



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2015; 1(10): 801-803
www.allresearchjournal.com
Received: 10-07-2015
Accepted: 11-08-2015

Dr. Gyanendra Kumar Sahu
Lecturer, P.G Dept. of Law
Utkal University, Odisha

Corporate social responsibility in perspective of Indian constitution

Gyanendra Kumar Sahu

Abstract

The corporate social responsibility is assortment of the business interest as well as community interest for social ordering. The actions of business and industry impact the lives of citizens, both directly and indirectly hence the business and industry are expected to assure reasonable level of responsibilities towards the society in addition to their economic and legal obligations. Nowadays the Governments are also moving towards the welfare state concept. With this purpose in mind, our Constitution lays down desirable principle and guidelines in Part IV of the Indian constitution. These provisions are known as the Directive Principle of State Policy under Article 36-51 of Indian constitution. The Constitution of India aims to establish not only political democracy but also socio-economic justice to the people to establish a welfare state. Since the increasing of socio-economic imbalances the Governments are encouraging companies to take up social responsibility for changing the social structure by eradicating hunger, poverty and malnutrition, promoting preventive healthcare, promoting education and promoting gender equality etc. For this purpose the Indian companies Act, 2013, section 135 and schedule VII provides guidelines on implementation of CSR and mandates the corporate's to spend 2% of their profit towards CSR activities for welfare state.

Keywords: socio-economic justice, welfare state, Stakeholders, Central Public Sector Enterprises (CPSEs)

Introduction

The corporate social responsibility (CSR) is a philosophy that looks at the social interest and the long run enlightened self interest of business. It aims at integrating the business interest with that of community in which it operates. The actions of business and industry impact the lives of citizens, both directly and indirectly. Hence the business and industry are expected to assure reasonable level of responsibilities towards the society in addition to their economic and legal obligations. The corporations have, thus, obligations towards the society and are expected to be ethical and good corporate citizens. CSR often begins with the general claim that businesses have not only a responsibility to generate economic returns for shareholders, but also a responsibility to the natural environment, as well as a social responsibility to other "stakeholders" including customers, employees, suppliers, creditors, and the community. One of the crucial questions surrounding CSR is the degree of responsibility which it imposes on the company when it comes to stakeholder interests and the environment. However, that most would agree that any characterization of responsible business begins with obeying the law and acting in accordance with general ethical principles^[1]. Of course, in many jurisdictions laws and regulations impose many obligations on companies not only with respect to shareholders, but also for environmental protection as well as laws protecting consumers and employees. And so, a company should normally follow the law in those jurisdictions where it operates in order to meet its social responsibility. In addition to the law, it is also generally accepted that the social responsibility of business also extends to acting in accordance with general ethical principles. General principles of fairness, justice and honesty can be found in all traditions around the world, and businesses should be expected to operate in accordance with these principles. As per Kotler and Lee the definition of CSR: "Corporate social responsibility is a commitment to improve community wellbeing through discretionary business practices and contributions of corporate resources^[2]." Companies with effective CSR have the image of socially responsible companies; achieve sustainable growth in their operations in the long run, and their products and services are preferred by the customers.

Correspondence
Dr. Gyanendra Kumar Sahu
Lecturer, P.G Dept. of Law
Utkal University, Odisha

Current Legal Position on CSR in India

In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013, which was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013. While the clause makes a series of overhauls to the Companies Act, 1956. The Act encourages certain companies it is mandatory to spend 2% of their average net profit of previous three years on CSR activities. If the companies fail to spend the abovementioned amount, furnishing reasons for the same in the Directors' Report under clause 134 of the Companies Act 2013. The clause applies to three types of companies those with an annual turnover of rupees one thousand crore and more, or those net worth of rupees five hundred crore and more, or a net profit of rupees five crore and more. The new rules, which will be applicable from the fiscal year 2014-15 onwards, also require companies to set-up a CSR committee consisting of their board members, including at least one independent director. Prior 2009 there was no concrete legislation with respect to 'Corporate Social Responsibility' for companies in India. Earlier official notifications by the Government have been released in the form of 'guidelines' This notification titled 'Corporate Social Responsibility Voluntary Guidelines', which was issued in December 2009 by the Ministry of Corporate Affairs ^[3]. The Ministry of Petroleum and Natural Gas first issued an official notification on CSR ^[4], whereby public sector oil companies had agreed to spend at least 2% of their net profits on CSR initiatives. Further guidelines were issued for Central Public Sector Enterprises (CPSEs) in April 2010, whereby the creation of a 'CSR Budget' was made mandatory ^[5]. Currently there is no statutory obligation on companies to contribute towards CSR initiatives, with the exception of Central Public Sector Enterprises. The Clause 135 of the Companies Act, 2013, is the first of its kind in India, and the second in the world after Indonesia, wherein a statutory obligation will be imposed on companies to compulsorily spend 2% of their average profits on CSR initiatives.

Constitutional Argument on Mandatory CSR and Voluntary CSR

The major Indian companies CEO have stated that the process should be more 'democratic' the CSR is essentially a 'voluntary' exercise it is not within the scope of law to statutorily mandate positive action; it can only enforce minimum standards ^[6]. The decision regarding allocation of a Public company's profits towards CSR should be subject to the shareholders' vote, not the government's legislative powers ^[7]. The Directive Principles of State Policy are non justiciable, as per Article 37 ^[8] of the Constitution i.e. they cannot be enforced in a Court of Law, because these Principles impose positive obligations on the State. Generally the Government imposes tax and Money given as 'tax' goes to the State, and not directly to the community. For what purpose that money is used is left to the discretion of the Government. In a country like India, where often the money does not use to the grass root level due to various reasons such as corruption, bureaucracy, population etc, mere payment of taxes cannot be a means of ensuring that social good is being done. On the other hand, the measure under clause 135 is much more effective than a tax – companies have full freedom to give priority to social causes they want to support, and because the money is directly pumped into CSR initiatives, the impact is much higher.

Clause 134 provides for mandatory disclosure of the implementation of the CSR Policy, and provides for penalty in case of failure to do the same. Hence, not only does the measure under clause 135 not amount to a 'tax', it is also more effective than a taxation scheme. Thus, it is submitted that 'voluntary CSR' is no longer sufficient to ensure that companies realize their obligations towards various stakeholders (both at a micro and macro level) – it is only through 'mandatory CSR' that companies would take up CSR initiatives in a more streamlined manner.

Clause 135 Violates Fundamental Rights of Indian Constitution

The Clause 135 of the Companies act 2013 is having various problems with the way in which clause 135 has drafted. The clause 135 creates a categorization among the companies in India. The Clause divides into two categories first those with an annual turnover of rupees one thousand crore and more, or those net worth of rupees five hundred crore and more, or a net profit of rupees five crore and more. Second other remaining Companies. Clause 135 is applicable only to three types of companies those with an annual turnover of rupees one thousand crore and more, or those net worth of rupees five hundred crore and more, or a net profit of rupees five crore and more. Since this clause creates a classification and violating Article 14 ^[9] of the Indian Constitution I.e Equality before law yet it to be tested the constitutional validity under Article 14 of Indian constitution. As per the Supreme court the classification of Article 14 divided two types i. The classification must be based on a clear differentia. ii The classification created must have a balanced nexus to the object sought to be achieved by the Act. The clause 135 easily satisfies the first classification but in second classification it fails. It has been stated by the Minister for Corporate Affairs, the purpose of this clause is to ensure that 'corporate entities contribute meaningfully' towards the growth and prosperity of the nation now how these figures of turnover, net worth and profit of company arrived or why these particular companies should be subjected to such an obligation why not to other remaining companies having a net worth of below five hundred crores, or a turnover of rupees below thousand crores, or a net profit of rupees below five crores. Such a categorization of companies seems 'arbitrary'. Moreover, the three classes of companies have been created under this clause create confusion. There are certain companies which have revenues exceeding rupees one thousand crore, but

Have incurred a net loss would also be required to mandatorily undertake CSR obligations under clause 135 of companies Act 2013. Thus, the various discussions on the clause 135 have failed to show a nexus between the classification created by the clause and the object of clause 135 of the Companies Act 2013. Thus, this clause would be liable to be struck down as violate of Article 14 of the Constitution, and it subject to judicial review.

Conclusion

1. It is not clear what all constitutes CSR activities as the list specified under Schedule VII of the Act seems like an inclusive list and not exhaustive so amend schedule VII because it restrict the scope of CSR activities it should provide a vast definition for CSR, in order to provide companies with the freedom to select from a large number of areas.

2. The CSR provisions under the 2013 Act require a minimum of 3 directors for the constitution of the CSR committee, clarification needed as to whether qualifying private companies would be required to appoint a third director to comply with the CSR provisions.
3. There may be exemption of CSR, especially in case of companies which are not profitable, but fall under the designated category due to triggering net worth or turnover criteria.

References

1. Where rule of law conditions prevail, observing the law will almost always be the socially responsible course of action. Of course, there may be situations, such as when laws are contradictory, where it is impossible to comply with all requirements of the law.
2. Philip Kotler, Nancy Lee. Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause (Hoboken, New Jersey: John Wiley & Sons), Kotler and Lee go on to define community well-being” to include “human conditions as well as environmental issues, 2005, 3.
3. Ministry of Corporate Affairs, Corporate Social Responsibility Voluntary Guidelines, 2009, available at http://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf.
4. Press Information Bureau, Ministry of Petroleum and Natural Gas, Government of India, Oil PSUs agrees to spend two per cent of profits on Social Responsibilities, Feb, 2, 2009. available at <http://pib.nic.in/newsite/erelease.aspx?relid=47172>.
5. Press Information Bureau, Ministry of Corporate Affairs, Government of India, Corporate Social Responsibility, 11, Aug. 2011. available at <http://pib.nic.in/newsite/erelease.aspx?relid=74428>.
6. Aneel Karnani. Mandatory CSR in India: A Bad Proposal, Stanford Social Innovation Review Blog, May, 20, 2013. available at http://www.ssireview.org/blog/entry/mandatory_csr_in_india_a_bad_proposal.
7. Azim Premji. against law on mandatory CSR spending by corporate, The Economic Times, Mar, 24, 2011, available at http://articles.economictimes.indiatimes.com/2011-03-24/news/29181451_1_csrspending-corporate-affairs-murli-deora-azim-premji; Also see IT CEOs back Premji, against mandatory CSR, Times of India, Mar, 26, 2011. available at http://articles.timesofindia.indiatimes.com/2011-03-26/software-services/29191926_1_csr-azim-premji-corporate-social-responsibility.
8. The provisions contained in this Part shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
9. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth