Chapter 9

Indian CSR Bill: A Critical Analysis

Introduction

The CSR practices in India need to go a long way from where it is now. In order to bring transparency in the future of CSR in India and take time bound steps to mainstream, it is better to take a look at the existing state of affairs in the Indian CSR domain.

The New Companies Bill was finally passed in Rajya Sabha on Thursday, 8th 2013, making it mandatory for profit making companies to spend on activities related to CSR. The following Act of Parliament received the assent of the President on the 29th August, 2013, making it a full-pledged Companies Act 2013. With the new legislation, India has become the first country to have CSR spending through a statutory provision. Presenting the bill in Parliament, Corporate Affairs Minister Sachin Pilot termed the passage of the Bill as a new era for corporate law and regulation in Indian economy and said this is a ‘historic moment for the country.’ 822 In the words of the minister, the Companies Bill 2013 is a positive, forward looking, reform oriented and investor friendly legislation. India gets the privilege as the first country in the world to have CSR in its statute.823

Answering the question, What is the need for making CSR mandatory? He said, that the move is to throw open this idea, put into statute, give CSR activities a framework and structure where some of the good work can be displayed.824 He also said, that the objective is not to mandate from Delhi what CSR should be. We are leaving it to the Conscience of the Companies.825

An examination of the extensive literature on CSR that has emerged in the last four decades reveals the existence of different approaches adopted by corporate bodies in fulfilling their social responsibility. However, considering the tenacity of corporations to

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823 Ibid.
825 Ibid.
part with a bit of their profits, force the law makers to adhere a mandate for corporate giving’s in the form of a bill which is on the process of getting enacted as a mandatory proposition on corporations.

This research also proposes a “one rupee CSR model for India.”

9.1 Current CSR Scenario in India

There were only 30,000 registered companies in India when the current Companies Act of 1956 was made. In 2012, there are over 850,000 companies. The government of India is a considering of passing a law that would make CSR mandatory for the Indian industry. As a closer step towards the legalization Lok Sabha on 19th December 2012 voted to replace India’s 56-year-old omnibus Companies Act 1956 with the Companies Bill 2011, that brings the management of the corporate sector in line with global norms. The new Bill decrees that companies worth $100 million or above or that meet similar standards should dedicate 2% of their net profits to CSR activities.

The Bill, with 470 clauses, seeks to make CSR spending compulsory for companies that meet certain criteria. Firms having Rs.5 crores or more profits in the last three years have to spend on CSR activities.

9.2 Should CSR be Voluntary or Mandatory?

A great deal of business, academic and government literature on CSR simply takes it for granted that CSR strategies of all varieties will be voluntary. A major theme of much of the CSR discourse emanating from the business community is the argument that regulating CSR is either undesirable or dangerous.

On the other hand, there are those who question whether voluntary CSR programs and activities by corporations are sufficient to ensure that the benefits of CSR are achieved or whether government regulation of corporate behavior is necessary. Should CSR be

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827 Ibid.
approached only on a voluntary basis or should it be complemented with a compulsory regulatory framework? If so, what type of government intervention is more effective in fostering CSR among companies? So what model could be suitable for a thickly populated developing country like India?

A country like India which is experiencing exponential population growth and massive poverty feels the pinch of under development every moment in its trail to welfare and progress, has a great relevance for CSR. Thus the question of legalization remains vital in the CSR road map of India. CSR is supposed to be voluntary in nature as it depicts the socially responsible human nature. One of the first, and probably the most famous, counterblast against CSR was an article written by Milton Friedman and published in 1970 in the *New York Times Magazine*. This article summarizes his views set out earlier in his less often cited book *Capitalism and Freedom* published in 1962. The first key statement on CSR, which can be found in Friedman's book, reads as follows: “[In a free society] . . . there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.”

Friedman's philosophical argument is that: “only people can have responsibilities ...business as a whole cannot be said to have responsibilities.”829 Thus, this only concerns to people and not corporations. Because, the corporation is a legal citizen created by the law and regulations. He may be saying that therefore there is no obligation on the corporations to be socially responsible and shell out the profits for the welfare of the society. However, let us not forget the fact that corporations does not spring up like mushrooms after a rain. It is an association or a group of people who have responsibilities. If Friedman affirms the aspect of responsibility of the people, I think that is the clear point where corporations should have the responsibility for the society, as society is also a group or association of responsible human beings.

829 See M. Friedman, *Capitalism and Freedom* (University of Chicago Press, Chicago, 1962), 133. This quote is referred to again by Friedman at the very end of his 1970 article “The social responsibility of business is to increase its profits,” *New York Times Magazine*, 126.

When Kant in his moral imperative assigns being responsible and being rational as qualities of a human being, I think the same responsible human nature he is trying to represent. Or When Levinas says responsibility is woven into our createdness and precedes our subjectivity, he certainly is trying to bring out the responsible human nature. Thus, responsibility is the human being’s aspiration to respond to the needs of other as one respond to the need of oneself.

In the instance, where an individual is able to handle such responsibility with awareness there is no need to impose laws. But the simple fact is that most of the human beings misuse the responsibility or ignore it. That is when laws and regulations are imposed. When a person pretends to be blind to the needs and requirements of the society, the only way to get it done is through imposing of laws and regulations. However, at the end of the day whether one acknowledges the responsibility or not, what counts is the consequence of a choice one is taking.

The choices often human beings make in life depends on the circumstances. In some circumstances empathy and sympathy plays a vital role in the process of decision making whereas in some other circumstances it is the force of the laws that make human beings to be sensitive.

It is like in the case of a school going child who has the responsibility to study and advance in life. As long as the child remains sensitive and aware of his/her responsibilities there is no compulsion from the parents. But the moment when there is a tendency of ignoring that responsibility, parents certainly intervene to make him/her realize his/her responsibilities.

So the crucial question of whether CSR be mandatory or voluntary, I think, it is a matter of awareness and convictions. When a corporation is convinced of the social responsibilities, irrespective of laws it will try to work for the betterment and growth of the society. But, when a corporation is not convinced of its responsibility, there arise the need for laws and regulations to make them aware of the responsibility. Thus, the question of mandatory or voluntary narrows down to the choices of conviction and awareness each corporation and individual exhibit. So I would rather say, make it compulsory that those who try to evade the responsibility would come under the scanner.
and forced to be responsible. And the other, category anyway does it irrespective of mandatory or voluntary. Thus, laws will seal the loop-hole and chances of escape. It will certainly, help the society to be more progressive as every single drop adds upto the common pool to enhance the happiness and well-being of the society. Philosophically it is right to argue that only people can have responsibilities. Even though a corporation is considered to be a corporate citizen, it will not have responsibilities as the persons are the executors. Similarly, people can only have feeling of empathy and sympathy. No corporate citizen would feel it. Thus, as a person if one has responsibilities, then he has to have accountabilities for his responsibilities. Now such accountability is to oneself and to others.

9.3 Possible Impact of the CSR Bill

With the increase in foreign direct investment in a developing country like India, there is a chance for plundering the domestic resource by the multi-nationals. I would not even hesitate to say, that it is a new form of colonization. For instance, if Samsung could sell their bench mark product galaxy in six months and monopolize 18% of the world market, why are we doubting about the neo-colonization strategy? The multi-national Samsung Corporation is not interested in the progress of any part of the world other than pocketing their profit and whooping up the market share. Samsung would rather be interested in spending the money to any Korean under developed locality than voluntarily investing a share of their profits in other parts of the world. The law will certainly make sure that at least certain portion of profits, earned by such companies are mandatorily spend for the progress of the local community. Let us be aware of the naked fact that when multi-nationals step into a place, they are not coming to spend their profit for the domestic development. Instead, they want to harvest as much as they can and vacate the place. Multi-nationals come to a developing or underdeveloped country with a simple logic and philosophy — minimum investment and maximum returns. In such a scenario, are they going to be responsible for the development of the society? Of course, not!, if there is a law they have to abide by the laws of the land.
Even when the domestic corporations or firms are reluctant to part with part of their profit for the welfare of the society, how can we expect a foreigner to be socially more responsible than the sons of the oil? So in my opinion, the CSR Bill will ensure at least two percent of the corporation’s profit to be utilized for the domestic welfare activities. Let us be assured that something is better than nothing. Whatsoever development that 2% can bring into the ocean of 1.2 plus billion Indian population, I think, is a great step towards making a difference in the lives of a tiny chunk in the thickly populated India. So, rather than being apprehensive about what change or what good it can bring to the country, accept it and join our hands together to explore more ways and means to irradiate poverty and bring about development in India.

9.4 Corporate Citizenship — with Responsibilities come Rights

Only people can have responsibilities. Corporations emerge when a group of people join hands together with same goal and profit motive. It is true that corporations are not citizens, they are artificial legal persons. However, the term 'corporate citizen', describes corporations that are attempting to be socially responsible, creates a new image of the corporation as an entity which has rights, feelings, a legitimate voice in a democracy, and which behaves in a moral manner. Though, corporation is not a person, it is a group of persons who have responsibilities. So I think, a corporation does have responsibilities like a person who is born into a society. A close look at the corporation will reveal that it is also born into the society like a child. Then it grows and flourishes in the society. So to say, a corporation’s involvement is bought by its 'commitment' to CSR and 'sustainability', and gives the opportunity to dominate the agenda and put across their view of how the world should be run. Thus the power and resources of the corporate citizen are such that of a real human citizens.

In my opinion, if the corporation or business has the right to operate in the society, undoubtedly it has the responsibilities to contribute to the societal progress and welfare alike. Because, with rights come responsibilities and vice-versa. In short, corporate

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conscience is the key to their responsibilities over the rights that society has attributed on them.

**9.5 Reasons for Enforcement of CSR Law in India**

There are various reasons for the enforcement of CSR Bill. Some of the reason I think are as follows:

1. Over a period of 60 years India has been trying the concept of voluntary CSR. Unfortunately, it did not catch up. The number of companies increased from 30,000 in 1956 to 850,000 in 2012, yet CSR the voluntary concept remained still alien to most of the profit making companies. Thus, the India Inc. has failed in making the voluntary contributions for the progress of the society.

2. Forbes latest billionaire list reveals that India has 61 billionaires as of 2012. A country with so many billionaires are still fighting for poverty eradication and welfare agenda at the grass-root levels. This portrays a sad account of the wealth accumulation pattern in the country that the wealthy are not willingly giving enough for the social welfare. So what they give in the name of charity or philanthropy is just an eye wash to evade taxes. So there is an acute need for legalization for the corporations to share their profits with the society as responsible corporate citizens.

3. India has a history of strong family ties and a well-established saving culture. So each generation tries to amass wealth for the next generation even by compromising on their own basic needs of daily life. Thus, parting with some portion of their wealth is generally difficult for the Indian minds. So, the so called giving culture is to be enforced through a law rather than waiting for voluntary initiative. Hence, there is certainly a need for a bill that would force the rich to share at least a meager percentage of their wealth for the society and partake in society building as responsible citizens.

4. A further insight into the concept of CSR takes us to the two broad approaches to CSR. The first approach is the Traditional Approach. The basic theme of this approach is “doing good to look good.” Basically, this approach was followed for a long time, till recently, and the companies following this approach undertook to perform their CSR only for the sake of it, only because it would fetch them recognition in the market. It did not
practice these activities because it was genuinely interested in the well being of the society. The mere reason behind it was to build its corporate image. Commitments were short term, allowing the organization to spread the wealth over a variety of organizations and issues through the years.

The new approach or the Modern Approach has its underlying objective, “doing all that we can to do the most good, not just some good.” It supports corporate objectives as well. This is a win-win situation for all because when a particular company does well to the society genuinely and for a cause, it has to be good, and along with this process, it succeeds in building a name for itself. Thus the CSR Bill will ensure bringing out the effects of the Modern Approach too even from those corporations who still have not undertaken the Modern Approach. Therefore, enabling them also to a win-win situation forcefully through the enforcement of CSR Bill.

5. The CSR law enforcement can raise lots of money for the developmental activities. Since each corporation is handling it independently, they can make sure the deployment of its effectiveness without much getting diluted in the storm of manipulation and corruptions.

**9.6 One Rupee CSR Model for India**

Progress and development of a country totally depend on the collective efforts of all its citizens. How understanding and aware are the people will speed up the developmental process of any nation in this globalization era. Though we have been focusing corporation’s role in development, each individual has a remarkable share to contribute. So individuals cannot get away from the social responsibilities easily by blaming corporations and government. An overall development of a country needs support from all strata of the society. Here the dictum could be whoever is able to contribute for the welfare of the nation, contribute and be responsible for the same. Thus the collective efforts will bring about exponential growth in every field adding up to the growth of a nation as a whole.

India is not a poor country that has no resources. India is a country with legacy of prosperity and riches. If only we to explore and extract the indigenous resource and
productively for the growth of our country, India can secure its place among the
developed countries in the near future. Wouldn’t it be a great feeling to be a citizen of a
developed nation? Let every Indian be reminded that it is not an impossible mission if all
of us cooperate and contribute for achieving the goal.

As a step towards achieving the above goal, I would like to propose a ‘One Rupee CSR
Model’ for India and to speed up the national growth. I have named it as ‘One Rupee
CSR Model’ because the model proposes to collect a CSR tax from every citizen who is
earning Rs.250 or more daily with a liability to pay Rs.1 to the National CSR Treasury.
Approximately, even a half of Indian population comes in the purview of Rs.1 CSR tax
bracket, half a billion rupees can be easily accrued daily, amounting to a 180 billion
rupees per annum. It is a substantial amount of money which can be used exclusively for
the various developmental purposes across the board. Thus, it gives an opportunity for
every citizen to be responsible and participate in the societal welfare along with the
Government, Corporations, NGOs and other Sources.

All what cost to a person for actively involving in the progress of our mother India is just
one rupee per day or 365 rupees per annum. I personally think, this model, if
implemented can work miracles as it becomes a catalyst for the faster growth and
development of India. Thus, the citizen’s contribution of mere one rupee can work
miracles in a country like India where population is the biggest doom and boom. Let us
not underestimate our mite to make an ocean.

**Conclusion**

Indians have to come out of the traditional view of ‘doing for the sake of it’; instead,
should come forward and realize their responsibilities more consciously and whole
heartedly. When the concept of CSR begins to be understood as a business oriented
concept, without which the business would become difficult, it will be the time when
India may be ready for statutory backing to the CSR. Notwithstanding the above and any
amount of sermonizing on the CSR platform is futile unless we remember Milton
Friedman’s famous quote that “the business of business is business.” I think it is right. If
the business of business is not business, what is it good for? It loses the spirit, it loses the
fire. That is what exactly the concept of nishkama karma is trying to reach to every generation. Desire is the fuel of life; without desire nothing can be achieved.\textsuperscript{832} If kama is taken out, what is it good for like the business is taken out of business. Because, kama is not desire; it is selfish desire. The Buddha calls it tanha, 'thirst': the fierce, compulsive craving for personal satisfaction that demands to be slaked at any cost, whether to oneself or to others.\textsuperscript{833} In short, without losing the thirst for making profits individuals and corporations need to engage themselves in the business and with the same spirit and passion part of the profits should be shared for the welfare of the society. According to Eknath Easwaran, nishkama karma is not 'good works' or philanthropic activity; work can benefit others and still carry a substantial measure of ego involvement.\textsuperscript{834} Thus, it highlights that we need to be aggressive and passionate in business to make profit which should be shared with the society. It reinforces the view that all CSR is driven by business interests and it is best left to the judgment of a corporate as to what makes good business along with corporate conscience which actively embeds CSR in it under the globalized economy and culture.

Globalization has been a force that has been all-pervasive and has impacted India in a great way. It has led to a new global order and the success of a country lies in its ability to face the upcoming challenges, and to emerge in the global order with a winning outlook. Thus I think, the current CSR Bill is the perfect example for India’s resilience and its capability to regulate its policies in a changing world arena.

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\textsuperscript{832} EknathEaswaran, \textit{The Bhagavad Gita}, (Nilgiri Press, California, 2008), 52. \\
\textsuperscript{833} Ibid. \\
\textsuperscript{834} Ibid.
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General Conclusion

Humanity as usual faces a tough tug of war where one end is greed and the other is responsibility. Often most of us forget the responsibility end and keep moving more and more towards greed. Like religions and other philanthropic organizations CSR enters the scene with a pure philosophy of acting with hearts and minds for the well-being and welfare of whole universe. And CSR bandwagon upholds the utilitarian philosophy of greatest happiness of the greatest number. Certainly corporations need to shoulder the responsibility along with the governments to bring about welfare and well-being in the world which is on par with the Law of Nature, as the corporate make their profit from the society itself. So their moral obligation is what CSR tries to implement. In a scenario where greed over powers responsibility, no philosophy can work miracles. So CSR is in the arena with a philosophy of making each being a responsible being for the self and for others. We become responsible human beings when we are able to understand and have empathy for the billions of human beings around the world who are under privileged. Almost half the world — over three billion people — live on less than $2.50 a day.835 Poverty in India is widespread, with the nation estimated to have a third of the world's poor.836 In 2010, World Bank stated, 32.7% of the total Indian people fall below the international poverty line of US$ 1.25 per day (PPP) while 68.7% live on less than US$ 2 per day.837 CSR has very much relevance and scope in India where more than half of the country’s population lives in poverty. CSR in India is too weak; while many companies post super profits they are unwilling to invest in social services such as education, health, roads, security and so on of the community. However, this happens all over the world where the capitalist spirit has taken full roots. The real problem in India is that we always like to copy the wrong things, those things that give us a leeway, an escape route. In the current scenario where there is need to understand CSR and begin to get big and medium scale enterprise to understanding that the spirit of generous giving is part of capitalist

837 Ibid.
ethic, strip of this, capitalism becomes a banal and anachronistic economic Darwinism which undermines all peoples and communities.

CSR has meant different things to different people. It is viewed as corporate giving or donation and its real impact that connects back to the organization is not properly understood. This lack of understanding is an opportunity and threat at the same time. The market reviews which have been appearing time and again indicate that the corporate bodies pay less attention to CSR due to not being particularly convinced that it can add to strengthening corporation’s image and ensure sustainability. The common belief of CSR being a cost center rather than a profit center have not entered the corporate mindsets; therefore, practical examples need to be placed in front of them and develop a sturdy academic and practical understanding of how the CSR practices are adding to corporation’s image, sales and profitability, while keeping the lines of communication open with the corporate bodies.

Essentially, CSR is social service, and every corporate group must give social service unconditionally and uncomplainingly. On the individual level, we can also render social service to each other, to our communities, to interest groups and the less privileged. And until this culture of service is institutionalized and internalized by all, whether as corporate groups or as individuals, we are not likely to make much social impact. Super profits by themselves have no meaning if they do not socially impact on the less privileged. We must always realize that there is a ‘common good’ that needs to be protected. If threatened, the common good, the personal security and safety of companies and the rich, of everybody, is equally threatened. This is the philosophical reorientation that needs to guide our fresh outlook and commitment to the concept of CSR.

In doing so, we are restoring dignity and humanity to citizens, we are making them stakeholders. This will inspire patriotism and commitment to the nation, and it will above all check the social malaise and crisis in the country. To believe that laws, more laws, military and policing can solve our problems is to miss the point. Each one of us needs to rededicate ourselves to the basis of nationhood, why states emerged and how they are sustained in peace and harmony. I think, at this juncture a small story can enlighten each of us to become aware of the importance of personal awareness and transformation for a
prosperous and happy world which sages and philosophers have been aspiring to establish throughout the history of humanity. 

Once a teacher brought a few pieces of cardboard which were pieces of the world map and put them all on the desk and asked the students,

“Can anybody come and arrange them in the right order?”

Many students tried to arrange the world in order but miserably failed.

Just one smart boy, seeing that everybody was failing and not managing to make the world map whole by putting the pieces together, looked at one piece on the reverse side.

Then, he turned all the pieces over and he found the picture of a man. He arranged the picture of the man, which was very easy, and that was the key. When on one side the man was arranged, on the other side, the world map was arranged.

Perhaps the same is true about the real world... if we can arrange man, the world will be arranged. Every trouble starts with the human being and he is either part of the problem or part of the solution. When the integrity of the human being is lost, the foundation of society is shaken. Every human being is a born creator with destructive and creative energy. However, it is upto each one of us to use it productively or destructively to uplift the world. Each human being is a miracle on earth. Transformation needs to happen at personal level to be aware of the personal and societal responsibilities that each of us has in life. Only such awareness can bring progress and welfare in the society and in the world. So let the CSR start with each one of us neither postponing nor anticipating, instead right here LIVING in your very life. Perhaps, the great wisdom of George Bernard Shaw will help each of us to make the trigger at a personal level for creating a paradigm shift in the destiny of our human existence. He wrote:

My life belongs to the whole community and as long as I live, it is a privilege to do for it whatsoever I can. I want to be thoroughly used up when I die, for the harder I work, the more I live. I rejoice in life for its own sake. Life is no 'brief candle' to me. It is a sort of splendid torch which I have got hold of for the moment; and I want to make it burn as brightly as possible before handing it on to future generations.838

Let each human being start valuing life and count it as a privilege to do the best of ability to the progress of the society to experience the fullness of happiness in this life. I am

sure; this attempt will certainly bring morality, prosperity and equilibrium in the today’s society which is desperately looking for a new world order to start adopting a code of best CSR practices at a personal level.

The following fact about the Dead Sea can enlighten the each of us to share and enrich the society with whatever we have. Dead Sea is really a Lake, not a sea. It is so high in salt content that the human body can float easily. One can almost lie down and read a book! The salt in the Dead Sea is as high as 35% — almost 10 times the normal ocean water. And all that saltiness has meant that there is no life at all in the Dead Sea. No fish. No vegetation. No sea animals. Nothing lives in the Dead sea.

And hence the name — Dead Sea.

Unlike the Dead Sea, the Sea of Galilee is pretty, resplendent with rich, colorful marine life. There are lots of plants. And lots of fish too. In fact, the sea of Galilee is home to over twenty different types of fishes.

Same region, same source of water, and yet while one sea is full of life, the other is dead. How come?

Here apparently is why. The River Jordan flows into the Sea of Galilee and then flows out. The water simply passes through the Sea of Galilee in and then out - and that keeps the Sea healthy and vibrant, teeming with marine life.

But the Dead Sea is so far below the mean sea level, that it has no outlet. The water flows in from the river Jordan, but does not flow out. There are no outlet streams. It is estimated that over a million tons of water evaporate from the Dead Sea every day. Leaving it salty. Too full of minerals. And unfit for any marine life.

The Dead Sea takes water from the River Jordan, and holds it. It does not give. Result? No life at all.

Let us, think about it.

Life is not just about getting. It is about giving and sharing. We all need to be a bit like the Sea of Galilee.
We are fortunate to get wealth, knowledge, love and respect. But if we don't learn to give, we could all end up like the Dead Sea. The love and the respect, the wealth and the knowledge could all evaporate. Like the water in the Dead Sea.  

If we get the Dead Sea mentality of merely taking in more water, more money, more everything the results can be disastrous. The universe in which we all live will come to a standstill, earth will have disorder and humanity will encounter chaos. It is a good idea to make sure that in the sea of our own life, we have outlets. Not just one or two instead, many outlets. Make sure we don't just get, but give too. Open the taps. Let the water flow freely into the buckets of those needy and down trodden. Let us open the floodgates to prosperity, happiness and peace.

*Lokah Samastah Sukhino Bhavantu*

*(May all beings everywhere be happy and free and may the thoughts, words and actions of my own life contribute in some way to that happiness and to that freedom for all.)*

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