Emergence of Corporate Social Responsibility in India: An Analytical Study

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Abstract

The globalisation of the world economy and related trade liberalisation has generated a discussion on the importance of business as an actor, as well as a social change agent in the development of society. Though businesses have played a key role in generating employment, creating wealth, and designing products and services of quality, there is increasing pressure on business to contribute to social issues involving employees, stakeholders, society, environment, and the government. The article is an analysis of the emergence of CSR in from history in both international and Indian scenarios. Moreover, it also analyzed the legal aspects of the same in both contexts. It examined different global as well as national standards, reforms; legal aspects came across the years in brief for the understanding of the emergence of current way of CSR practices in the country.

Keywords: **Corporate Social Responsibility, Indian scenario, Legal**

Introduction

Conducting business in the 21st century, for giant corporations as well as increasingly for smaller companies, happens in a world where borders - local, national and international - are losing their relevance. Enterprise has never truly been carried out in a social vacuum. But it is now becoming increasingly clear that doing business means dealing with a world weighed down with urgent issues such as climate change, biodiversity destruction, poverty, disease, corruption, child labour and violation of human rights and labour standards, necessitating a transition from purely profit making goals to a greater awareness of social responsibility.

The concept of Corporate Social Responsibility (CSR) refers to “a company's sense of responsibility towards the community and the environment within which it operates, and is concerned with treating the stakeholders of a business or institution ethically” (Hopkins, 2012). The enactment of the new Companies Act of 2013 has made CSR mandatory, and seeks to bring CSR to sectors as diverse as education, health, entrepreneurship, and environment. This mandate is projected to infuse Rs. 20,000 crores into the budget for CSR initiatives (Mukarji, 2015). The extent of capital investment and CSR’s potential for social development has all triggered widespread debates in corporate and academic circles in India.

Corporate social responsibility has a history of evolving definitions and concepts, and different models or areas of focus depending on geography or organisation. During the 1960s, definitions of CSR grew, proliferating during the 1970s. The 1980s saw fewer new definitions but more empirical studies, and alternative ideas began to be established, including those pertaining to corporate social performance (CSP), as well as theories related to stakeholders and business ethics. The study is an analysis of the emergence of CSR in from history in both international and Indian scenarios. Moreover, it also analyzed the legal aspects of the same in both contexts.

The Rise of CSR

Historically, from the time of the industrial revolution to the contemporary globalised economy, the dynamic between business and society has been a frequent point of discussion and concern (Utting 2005; Jenkins 2005). According to Jenkins (2005), attention to corporations ‘social responsibilities principally heightened as a result of the globalisation process and the neoliberal policies driving it. This included the economic liberalisation of goods, services and finance, and the endorsement of minimal interference by the State. Market structures have come to rule world systems; leading multinational and transnational companies (TNCs) to become economically and politically powerful in both developed and developing nations, influencing their local communities, and domestic and international policy (Kercher, 2006), to the extent of being capable of transforming the fate of nations. The enhanced mobility of capital enabled TNCs to take advantage of regulatory variations between states by (re)locating or threatening to move their production facilities to countries with governments more favourable to the financial bottom line (Jenkins 2005). TNCs were later accused of reaping the benefits of globalisation but allowing others to foot the bill, most notably the developing countries (Blowfield & Murray 2008). Here, labour and environmental conditions worsened and the population living in extreme poverty failed to decline, while inequality increased (Utting, 2005). Some of the harmful impacts of multinationals on developing countries include over exploitation of resources, discrimination, political interference and indifference to social cost (BMS, 2013).

Deliberation on a CSR framework is still being influenced by constant new developments and ideas, particularly as national and international guidelines and regulations remain in a state of flux. Furthermore, regional issues and cultural ethos inform discussions and debate on the subject matter of CSR. Western notions of CSR may not necessarily always be acceptable in the East, and vice versa. Also, each sector has its own set of social challenges; large corporations deal with challenges that are different from those of smaller businesses (Government Vision on CSR, 2007). In societies where the government failed to intervene in social issues due to the absence of resources, social enterprises stepped in (e.g. Annapoorna, Akshayapathra) under the supervision of established NGOs, often supported by corporates.

CSR: Global Scenario

Responses to societal and environmental challenges vary widely across nations, reflecting diverse national business, socio-economic, political and cultural mileus. Thus there is no ―one size fits all‖ CSR solution that can be uniformly applied in all countries, other than a foundation of universal ethics, and compliance with laws and human rights (Chatterji, 2011). The globalisation phenomenon and subsequent rise of multinational and transnational companies have created socio-economic impacts in different countries of their operations; the key concern has been whether these MNCs have taken advantage of their greater reach and superior knowledge and technology to exploit poor and vulnerable labour, adversely impact local communities, and damage the environment. To address these concerns and shore up their image as being responsible and credible, the majority of MNCs use their CSR practices to underscore their ethical intentions (Chatterji, 2011). MNCs would have to be sensitive to the culture, values and norms of both their home and host nations (Chapple & Moon, 2005) and integrate both global and local practices into their CSR initiatives.

CSR perceptions, practices and models vary widely across the globe. Welford (2005) studied 15 countries' CSR practices, and noted a link between a country's economic development and its CSR practices. The United States has traditionally followed a philanthropic or charity-based model of CSR, where companies create profit, with no other obligation other than paying taxes, and then donate a portion of their profits to charity (ECRC, 2014). Focus in the US has widened to include all spheres of business, such as human rights, equal distribution of benefits, ethics in technological innovation, and environmental practices. Business centres around laws and regulations, and encourages volunteerism (Baughn, Bodie & McIntosh, 2007). The high awareness and expectations of consumers, and their identification with businesses whose ethical practices go beyond mere legal compliance, encourages organisations in the US to disclose their CSR strategy and practices; this includes processes and practices related to equal opportunity, non-exploitative supply chains, consumer safety, and environmentfriendly technologies (Chatterji, 2011). The European CSR model however, greatly emphasizes operating the core business in a manner that is socially responsible and complemented by investing in communities for reasons directly linked to business. In the European perspective, social responsibility becomes a vital part of the wealth creation process itself (ECRC, 2014). England was one of the first countries to focus on social responsibility and to address the issue of corporate governance and develop codes to implement them. It has been noted that coalitions of institutional investors in the UK have stressed key social issues like climate change, HIV/AIDS and supply chain labour conditions (Williams & Conley, 2005). Another western nation, New Zealand has witnessed business non-profit and public-private social partnerships emerge as a key means of addressing social issues and finding solutions to problems such as poverty and sustainability, and benefitting a variety of stakeholders (Chatterji, 2011).

Holme and Watts (2000) noted the CSR scene in a number of developing nations. In Brazil, CSR is a high priority among multinationals, but not very common among local SMEs. In Thailand, the economic weakness of the private sector meant that business was forced to prioritize its own survival, and social responsibility was seen as more of a luxury. On the other hand, in the Philippines the private sector provided leadership where government failed, and media and advertising were an important means of generating awareness of social and environmental issues. CSR was not a priority in Ghana, as it was considered too expensive, with little external pressure on businesses to encourage them to take the lead on CSR (Holme & Watts, 2000). Indonesia has a different set of issues, with large corporations flouting laws and certifications. Indonesia is torn between foreign investment and enforcing strict social and environmental regulations (Chatterji, 2011). When examining CSR empirically, there are both cross-cultural and methodological variations across countries (Jamali & Mirshak, 2007).

CSR in India

Organisations in India are now expected to fulfil their stakeholder responsibilities and societal obligations, together with their target of shareholder-wealth maximisation. Almost all leading corporations in India are carrying out CSR projects in diverse areas including education, health, livelihood generation, skill development, and empowerment of weaker sections of the society. Noteworthy initiatives have arisen from large corporates such as the Tatas Group, Infosys, Bharti Enterprises, ITC Welcome group, and Indian Oil Corporation, among others. To guide corporations in addressing the expectations and needs of stakeholders and citizens, while working within the framework of national policies and aspirations, the government came out with the Voluntary Guidelines in 2009 (for domestic as well as multinational and transnational corpoations operating out of India) (Chatterji, 2011), and then later the National Voluntary Guidelines in 2011 and the New Companies Act of 2013. Four Indians made it into the 2016 list of Forbes Asia's 48 Heroes of Philanthropy (The Economic Times, 2016). India's Wipro was ranked first among the top performing companies in the 2016 Channel News Asia Sustainability Ranking (CSR Asia Summit, 2016). A study carried out by an industry body in 2009, examining the CSR activities of 300 corporate houses, revealed that corporate India has spread its CSR activities, covering 20 States and Union territories, with Maharashtra with 36 per cent of CSR activities being the state to gain the most. This is followed by about 12 per cent in Gujarat, 10 per cent in Delhi and 9 per cent in Tamil Nadu (Maharajothipriya & Kalpanadevi, 2016). The financial services sector in India is steadily going green. With a focus on conserving energy, businesses have begun easing the carbon footprint in their offices. Initiatives by companies such as HSBC India, Max New York Life and Standard Chartered Bank have ensured that the green movement has maintained its momentum by asking their customers to opt for e-statements and e-receipts (Gouda, Khan & Hiremath, 2017).

The Department of Public Enterprises (DPE) has developed guidelines for central public sector companies to engage in important CSR projects, to be funded by 2-5 percent of the organisation's net profits. However large companies in India that have CSR obligations worth hundreds of crores are facing challenges in investing in meaningful projects. There is a significant lack of organisation and skills to develop projects on a larger scale, a lacuna which is also shared by the NGO sector (Munjal, 2017). For this reason, CSR spending by the top companies is mostly focused on health and education, with very little focus on maternal health, child mortality, gender equality, women empowerment, sports, technology or slum development.

Moving from the national to regional levels, the vast majority of CSR spending favours the most industrialised states, with projects concentrated in Maharashtra, Rajasthan and Gujarat towards the north, and Karnataka and Tamil Nadu in south India. All this skews the development trajectory, and prevents it from becoming inclusive and comprehensive (Munjal, 2017). Successful implementation of CSR initiatives entails inclusive growth, and The Tata Council of Community Initiatives (TCCI) perfectly illustrates the evolution of CSR from charity and philanthropy, to the level of strategy design in corporate boardrooms. Through TCCI, the house of Tata‘s have mitigated the syndrome of making profits by any means possible (both ethical and unethical), and then distributing a miniscule fraction of these profits as charity to justify profiteering. TCCI has shown the way forward for business in India to integrate CSR into their corporate processes to produce socio-economic benefits for stakeholders (Chatterji, 2011). There is a need for CSR in India to move beyond helping society after making profits, and to help society in the process of making money (Munjal, 2017). What is most important is not how much is spent, but the outcomes that are achieved.

Legal Framework for CSR in India

The Government of India‘s first formal endeavour to address the CSR issue was in 2009, with the Ministry of Corporate Affairs issuing Corporate Social Responsibility Voluntary Guidelines (MCA, 2009). Prior to this, the significance of CSR was deliberated in the context of corporate governance reforms, for instance in the Report of the Task Force on Corporate Excellence by the Ministry of Corporate Affairs (MCA, 2000). Whilst the report made a business case for CSR as well as stressed its social benefits, the discussion was more recommendatory, with few actionable points. In the Voluntary Guidelines of 2009, the core elements of a CSR policy were fleshed out; this included addressing all stakeholders, ethical operations, respect for human rights, labour rights and welfare, compliance with environmental regulations and activities for promoting social and inclusive growth.

The Voluntary Guidelines explicitly distinguished between philanthropy and CSR activities, and underscored the voluntary nature of CSR activities beyond any statutory or legal requirement. In 2011, the Guidelines were followed by the National Voluntary Guidelines Social, Environmental & Economic Responsibilities of Business, which were also issued by the MCA (MCA, 2011). These guidelines were supposedly based on inputs from key stakeholders countrywide, and set down nine principles for the responsible functioning of businesses, so as to promote inclusive national level economic growth. Similar to the 2009 Guidelines, the Guidelines of 2011 were voluntary in nature, in which businesses were advised to adopt all the nine principles and to report their compliance with the guidelines based on the apply-or-explain‘ principle. A key point of difference between the 2009 and 2011 guidelines was that the former laid down implementation strategies to allocate a ―specific amount related to profits after tax, the cost of planned CSR activities, or any other suitable parameter,‖ while the latter included no such suggestion (MCA, 2009; MCA, 2011).

The transition from a voluntary to a regulated CSR regime took place when the Securities Exchange Board of India (SEBI) mandated the top listed 100 organisations, as part of

Clause 55 of the Listing Agreement, to disclose their CSR activities in the Business Responsibility Reports (BR Reports) that accompany their Annual Reports. SEBI‘s opinion was in the larger interest of public disclosure and signified a move towards combining social responsibility with corporate governance. The most ambitious effort at mandated CSR activities for organisations happened when Section 135 of the Companies Act 2013 (MCA, 2013) was enacted, for the first time making CSR spending as well as reporting mandatory in India; it also brought CSR activities of Indian businesses under the purview of business law. Specifically, the provisions of Section 135 require that organisations with a net worth equal or greater than rupees five hundred crores, or a turnover of rupees one thousand crore or more, or a net profit of rupees five crores or more, are asked to comply with the following points: (i) To appoint a CSR Committee of at least 3 directors (one independent director), and (ii) under the guidance of the CSR Committee, spend in every financial year, a minimum of two per cent of the company‘s average net profits during the three immediately preceding financial years, under the guidance of the a CSR Committee, in pursuance of its CSR Policy (MCA, 2013). While the quantum of CSR spending and reporting has been mandatorily set under Section 135, the law provided for some inbuilt flexibility pertaining to businesses‘ choice of CSR activities. As opposed to rigidly defining CSR boundaries, Annexure VII of the Act broadly specifies the scope of social responsibility with regards to a list of activities that the organisation can potentially embark on, leaving the choice of activities to the organisation‘s discretion. As far as compliance with Section 135 is concerned, the law adopts the approach of comply-or-explain, but does not specify penalties for non-compliance (MCA, 2013).

After the Act was passed, the Ministry of Corporate Affairs (MCA) notified the CSR Rules during February 2014. Aside from listing specific activities on which businesses are free to spend the sum set aside under their CSR Policy, the Rules safeguard against self-serving spending by companies, by detailing that CSR activities benefitting only company employees and their families shall not be considered as CSR spending under the provisions. However, organisations may build their employees‘ CSR capacities through reputed institutions provided such expenditure does not exceed five percent of the organisation‘s total CSR expenditure in that financial year. The Rules framed under Section 135 of the Act became effective on April 1, 2014. With the passing of Section 135 of the Companies Act, 2013, as observed by the MCA in the Report on the Standing Committee on Finance (LSS, 14 2010) India became the first country to incorporate CSR provisions in Company Law and make CSR expenditure mandatory for corporations based on pre-specified criteria. For the rest of the world though, CSR remains a voluntary exercise left to the discretion of businesses. At most, in a growing number of countries, compulsory reporting of CSR activities carried out by corporations is mandatory, though this is not applicable across all countries. Thus, in countries like France, Sweden, Norway, the Netherlands, Denmark, Australia and China, either government rules or stock exchange regulations, or both, mandate corporations to make known their CSR activities through sustainability reporting (KPMG-UNEP, 2011).

Summary

The distinctive feature of Section 135 is that it not only makes CSR reporting of activities mandatory, but also goes on further to mandate CSR activities in the first place. For the rest of the world though, CSR remains a voluntary exercise left to the discretion of businesses. At most, in a growing number of countries, compulsory reporting of CSR activities carried out by corporations is mandatory, though this is not applicable across all countries. Thus, in countries like France, Sweden, Norway, the Netherlands, Denmark, Australia and China, either government rules or stock exchange regulations, or both, mandate corporations to make known their CSR activities through sustainability reporting (KPMG-UNEP, 2011). The distinctive feature of Section 135 is that it not only makes CSR reporting of activities mandatory, but also goes on further to mandate CSR activities in the first place.

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