importance of balancing economic and social responsibilities.

To mitigate potential conflicts, it is essential to strike a balance between freedom of trade and CSR. Encouraging voluntary CSR initiatives, implementing flexible regulations, and fostering stakeholder engagement can help achieve this balance. Judicial review of CSR regulations is also crucial to prevent overreach. Therefore, the interplay between freedom of trade and CSR in India requires careful consideration. While CSR is essential for social and environmental welfare, it must not unduly restrict business operations. By finding a balance between these competing interests, India can promote sustainable and responsible business practices. Corporate Social Responsibility (CSR) has emerged as a vital component of India's business landscape.

CONCLUSION AND SUGGESTIONS

Freedom of trade and CSR are intertwined in India's business landscape. As companies exercise their freedom to operate, they must also acknowledge their social responsibility. Today, the concept of corporate social responsibility is firmly rooted on the global business agenda. In order to move from theory to concrete action, many obstacles need to be overcome. A key challenge facing business is the need for more reliable indicators of progressing the field of CSR, along with the dissemination of CSR strategies. The absence of a clear and fixed regulatory framework also acts as a hindrance in implementing CSR. It is found that the degree of CSR activities of companies should depend upon their business size and profile. In other words, the bigger the company, the bigger is its CSR program. Despite significant progress in Corporate Social Responsibility (CSR) in India, several challenges continue to hinder its effective implementation. One of the primary concerns is the lack of clarity on CSR implementation. Ambiguities in regulations and guidelines have led to confusion

among companies, resulting in inconsistent and ineffective CSR practices.

Another major challenge is the insufficient monitoring and evaluation of CSR initiatives. The absence of robust monitoring mechanisms makes it difficult to assess the impact and effectiveness of CSR projects, limiting the ability to identify areas for improvement. Furthermore, limited engagement with stakeholders remains a significant obstacle to successful CSR implementation. Companies often fail to involve key stakeholders, including local communities, NGOs, and government agencies, in the planning and execution of CSR initiatives. This lack of collaboration can lead to mismatched priorities, inefficient resource allocation, and ultimately, ineffective CSR outcomes. Addressing these challenges is crucial to enhancing the impact and credibility of CSR in India. To overcome these hurdles, companies must prioritize transparency, accountability, and stakeholder engagement. This can be achieved through regular monitoring and evaluation, stakeholder consultations, and clear communication of CSR goals and objectives.

By tackling these challenges, India can unlock the full potential of CSR, driving in Non-governmental organizations and Government agencies generally possess a constricted viewpoint towards the CSR activities of companies. As a result, they find it hard to decide whether they should contribute in such activities at medium and long range. Lack of transparency is another issue which needs focus. This is mainly due to the fact that there is little or no knowledge about CSR within the local communities since no sincere efforts have been made to create awareness about CSR and win the confidence of local communities. There is a need to increase the understanding and active participation of business in equitable social development as an integral part of good business practice.

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