Corporate Social Responsibility under Companies Act 2013

CSR in India is a result of the 2013, Companies Act. India is one of the few countries in the world to have a dedicated CSR act. In fact, it is the first to have brought about a legislation to implement CSR activities, followed by United Kingdom.

Wee can understanding Corporate Social Responsibility (CSR) laws in India with the help of the following research questions-

- How do you define CSR? What do you mean by CSR?
- What activities may be said to constitute CSR?
- What are the benefits of CSR? Why do we need CSR?
- What are the laws related to CSR in India?
- What are the advantages and shortcomings of the Indian CSR laws?
- **How can CSR laws in India be made better?**

WHAT IS CSR?

CSR refers to the idea that companies need to invest in socially and environmentally relevant causes in order to interact and operate with concerned parties having a stake in the company's work. CSR is termed as "Triple-Bottom-Line-Approach", which is meant to help the company promote its commercial interests along with the responsibilities it holds towards the society at large. CSR is different and broader from acts of charities like sponsoring or any other philanthropic activity as the latter is meant to be a superficial or surface level action as part of business strategy, but the former tries to go deep and address longstanding socio-economic and environmental issues.

Small or Medium Enterprises (SMEs) should be asked to promote CSR by taking into account their respective fiscal capacity and not over-stretching their rather limited resources. According to the United Nations Industrial Development Organization (UNIDO), CSR based on Triple Bottom Line (TBL) Approach, can help countries in the developing bracket to accelerate their socio-economic growth and help them become more competitive. TBL approach encourages private companies and institutions to align their activities in a socially, economically and environmentally viable way. This will help countries achieve Sustainable Development Goals (SDGs) in the long run. Companies should be encouraged to take up cost-effective CSR programmes that help the society and the environment according to the UNIDO.

CSR motivates companies to be ethically right by contributing socially, economically and environmentally by engaging in acts like

- Engaging members of local community.
- By using “Socially Responsible Investment” (SRI).
- Develop an amicable relationship with employees and consumers
- Engage in actions which are protecting and sustaining the environment.

NEED OF CSR

CSR is responsible for generating a lot of goodwill to companies either directly or indirectly. These include:

- Making employees more loyal and help companies retain them in the long run.
- Make companies more legitimate and help them in accessing a greater market share.
- Since companies act ethically, they face less legal hurdles.
- Bolster the goodwill of companies amongst the general public and help in strengthening their “brand value”.
- Help in the stabilization of stock markets in both the short and long run
- Help in limiting state’s involvement in corporate affairs as companies self-regulate and act as most ethical.

CSR helps companies and their components like their shareholders to help in the development of a country’s economy on a macro-level. They motivate companies to cooperate and communicate with each other, their customers and the administrative machinery.

The various advantages granted to various stakeholders are explained below:

- The Standard of living gets better with the introduction of more amenities.

- Companies engage in large-scale “capacity building” due to which the society becomes more prosperous and wealthy.

- Creates a more balanced world and healthier environmental systems.
- Ecosystems become healthier due to balancing efforts of the corporates.
- Management of waste is improved.
- Cleaner and greener environment is created.
- Advantages to corporates.
- Creates greater societal acceptance and respect.
- Helps the company to grow fiscally and makes it more competitive.
- Helps the company to interact with various stakeholders and helps them understand their needs.
- Employees and their family feel proud to be associated with a balanced corporate organization.

NEED OF CSR LAWS

CSR laws are meant to help in transferring excess capital from the haves to the have-nots via acts of charity. According to available data, CSR laws will help in increasing amount of monetary contribution from $600 million to $2 billion annually. This will help corporate undertakings to take up a lot more social, economic and environmental activities in order to help the general populace. This will also help corporates to have a direct stake in improving the society and drastically change their role from perceived exploiters of commerce to facilitators of development. They will be forced to contribute beyond the surface level and help in changing the society in a much deeper way.

CSR LAWS IN INDIA

The Companies Act, 2013, a successor to The Companies Act, 1956, made CSR a compulsory act. Under the notification dated 27.2.2014, under Section 135 of the new act, CSR is compulsory for all companies- government or private or otherwise, provided they meet any one or more of the following fiscal criterions:

- The net worth of the company should be Rupees 500 crores or more
- The annual turnover of the company should be Rupees 1000 crores or more
- Annual net profits of the company should be at least Rupees 5 crores.

If the company meets any one of the three fiscal conditions as stated above, they are required to create a committee to enforce its CSR mandate, with at least 3 directors, one of whom should be an independent director.

The responsibilities of the above-mentioned committee will be:

- Creation of an elaborate policy to implement its legally mandated CSR activities. CSR acts should conform to Schedule VII of the Companies Act, 2013.
- The committee will allocate and audit the money for different CSR purposes.
- It will be responsible for overseeing the execution of different CSR activities.
- The committee will issue an annual report on the various CSR activities undertaken.
- CSR policies should be placed on the company's official website, in the form and format approved by the committee.
- The board of directors is bound to accept and follow any CSR related suggestion put up by the aforementioned committee.
- The aforementioned committee must regularly assess the net profits earned by the company and ensure that at least 2 percent of the same is spent on CSR related activities.
- The committee must ensure that local issues and regions are looked into first as part of CSR activities.

FEATURES OF CSR LAWS

The broad and important features of the CSR laws are as follows:

- Quantum of money utilized for CSR purposes are to be compulsorily included in the annual profit-loss report released by the company.
- The CSR rules came into force on 1st April 2014 and will include subsidiary companies, holdings and other foreign corporate organizations which are involved in business activities in India.
- CSR has been defined in a rather broad manner in Schedule VII of Companies Act, 2013. The definition is exhaustive as it includes those specific CSR activities listed in Schedule VII and other social programmes not listed in schedule VII, whose inclusion as a CSR activity is left to the company's discretion.

CSR activities listed in schedule VII include:

“eradicating hunger and poverty, promotion of education and employment, livelihood enhancement projects, promoting gender equality, women empowerment, hostels for women and orphans, old age homes, day care, environmental sustainability, protection of flora and fauna, contributions to PM relief fund, measures to benefit armed forces veterans, war widows and dependants, promotion of sports, and rural development projects”.

- Net profits are calculated on the basis of Section 198 of Companies Act, 2013. However, only domestic branches are included and dividend-related payments are left out of the final calculation of total net profits.
- Companies are allowed to implement CSR via any of the following means possible.
- Setting up a Trust or Society under Section 8 of the 2013 Companies act under its direct administrative control.
- Corporates can outsource the CSR tasks to established social enterprises- institutions engaged in CSR activities for 3 years or more. These institutions are meant to engage in not for profit activities. The corporates though are supposed to monitor the social enterprises meant to enforce their CSR mandate.
- Companies can collaborate with fellow companies and work out some arrangement based on the CSR rules.
- CSR activities should follow the below-mentioned rules:
- Any familial activity or act of personal charity is not to be included as part of CSR activity.
- Any sort of contribution-fiscal or otherwise by political organizations is outside the purview of CSR activities as indicated under Section 182 of the 2013 Companies Act.
- All CSR activities are to be conducted in Indian territory to be considered valid.
- Companies can utilize a maximum of 5 percent of their total expenditure to help in capacity building of their society, trust or outsourced social enterprise.
- As stated before listed public companies are mandated to have up to 3 directors as part of their CSR committee- one of whom should always be independent. Unlisted and private companies are allowed to have at least 2 directors and no independent director.
- CSR reports are to be compulsorily published on an annual basis. The reports have a fixed format as designed by the CSR rules, which must include details like official CSR policy, the number of funds dedicated to CSR and its detailed utilization as well as a detailed explanation for non-utilization of funds if any. The said format and its constituents must be displayed on the official website of the company.

- CSR activities initiated by a foreign company has to be via its Indian subsidiary to be considered legitimate under Section 135 of the companies act.
- Trusts created by companies to carry out their mandated CSR tasks, are to be compulsorily registered in some states where it is mandatory under Income Tax, 1956.
- Companies are allowed to co-operate with their independent counterparts, provided the latter has a proper tracking and reporting system for CSR activities that may be under Company.
- Companies are allowed to engage in capacity building by allotting up to 5 percent of all expenses to be incurred on CSR activities to be devoted to training and equipping of personnel to carry out CSR and related activities.
- Activities that cannot be considered as CSR include.
- Operational and administrative activities of the business.
- CSR activities that do not take place in Indian territory.
- Employee and familial welfare activities are strictly outside the purview of CSR tasks as well.
- Fiscal help rendered to political outfits is not considered as a CSR activity as well.
- Events like the marathon, award functions, fiscal help rendered to charitable institutions, sponsoring TV shows etc that are strict “one-off”-i.e. meant to happen just once in a while are not considered CSR.
- Companies cannot report lawful duties rendered under acts or regulation like Labour Act, Land act etc cannot be considered as CSR tasks.