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Exhuming into Corporate Social Responsibility (CSR) in India

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ABSTRACT

Corporate Social Responsibility (CSR) is the mechanism in which both the society and the organizations or the companies work hand in hand. The companies return back to the society from the gain or profit that the company has achieved due to the active participation and involvement of the people of the society. The term CSR may be a new to India which has aroused over a decade but the concept of CSR has been practised since time immemorial by the company. The author of the paper has portrayed the emergence of CSR in India along with the present day practise that is being carried out by the companies.

An elaborate analysis has been made of the recent 2021 Rules on CSR. The paper has brought into light the challenges that is faced by the companies while pursuing the activity on CSR. The author of the paper has led to some suggestions that can be inculcated for a better working of CSR in India.

Keywords: *Corporate Social Responsibility (CSR), Companies Law, CSR Rules, Growth*

I. INTRODUCTION: BRINGING INTO LIGHT THE EVOLUTION OF CSR

Corporate Social Responsibility (CSR) has been imbibed in the culture of Indian since time immemorial. The Mauryan period has witnessed it where while carrying on the business emphasize were laid on ethical principles and practices. Archaic India has practiced corporate social responsibility via providing aid to the unprivileged people of the Indian society. In a diversified country like India, religion played a crucial role in building the sense of responsibility in the conduct of business. Also the citizens of the country became aware of their responsibilities towards other citizens, nature, animals and with the unprivileged sections of the Indian society.

After the independence, India witnessed economics model where the villages were considered as a complete unit and the individuals of such villages ensured that the entire community had food, shelter and employment. The villagers were generally involved in

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trading, farming or in performing arts. All these practices led to the emergence business activity. The industrial revolution led to the interference of industrial families such as Birlas, Tatas etc.² in spending lump sum amount for welfare of public at large via CSR expenditure. These organizations also led to the growth of healthcare organizations and educational institutions.

Corporate Social Responsibility (CSR) in the context of United Nations Industrial Development Organization,³ is a managerial process which focus is the integration of environmental and social concerns coupled with interactions with the shareholders. CSR is considered to be a procedure which brings about coordination in social, economical and environmental integrals, better known as Triple-Bottom Line-Approach.⁴ CSR also keeps an eye on the expectations that the stakeholders and shareholders have towards the organization.

The organizations become socially responsible towards its stakeholders and public by implementing the approach of Corporate Social Responsibility (CSR). The organizations become aware on the consequences of the functions that they are carrying on, thereby leading to growth and development of the organizations. The scope and ambit of CSR differs from organizations to organizations. However, CSR not only benefit the society, but also aids in the overall development of the organizations. In order to put it in a better way, CSR focuses on the overall expansion of the organizations which includes economic, social and environmental development.⁵

II. COMPANY LAW AND CSR: A VIADUCT

The Companies Act, 2013 has spring with the advent of new provisions that brought a metamorphism in the working and structure of the Indian Corporate Business. Corporate Social Responsibility is one of the new context that has evolved in the country with the introduction of The Companies Act, 2013. The give and take policy is mostly focused in the ambit of Corporate Social Responsibility (CSR). The organizations reward back to the society after they receive the desired output which they desired for from the inputs that are given by the society in form of resources such as human resources, raw materials. The organizations give some returns back to the society after they has completed the assigned

² Hency Thacker, *What is CSR?*, The CSR Journal (2020), <https://thecsrjournal.in/what-is-csr-corporate-social-responsibility/> (last visited Mar 17, 2021)

³ *What is Corporate Social Responsibility (CSR) in India?*, India CSR (2020), <https://indiaccsr.in/what-is-corporate-social-responsibility-csr-in-india/> (last visited Mar 17, 2021)

⁴ Timothy F. Slaper & Tanya J. Hall, *The Triple Bottom Line: What Is It and How Does It Work?*, 86 Indiana Business Review (2011), <https://www.ibrc.indiana.edu/ibr/2011/spring/article2.html> (last visited Mar 17, 2021)

⁵ *What Is Corporate Social Responsibility [CSR]?*, Law Corner (2020), <https://lawcorner.in/what-is-corporate-social-responsibility-csr/> (last visited Mar 17, 2021)

work on Corporate Social Responsibility (CSR).⁶

It has been notice that Section 135 of The Companies Act, 2013⁷ deals with a detailed description in the context of Corporate Social Responsibility. A committee on CSR should be constituted for the companies or organization whose net worth is not less than Rupees five crores⁸ or the turnover is not less than Rupees thousand crores in a financial year.⁹ The said committee should consists of one independent director¹⁰ out of the three or more directors assigned for the work of the committee. It should be noted that not only the Indian Companies should follow this, but also the foreign companies.¹¹

The Indian Government has commenced the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021¹² (2021 Rules) which has brought amendment in the Companies (Corporate Social Responsibility Policy) Rules, 2014¹³ (2014 Rules). The definition of the term CSR has undergone changes in the 2021 Rules. This amendment has been done to bring about a clearance in the ambit of CSR and that CSR does not include any business activity that takes place in the normal or daily business activity. On the contrary, the 2021 Rules has not laid down any exceptions to it. The 2021 Rules has laid down that in lieu of pursuance of any activity that is dealing with research and development with regards to Covid 19 for the upcoming years till 2023 will come under the scope and ambit of CSR. However, the 2021 Rules, has also pointed out that any activity that is being performed in abroad will not come under purview of CSR until and unless they are pertaining to any training activity that involves personnel from Indian Sports¹⁴ or representing the country.

⁶ Mansukhlal Hiralal Company, *India: Corporate Social Responsibility - Indian Companies Act 2013*, Mondaq (2015), <https://www.mondaq.com/india/corporate-governance/366528/corporate-social-responsibility--indian-companies-act-2013> (last visited Mar 18, 2021)

⁷ Saurabh Kumar, *Corporate Social Responsibility under Companies Act*, IPleaders (2021), <https://blog.ipleaders.in/csr-laws-india/> (last visited Mar 18, 2021)

⁸ *The Scope of Corporate Social Responsibility*, Goodera, <https://goodera.com/blog/csr/the-scope-of-corporate-social-responsibility/> (last visited Mar 18, 2021)

⁹ *Corporate Social Responsibility Under Section 135 of Companies Act 2013*, Cleartax (2021), <https://cleartax.in/s/corporate-social-responsibility> (last visited Mar 18, 2021)

¹⁰ V. Lakshmi Kumaran, *Corporate Social Responsibility: The saga of new compliances and penalties*, Business Today (2019), <https://www.businesstoday.in/opinion/columns/corporate-social-responsibility-csr-new-compliances-and-penalties-companies-act-ministry-of-law-and-justice-indian-corporates/story/375847.html> (last visited Mar 18, 2021)

¹¹ Ankita Singhla, *Corporate Social Responsibility (CSR) as per Companies Act, 2013*, TaxGuru (2018), <https://taxguru.in/company-law/corporate-social-responsibility-csr-companies-act-2013.html> (last visited Mar 18, 2021)

¹² *Analysis of Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021*, Centre for Advancement of Philanthropy (2021), <https://capindia.in/analysis-of-companies-corporate-social-responsibility-policy-amendment-rules-2021/> (last visited Mar 19, 2021)

¹³ Mohit Patel, *Analysis of Companies (CSR Policy) Amendment Rules, 2021*, Taxguru (2021), <https://taxguru.in/company-law/analysis-companies-csr-policy-amendment-rules-2021.html> (last visited Mar 19, 2021)

¹⁴ Nitu Poddar, *CSR - "comply or suffer" provisions made effective*, Vinod Kothari Consultants (2021),

Donations that come under the sphere of Section 182 of The Companies Act, 2013 will not be considered under CSR. Also any obligation under the statute of law will not be entertained as CSR. Activities that are performed in order to benefit the company employees or benefits of marketing standards with regards to product and its service are not contemplated under CSR.¹⁵

Rule 4 has been amended in the 2021 Rules, it has been clearly mentioned that company's board should be responsible for implementing the projects on CSR with reference to timeline of the project. The board should also look into the fact that whether the fund are being utilized for appropriate purposes. The board has been conferred with powers as per the 2021 Rules whereby variance can be made which the board deems fit for implementing better with the assigned time span. Funds that are dispensed of for the project on CSR should be utilized in a manner that the board is satisfied with. Also it should be approved and certified by the Chief Financial Officer¹⁶ or any person who has been in charge of the management of financial activity. External organizations should be brought into play in order to monitor the projects on CSR and collaboration should be made for the same.

According to the amended Rule 5 of the 2021 Rules, there is a mandatory requirement to form a committee on CSR. The committee on CSR should contain certain essentials that are mentioned in Rule 5(2) of the 2021 Rules and it should also form an annual action plan in conformity with the CSR policy that the company has. It should also recommend the same to the board.

There has been an enlargement in the expenditure on CSR for the rules in lieu of fund management that the CSR has been allocated with. The fund that has been assigned by the company should not outpace 5% of the total expenditure¹⁷ on CSR as has been laid down in the Rule 7 of the 2021 Rules. Any remaining excess fund with regards to the expenditure on CSR should not be used in any other purpose even though it relates to the business activity. The excess amount can be utilized in the similar project on CSR or can be transferred to the unspent CSR account. The expenditure are now permitted for setting off over the 2% expenditure that is required. However, in order to conduct the same, a resolution should be

<http://vinodkothari.com/2021/01/csr-comply-or-suffer-provisions-made-effective/> (last visited Mar 19, 2021)

¹⁵ Diveysh Goyal, *Companies (CSR Policy) Amendment Rules, 2021 - Detailed Analysis*, Taxguru (2021), <https://taxguru.in/company-law/companies-csr-policy-amendment-rules-2021-detailed-analysis.html> (last visited Mar 19, 2021)

¹⁶ Sonali Jain, *CSR Amendment Rules, 2021 : A New Paradigm*, Live Law (2021), https://www.livelaw.in/columns/csr-corporate-social-responsibility-csr-amendment-rules-2021-companies-act-169801?infinite_scroll=1 (last visited Mar 19, 2021)

¹⁷ *India-Amendments to CSR Rules: A Game Changer*, The National Law Review, (2021), <https://www.natlawreview.com/article/india-amendments-to-csr-rules-game-changer> (last visited Mar 19, 2021)

passed by the board and it should not combine any surplus that arises with regards to the CSR action.

The 2021 Rules came across changes in the mechanism of reporting and that it stated that CSR annual report should be included as it has been prescribed in Rule 8 of the 2021 Rules. It has also been mentioned in the rules that for foreign companies, the balance sheet has to be submitted in accordance with Section 381(1)(b) of the Companies Act, 2013¹⁸ and it should be handed over to the Registrar.¹⁹

III. UPSHOT ON CSR: A LONG WAY TO GO

CSR in India still faces issues and challenges in various grounds such as less participation²⁰ of community is involved in activities of CSR. There has been a lacuna in portraying the transparency of CSR methodology and many companies till date find that its a waste of money. There is an urgent need of creating local bodies and NGOs that can deal with CSR. However, the above stated problems can be reduced in CSR is implemented by the companies in a proper manner.

Initiatives should be taken for creating awareness amongst the public in general towards CSR policy. The concept on CSR should not only be inculcated in the business schools but it should be also taught to the corporate. Government of India and the State Governments should come up with the provisions and guidelines in order to safeguard the continuance of CSR in India and that it has to made understandable to the public that implementations on CSR does not result in the wastage of money, rather the profitability along with the overall growth and development of the country is increased. The society should cooperate with the companies and organizations in order to bring about a healthy growth in the corporate sectors and to the society.

¹⁸ Government brings in New CSR Rules (Amendment) 2021-e-form for implementing agencies, NGOBox, (2021), [https://ngobox.org/full-news_Government-brings-in-New-CSR-Rules-\(Amendment\)-2021-e-form-for-implementing-agencies-NGOBOX_23144](https://ngobox.org/full-news_Government-brings-in-New-CSR-Rules-(Amendment)-2021-e-form-for-implementing-agencies-NGOBOX_23144) (last visited Mar 19, 2021)

¹⁹ Ashima Obham and Shivam Patanjali, *India: New Rules Governing Corporate Social Responsibility*, Mondaq (2021), <https://www.mondaq.com/india/corporate-governance/1033048/new-rules-governing-corporate-social-responsibility> (last visited Mar 19, 2021)

²⁰ Yasmin Begum R. Nadaf and Shamshuddin M. Nadaf, *Corporate Social Responsibility: Issues Challenges and Strategies for Indian Firms*, IOSR Journal of Business and Management, <http://www.iosrjournals.org/iosr-jbm/papers/Vol16-issue5/Version-3/I016535156.pdf> (last visited Mar 20, 2021)