ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2016; 2(1): 323-328
www.allresearchjournal.com
Received: 29-11-2015
Accepted: 30-12-2015

Shreyes Krishnan
Research Scholar, Dos in Commerce, Manasagangothri, University of Mysore, Mysuru, Karnataka, India

Dr. H Nanjegowda
Professor and Former Principal, Yuvaraja's College (Autonomous), University of Mysore, Mysuru, Karnataka, India

Correspondence
Shreyes Krishnan
Research Scholar, Dos in Commerce, Manasagangothri, University of Mysore, Mysuru, Karnataka, India

Corporate social responsibility: A theoretical study with reference to Indian companies ACT, 2013

Shreyes Krishnan and Dr. H Nanjegowda

Abstract
India has emerged as one of the leading nations to make Corporate Social Responsibility (CSR) mandatory by the passage of the Companies Act, 2013 and the CSR (Policy) Rules (the Act) from 1 April 2014. It can be seen as an explicit call to businesses to partner in solving India's complex development issues. There is sustained interest amongst different stakeholders to understand the evolution of Indian businesses CSR journey.CSR demonstrates that business that takes an interest in wider social issues, rather than just those that impact profit margins, which will attract customers who share the same values. Therefore, it makes good business sense to operate sustainably. The present study gives introspection into the CSR in Indian context.

Keywords: Social responsibility, act, stakeholders, regulations

Introduction

Today, the term Corporate Governance is the buzzword in global business and regulatory communities. It occupies mind space of the government, regulators, corporates, boards, markets, employees, investors and almost the entire society as one of the most important business constituents given its all-pervasive characteristic. Across the world, innovative governance practices are evolving in response to the global financial crisis, wave of privatization, activity and integration in the capital markets, rising investment levels, greater stakeholder awareness and the urge to survive and thrive in uncertain times. Globally, governments and law-makers are endeavouring to legislate good governance while promoting and disseminating the understanding of best practices for voluntary adoption. Regulators are keen to deter non-compliance. Industry and responsible corporates are constantly striving for exemplary corporate behaviour by designing corporate governance structures and processes with strong emphasis on risk management, enhanced transparency and greater stakeholder engagement [1].

The need for CSR

In the ever changing global order, the enlightened Governments have realized the importance of Corporate Social Responsibility. The Government has realized that Social Responsibility of the business is integral part as that of economic interests of the organisations in India. Companies Act, 2013 is much delayed imposition of the legal measures on the Indian Companies, majority of which were reluctant or not bothered to take up the initiative for meeting the social responsibility. When compared to the developed countries, especially the United States, Indian Companies never ventured into the taking care of the societal development.

In fact, companies are expected to shoulder social responsibilities. They are the trustees of the stakeholders. Organisations must balance the needs of all the stakeholders such as shareholders, employees, customers, creditors, government, community, society, environment and the like. They have to balance ethical performance and economic performance.

[1] Companies Act, 2013 – A New Wave Of Effective Regulation And Corporate Governance In India; International Journal Of Advancements In Research & Technology, Volume 3, Issue 7, July-2014

As companies are drawing inputs from the society, they are bound to contribute some percentage of their profit towards the society. The need for the present study arose on account of the drastical measures of the Government of India through the Companies Act, 2013, to deal with the companies with iron hand to shell out certain percentage of Profits mandatorily towards social and environmental related projects and programmes. Under such circumstances, what is the perception of corporate executives of the sample companies in respect of Corporate Social Responsibility. It calls for relooking at the way CSR activities are evolved and implemented for achieving balanced socio-economic goals of the stakeholders.

Review of literature

G.Thiruvasagam & D.Rajasekar (2017) [2] makes an attempt to study various provisions in the Companies Act 2013 incorporated with a view to implement and improve the corporate governance practices generally in companies in India as the corporate governance provisions in the listing agreement are applicable only to listed companies. Under the Companies Act 2013, companies fulfilling certain conditions are required to comply with the provisions related to corporate governance. The objective behind this is to protect interest of other stakeholders including those of minority shareholders and the Government.

Jayati Sarkar and Subrata Sarkar (2015) [3] draw on existing theoretical and empirical literature on the rationale behind Corporate Social Responsibility (CSR), analyses the potential implications of mandated CSR under the Companies Act, 2013 in India on firm incentives, likely responses of corporates that come under the ambit of the law, implications for resource availability and delivery of social goods, and the prospects and challenges of implementing mandated CSR. Insights into these issues are drawn by empirically examining the voluntary CSR behavior of a sample of 500 large companies listed on the Bombay Stock Exchange for the period 2003-2011 that predates the new regulation. The researcher argue that notwithstanding the potential economic costs that may accompany mandated CSR, the provisions of the new Act are designed thoughtfully to balance the objectives of the corporation and its shareholders on the one hand and that of the society and its stakeholders on the other.

Halina Ward (2005) [4] report about corporate responsibility and the business of law. The author finds that it considers the implications of the corporate responsibility agenda for business lawyers and for the practice of business law. Its aim is to stimulate discussion in this neglected area, with a view to strengthening the contribution that business lawyers make to corporate responsibility. Less has been written about the business of law than many other sectors. And very little has been done to address the contribution of business lawyers to the corporate responsibilities of their clients or employers. Even when analysts or campaign groups have focused on legal aspects of corporate responsibility, they have generally focused not on the legal profession, but rather the rules or litigation that it has generated. There has been a tendency to focus, not on the practice of business law, but on the content of laws that are relevant to corporate responsibility.

Benedict Sheehy (2015) [5] provides an overview of the implications of this definition on CSR as a field of study, a management practice and an approach to improving the dialogue concerning the social contribution of business. The ubiquity of the term CSR threatens its carrying any distinctive meaning. Despite its long history no consensus has been developed among the industry participants, academics or other interested parties. After a careful review of the complications and complexities of the CSR debate and distinct disciplinary definitions, the article turns to approach the problem of definition using the philosophy of science. It applies a scientific definitional approach of genus, differentia and species to arrive at a definition of CSR as international private business self-regulation.

Zelal Ates and Marion Büttgen (2011) [6] attempts to address the lack of knowledge pertaining to challenges faced by local public enterprises in the field of corporate social responsibility (CSR). On the basis of expert interviews, group discussions and an online survey in five countries of the European Union, the authors in their study examines the specific market conditions of local public companies and explores the extent to which they must develop unique methods to assess and integrate CSR. The results include a framework developed for the use of those local public companies that wish to adopt a more strategic and holistic approach to CSR. This framework applies balanced scorecard principles to CSR and includes industry-specific key performance indicators.

M. Nazmul Amin Majumdar [7] examines the existing global models of CSR practices and identifies difficulties in applying these models in the developing country context. Corporate social responsibility (CSR) debate has emerged as an ‘inescapable priority’ for corporations in today’s globalised world but CSR in developing countries has been neglected in the literature. It argues that global models cannot be replicated by developing countries without prior examination due to the macro environmental conditions and country-specific contextual determinants. Five domains are recognized in the existing CSR models, namely economical, legal, ethical, philanthropic, and environmental. However most corporations in developing countries view philanthropy as their major social responsibility and largely ignore other domains. This paper suggests an operational framework of CSR practices in developing countries.

Manjit Singh Sandhu, Shaufique Fahmi Sidique and Betty Khoo (2011) [8] contend that although CSR (Corporate Social Responsibility) is becoming an important element in business conducts, its practices are usually carried out by large firms, particularly multinational corporations (MNC). Large companies face relatively higher pressure than small

2 An Analysis Of Provisions In Companies Act 2013 To Improve Corporate Governance; International Journal Of Research In Humanities, Arts And Literature (Impact: Ijrhal) Issn(P): 2347-4564; Issn(E): 2321-8878 Vol. 5, Issue 6, Jun 2017, 187-19

3 Corporate Social Responsibility In India - An Effort To Bridge The Welfare Gap; Indira Gandhi Institute Of Evelopment Research, Mumbai August 2015 Http://Www.Igidr.Ac.In/Pdf/Publication/Wp-2015-023.Pdf

4 Corporate Responsibility And The Business Of Law; Globalt Ansvar; Swedish Partnership For Global Responsibility

5 Defining Csr: Problems And Solutions; Article In Journal Of Business Ethics · December 2015
Doi: 10.1007/S10551-014-2281-X

6 Corporate Social Responsibility In The Public Service Sector: Towards A Sustainability Balanced Scorecard For Local Public Enterprises; Zeitschrift Für Öffentliche Und Gemeinwirtschaftliche Unternehmen: Zögu / Journal For Public And Nonprofit Services 34. Jahrg., H. 3 (2011), Pp. 346-360

7 Challenges Of The Corporate Social Responsibility Practices In Developing Countries;

8 Csr Practices And Influencing Factors: Evidences From Small And Medium Enterprises In Malaysia; Anzam 2011

companies to be more socially responsible since they tend to be more visible to society and have bigger social impact due to the scale of their activities. However, recent trend shows that small and medium enterprises (SMEs) involvement in CSR practices is growing. The researchers aim to provide some insights into the factors influencing selected Malaysian SMEs to participate in CSR practices.

Corporate social responsibility (CSR) - brief summary of provisions

Before enactment of Companies Act, 2013 Corporate Social Responsibility (CSR) expenditure is at the discretion of the corporate however after enactment of Section 135 of Companies Act 2013 such expenditure is made mandatory for certain corporate (Criteria given below).

Corporate Social Responsibility (CSR) has been in existence for a long time and is almost as old as civilization. It is based on the Gandhian Principle of "trusteeship concept" whereby business houses are looked upon as trustees of the resources they draw from society and thus are expected to return them back manifold.

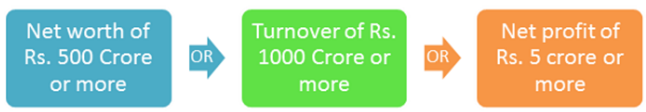
CSR is extremely important for sustainable development of all stakeholders (all the people, on whom the business has an impact, including the society at large).

Company is a social institution having duties and responsibilities towards the community in which if functions. Its objective is to bring about maximization of social welfare and common good.

India is the only country so far, where CSR has been made mandatory

Applicability to which CSR provisions applicable

A. Following below mention companies are required to constitute CSR Committee, If Company having following during Immediate Preceding financial year



Provisions of CSR apply to foreign branch/project office of foreign company

The Provisions of CSR are applicable to Foreign Company having Branch office or project in India if it fulfill the above given criteria. The criteria of [1] Net Profit etc. apply only to business operations in India in case of foreign Company/ Project Office.

a) **Companies ceases to comply with the provisions of CSR**

Every company which ceases to be a company covered above three conditions for immediate preceding financial years shall not be required to:

- Constitute a CSR Committee; and
- Comply with the provisions contained in sub-sections (2) to (5) of the said section (to spent amount on CSR Activities).Once company again fall within the limit provisions of CSR will be applicable on Company.
- CSR Committee

Constitutions of CSR committee

Company to which CSR is mandatory should constitute a CSR Committee to undertake and monitor CSR activities:

The CSR Committee shall consist of 3 (Three) or more Director, out of which at least one director shall be an Independent Director.

- An Unlisted Public Company: This is covered under CSR provisions, but need not to have Independent Director on the CSR Committee.
- Private Limited Company: which is covered under CSR provisions
- ✓ Need not have Independent director on the CSR Committee
- ✓ Can have CSR committee with only Two Directors.
- In case of Foreign Company: The CSR committee should have at least Two person, out of which
- One person shall be specified under section [2] 380(1)(d) of the 2013 Act and
- Another person nominated by the Foreign Company.

CSR Committee Meeting

- Law is silent with respect to number of CSR Committee meetings in a year. But as per Secretarial Standard 1 clause no. 2.2 "Committees shall meet as often as necessary subject to the minimum number and frequency stipulated by the Board or as prescribed by any law or authority."
- CSR Committee meeting can conduct business by passing of resolution by circulation.

Quorum

Law is silent W.r.t. quorum for the committee meeting. But as per Secretarial Standard 1 clause no. 3.5. "The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the Articles or by the Board.

Time Limit

No time limit prescribed for constitution of CSR Committee. However keeping in view the fact once provision applicable on the Company, it should constitute the committee within 6 month.

Role/ functions of CSR committee

- To formulate and recommend to the board of Directors CSR Policy as per activities specified in Schedule VII.
- To recommend the amount of expenditure to be incurred on above activities along with calculation of the same.
- To monitor the policy from time to time.
- Prepare a transparent monitoring mechanism for ensuring implementation of the projects / programmes / activities proposed to be undertaken by the company.

Role/responsibility of board of direcotrs

Responsibility

- To approve the CSR Policy recommended by the Committee.
- To disclose the contents of the policy in its report & place it on website.
- To ensure that activities reflected in CSR policy are actually undertaken by Company.
- To ensure that activities included by a Company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.

Role/Work

- After taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the Company.
- Review activity included in policy undertake by the Company or not.
- Check Whether Company is spending the amount if not discuss in the Meeting.
- The Board of Director's report undertakes Section 134(3) of the 2013 Act shall disclose the composition of the Corporate Social Responsibility Committee.

Net profit require spending on CSR activity

To ensure that at least 2% of average net profit of 3 immediately preceding financial years to be spent on CSR activities every year. Exp. For Financial Year 2017-18 Calculation: Average net profit of FY 2012-15, 2015-16 & 2016-17 needed to be considered.

"Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:

i. any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
ii. Any dividend received from other companies in India, which are covered under and complying with provisions of Section 135.

Most Imp: average net profit is calculated as per section 198 i.e. calculation done for managerial calculation.

Net Profit for Foreign Company: In case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

The Average Net Profit Criteria in Section 135(5)

The explanation to section 135(5) states that "average net profit" shall be calculated in accordance with section 198 of the Companies Act, 2013. In terms of section 198(5)(a) in making computation of net profits, income-tax and super-tax payable by the company under the Income-tax Act, 1961 shall not be deducted. Therefore, the net profit criterion in section 135(5) is Net Profit before Tax.

CSR Activities Includes

Preferable Location for spent of Amount

- The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.
- CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure.

- **If expenditure done by Foreign Holding Company**

Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

- **If Registration of Trust is not mandatory in any state**

'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

- **A Company can spend through any other Entity**

Contribution to Corpus of a Trust/ Society/ section 8 Companies etc. will qualify as CSR expenditure until unless:

a) The Trust/ society / Section 8 company etc. is created exclusively for undertaking CSR activities and [established by the company, either singly or along with its holding or subsidiary or associate company, or along with any other company, or holding or subsidiary or associate company of such other company, or otherwise]
b) If not if such trust, society or company is [not established by the company, either singly or along with its holding or subsidiary or associate company, or along with any other company, or holding or subsidiary or associate company of such other company] shall have an established track record of three years in undertaking similar programs or projects;
c) The company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism
d) Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

- **Company collaborating with another company for CSR activity and project**

A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programs.

- **Building CSR Capacity**

Company may build CSR capacity of their own personnel as well as those of their implementing agencies through institutions with established track record of three years are permissible. However, such expenditure shall not be more than 5% of total CSR expenditure of company in one financial year.

Schedule VII mandates expenditure for the following activity

a) Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water.
b) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects.
c) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, daycare centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward.
d) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare,

agro forestry, conservation of natural resources and maintaining quality of soil, air and water.

e) 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 art and handicrafts.
f) Measures for the benefit of armed forces veterans, war widows and their dependents.
g) training to promote rural sports, nationally recognised sports, paraolympic sports and Olympic sports; 8) 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.
h) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government.
i) Rural development projects.
j) Slum Area Development.

Effect of none complying with CSR Provisons

If a company fails to provide or spend such amount, the Board shall specify reasons for not spending the amount in its report.

Consequence for non-compliance of CSR provisions, the concept of CSR is based on the principle 'comply or explain'. Section 135 of the Act does not lay down any penal provisions in case a company fails to spend the desired amount. However, sub-section 8 of section 134 provides that in case the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. In case the company does not disclose the reasons in the Board's report, the company shall be punishable under section 134(8). This view of ICSI seems to be for the reason of provision of section 134(3) (o).].

Provision Added and Omitted

Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

CSR Committee

The CSR committee of the Board must initiate the entire process by formulating a CSR Policy enlisting the activities to be pursued by the company. It should make a recommendation to the board on the estimated budget for the perusal of activities. Based on the recommendations, the Board will approve the expenditure on each activity stated in the CSR Policy. The CSR committee is vested with the responsibility of supervising and monitoring the implementation of CSR Policy. The funds allotted for the activities must be entirely spent on the stated purpose.

CSR Activities

The CSR committee is entitled to make a recommendation to the board on the activities to be pursued under CSR based on which, the board will finalize the CSR policy. Some of the main aspects of conducting CSR activities are as follows:

- The CSR activity should not include the daily chores of business.
- The Company (Corporate Social Responsibility Policy) Rules, 2014, permits an organization to undertake CSR activities through a registered trust/ registered society/ Section 8 company.
- The CSR committee must set-up a monitoring and reporting system for utilization of funds for the CSR activities.
- The company is also provided with an option of collaborating with other companies in a manner which helps the CSR committees of the respective companies to report separately on such projects or programs.
- CSR activities of an Indian entity must only be conducted in India.

CSR Expenditure

Some of the main aspects of CSR expenditure are as follows:

- Money spent outside of India on activities as per CSR Policy will not be a part of CSR expenditure.
- Expenses incurred on employee welfare will be not be regarded as CSR expenditure.
- Expenditure incurred by the company on building CSR capacities of their own employees, and employees of implementing agencies with track record of three years, including expenditure on administrative overheads will be deemed to be CSR expenditure, subject to the satisfaction of certain conditions.
- Expenses incurred on payment to political parties will not fall under the ambit of CSR expenditure.
- One-off events like marathons, awards, charitable contribution, advertisement, sponsorship of television programs etc wouldn't qualify as CSR expenses.
- Remuneration paid to regular CSR staff as well as to volunteers of the company for the performance of CSR activities can be factored into CSR project cost as a part of CSR expenditure.
- The expenditure incurred by foreign holding company for CSR activities in India will qualify as CSR spend of the Indian subsidiary, if the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per the Act.

Reporting For CSR

Rule 8 of the CSR Rules provides that the companies, upon which the CSR Rules are applicable on or after 1st April, 2014 shall be required to incorporate in its Board's report an annual report on CSR containing the following particulars:

- A brief outline of the company's CSR Policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs;
- The composition of the CSR Committee;
- Average net profit of the company for last three financial years;
- Prescribed CSR Expenditure (2% of the amount of the net profit for the last 3 financial years);
- Details of CSR Spent during the financial year;
- In case the company has failed to spend the 2% of the average net profit of the last three financial year, reasons thereof;

Role of CSR committee

The CSR Committee constituted in pursuance of Section 135 of the Companies Act, 2013 shall be required to carry out the following activities:

a) Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall 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 clause (a); and
c) Monitor the Corporate Social Responsibility Policy of the company from time to time.

Conclusion

The Companies Act 2013 has made the CSR reporting mandatory for the companies. The concept of Corporate Social Responsibility has gained prominence from all avenues. Organisations have realized that Government alone will not be able to get success in its endeavor to uplift the downtrodden of society. With the rapidly changing corporate environment, more functional autonomy, operational freedom etc, The Companies have adopted CSR as a strategic tool for sustainable growth. The companies post the enactment of The Companies Act 2013 CSR means not only investment of funds for Social Activity but also integration of Business processes with Social processes.

References

1. Blumenfield M. Brand rankings find top CUS have one thing in common: they stay true to values, Credit Union Journal. 2008; 12(36):16.
2. Basu K, Palazzo G. Corporate social responsibility: a process model of sense making, The Academy of Management Review 2008; 33(1):122-136.
3. Chapple M, Moon J. Corporate social responsibility (CSR) in Asia a seven country study of CSR web site reporting, Business and Society 2005; 44(4):270-278.
4. Chaudhri. Communicating corporate social responsibility on the internet a case study of the top 100 information technology companies in India, Management Communication Quarterly 2007; 21(2):232-247.
5. Friedman M. The social responsibility of business is to increase its profits, New York Times Magazine 1970; 32(33):122-126.
6. Fukukawa K, Teramoto Y. Understanding Japanese CSR: the reflections of managers in the field of global operations, Journal of Business Ethics. 2009; 85(1):133-146.
7. Kapoor, Sandhu. Does it pay to be socially responsible? An empirical examination of impact of corporate social responsibility on financial performance, Global Business Review 2010; 11(2):185-208.
8. www.wikipedia.com
9. www.investopedia.com