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# A Critique of Mandatory Corporate Social Responsibility during COVID 19

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***Abstract***

*During these testing times of COVID 19 this paper is an attempt to see whether mandatory CSR as per companies Act 2013 has given a reason to corporates in India to contribute maximum to the relief measures or they are trying to keep themselves away in the name of falling demand, Mounting business losses and cost. With the passing of the Companies Act (2013) India has become the first country in the world to make the CSR activity legally mandatory for the corporate sector. The change in behaviour which is expected from the corporate sector has led to different reactions from the different stakeholders. The objective of the present paper is to look at the changes in the Companies Act 2013 with respect to CSR activities. The other objective is to analyse the theoretical basis of the mandatory nature of CSR and its evolution from pre liberalisation period to current times. The methodology of the paper is mainly descriptive and secondary data has been used to study the issue. Various books, Journals, periodicals and Companies Act 2013 have been consulted to look at the different perspectives on the subject of the paper.*

*One segment of people quote that improving social welfare is not the objective function of the theory of the firm which comes into existence to maximise shareholders value. Another set of economists see no essential conflict between profit maximisation function of the firm and its social welfare activities. But the changes in the Companies Act have specifically mentioned that the social activities for which companies are required to contribute and to associate with should not be anyway related to the business of the concerned companies. The purpose of the change in the policy framework is indeed laudable but it would have been better if companies instead of earmarking some percentage of their profits for the social activities were called upon to engage actively in the social sector in the truly entrepreneurial manner to find some solutions to the social ills plaguing the society. The post liberalisation era with the emergence of large home grown and foreign corporate sector is negatively impacting the society in myriad ways. Now it is the serious and honest implementation of the Act which can help the society to free itself from various social ills.*

***Keywords:*** *Covid 19, social responsibility, sustainability, Companies Act (2013)*

## Introduction

The impact of Covid-19 on the global economy is likely to be unprecedented since the 1930s Great Depression (Euronews, 2020). We all know these are testing times for corporate regarding their ethical conduct, short term profit making tactics in name of survival and mounting pressures to sail through these tough conditions .CSR activities must have taken a back seat but there are many companies who have proactively participated and contributed in providing help and assistance to fight against this deadly virus. This pandemic has exposed businesses to all those extraordinary external environment forces which can pose a question mark on survival and existence of businesses. In such turbulent times corporate have a tough dilemma either they can be totally discouraged for CSR activities due to lack of funds or they can come forward present themselves to be socially responsible.

| Name of the Group | PM-CARE Fund(Rs Crores) |
|---|---|
| Tata Group | 1500 |
| Infosys | 100 |
| Paytm | 500 |
| Aditya Birla Group | 500 |
| Reliance Group | 500 |
| **Larsen & Toubro** | 500 |
| **HDFC** | 150 |
| Vedanta Group | 101 |
| Coal India Limited | 221 |
| Bajaj group | 100 |
| JSW Group. | 100 |

India Inc. appears set to spend all or most of its corporate social responsibility kitty for the year on combating the Covid-19 pandemic.AS per report 80% of the total budget of CSR has been spent on COVID relief measures. (Crisil report ,Mint June 2020) be it through contribution to the PM CARES Fund, other relief funds, distribution of food, masks, personal protective equipment for healthcare workers, or relief material to the needy.

Vedanta group has provided huge medical facilities like Sanitizers, PPE kits , ICU beds .Corporate India has welcomed this step and contributed hugely to the relief work and meet the statutory requirements of Companies Act 2013.(Financial express July 2020.

An idea which in the recent years has generated lot of attention, enthusiasm and great expectations is the Corporate Social Responsibility**.** Especially with the introduction of the new Companies Act (2013) has come the provision of mandatory spending by corporate sector on discharging social responsibility which earlier was voluntary contribution. Under the new Act, the rules require companies to set up the CSR committee of their board members. They can spend on social activities and projects as per the advice of the CSR committee but they have to report to the government about their activities and also have to specify reasons for not spending in their annual CSR report. The provisions of the Act are truly visionary as companies either have to comply with the Act or explain their position. India is the only country in the world which has taken the initiative of making the social responsibility of the corporate sector legally mandatory. Traditionally the provision of various economic and social services has been the responsibility of the government but with the resource crunch looming large over the governments' especially in developing countries and with the ever increasing magnitude of various social and environmental problems corporate sector has been asked to mandatorily perform their social responsibility. The issue of voluntary or mandatory nature does not carry much importance in developing countries as shared by Carron et.al (2006) share that in countries like India and Pakistan it is the rule rather than exception that companies donot comply with existing legal framework related to corruption, payment of taxes, fair trade practices, respect for human rights, customer services, environmental protection.Carronet.al further argues 'the challenge in India is first to get business to meet these basic (legal) obligations'.

The kind of projects and activities which can be pursued by the corporate sector have been broadly described in the new Act. Attempt in this paper is to look at the theoretical underpinnings of the concept, reaction of the various stakeholders to the changes in the CSR law and future challenges for the corporate sector and the government.

**Objectives of the paper**: The main objectives of the paper are to look at the conflict between theoretical model of the firm and the mandatory nature of CSR. To analyse the rules of CSR as applicable to firms under the new Companies Act. The paper attempts *to see the* evolution of the concept of CSR from pre liberalisation period to its present state.

**Methodology:** The paper is descriptive in nature and has relied mainly on the secondary sources for getting information. Various research articles, books, periodicals have been consulted to get an insight into the varying opinions of stakeholders involved in CSR activity.

**Theory of Firm and CSR**

The idea that firms should take the responsibility of discharging social responsibility has been appreciated and has drawn flak as well from various quarters. Since the advent of the industrial revolution the theory of firm has undergone many changes. At one time the basic objective of wealth creation was considered immoral but that changed during the 19th century under the influence of the Adam Smith capitalist idea of the market economy and commercialism did not remain to be a dirty word anymore. At this time business assumed absolutely no responsibility for society as cited by Kristoffersen 2005 in Luthans et.al 1990. After the great depression of 1930 government intervention in the form of various laws came in to place which tried to curb the exploitative behaviour of the firms. Labour unionism, public opinion, and political pressure led to change in the attitude of the firms towards society. The concept of CSR is basically the about the dynamics of relationship between firms and society. The reason for concern is that how the CSR activities would fit in to the profit maximising objective function of the firm. Those who oppose it usually consider it as a non commercial activity. There are different interpretations attached to the meaning of the social responsibility The World Business council on Sustainable development has quoted about CSR in the year 2000 as "Continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families and as well as of the localcommunity and society at large".

There are contradictory opinions as to whether the CSR is going to complement the profit maximisation function of the firms or compromise with it. Critics of the concept opine thatimproving social welfare is not the function of the firms; they derive their sustenance by maximising share holders value. Moreover the managers don't have expertise in managing social ills or evils. Friedman has been cited as one of the famous economists to criticisethe concept of the CSR by claiming that the social responsibility of the firm is to make profits. It is the route to a civil and civilised society. " In a free market economy 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"( Friedman,2002).

On the face of it the views of Friedman might appear to be cruel or unacceptable in a society with lot of negative externalities, labour exploitation and environmental degradation but if seen in totality his views do not pose any conflict with profit maximisation and social responsibility. It is the role of the society and government to set up framework of law in which profit maximisation does not infringe upon the rights of others. If Property rights and liability laws are such that firms are bound to take externalities into account and treat these as internal costs, it can lead to win-win situation for firms as well as society. So, there is need to understand the view point of Friedman in the existence of and implementation of rule based system under which companies maximise their profits. Most of the companies these days are found to be flouting these rules and blindly try to achieve only one objective at the cost of various segments of the society. Hence the need for firms to discharge their social responsibility is emphasised.

Another view point which has been in circulation in recent years is that there is no inherent conflict between discharging both economic and social responsibilities simultaneously. Adoption of CSR does not necessarily mean compromising, with profit maximisation. Zingales in 2000 has defined firm as a complex system of relationship among its constituents and the success of the firm depends on the quality of the relationships and how well these are managed by the firms. Various groups in the society have certain expectations from the firms and firms have to assume some responsibilities since it is two way relationship. Consumers, employees, suppliers, government, environmentalist and other such groups have their assumptions about the working of the corporate sector.So the opposing factions; one thinks that service to the society should take precedence over profit making and others' take is that maximising production and jobs for people will automatically maximise social welfare.

No doubt the existence of the firm has been seen as a profit maximising entity in the market economy under a system of rules and laws developed through a political legal process. The market economy or the capitalist mode of production, no doubt has many ardent supporters of the efficiency of the system, But the biggest flaw of the system is that it does not see beyond its nosei.e., pure and simple profits sans any responsibility and these firms have been found to be flouting rules concerning environment, peoples' health, labour standards and many more. Plethora of problems in the economy especially related to the use of common property resources and resultant negative externalities are created by the production processes followed by companies to maximise their profits. Environmental degradation is mostly the result of the short sightedness of the companies. They have been found to be acting irresponsibly without bothering about the well being of the various stake holders. About the changes in the Companies Act and correspondingly rules of CSR also (Venkatesan,EPW) has opined that the major flaw in making CSR legally binding on the companies is that it does not intend changing the behaviour of the firms and make them act overall with a greater responsibility. Rather it encourages philanthropy and intervention of private sector in public policy and social welfare which can be problematic.

With rising GDP and increased consumption expenditure of the people the corporate sector is making huge profits. In order to make them realise their responsibility towards the society in which they are operating the new companies act has made CSR legally compulsory.

The enormity and huge magnitude of the problems at hand cannot be lessened, not only in India but all over the world, by solely depending on the governments. Issues of education, health, women children and environment are posing a threat to the sustainability of the development not only in developing countries but also in the developed world. Prosperity, progress and growth are intermingled with poverty, inequality and destitution. Companies whether public or private, Indian or foreign, manufacturing or service are making profits by catering to the ever rising needs and demands of the well off sections of the society but to what extent it is impacting society negatively in myriad ways is not taken care of. The damage or benefit for the society and environment is caused by the operations and products of the companies and what it does with a portion of the profits to repair the damage can be just a token.

In order to earn the good will of the customers and government some companies like Tata and Birla have in the past have been spending on the social activities but such companies are very few.*Business World, a* reputed business magazine in a survey in 1983 on Most Respected Companies in India reported that respect for companies was associated with two broad parameters quantitative (like profitability) and qualitative (like community responsibility). The survey revealed that impressive financials are not enough to earn respect. Companies were trusted because they were transparent and stakeholders trusted their policies. Transparency and ethics were the most important on earning respect. Infosys came on the top in terms of winning respect in 2003 survey and CEO Murthy said that 'when you make a statement, people should say, we believe.'(Business World, 2003)

But the examples like this are far and few between and majority of the corporate sector not only in India but all over the world has failed to win the trust and respect from the society at large. Scams after scams involving big companies in the US and India like Enron, Lehman Brothers, Satyam, Kingfisher and many more is lending credence to the opinion of the people about unfair practices being followed by companies to make profits. A Survey by Business Week has reported that 94 percent of the respondents have only some hardly any confidence that US Congress can write effective rules governing corporate financial matters (Sagar, 2004).

Many other render only lip service to the various causes rather than doing some actual work around their area of operations. This is a typical Indian attitude as shared by Singhvi in a report in The Economic Times, "if you can get away without doing something, it is best to avoid it" (ET, 2012). He has further mentioned that Indian corporate sector has failed to perform the role of good corporate citizen so far. A report in the Economic Times mentioned that out of 150 odd billionaires 10 are in India and out of them only one Azim Prem ji lists in the list of 105 billionaires who have pledged to give away 50 percent of their wealth for social good.

Companies can be said to be discharging their social responsibility if they provide good quality products to their customers, fulfil their commitments to various stakeholders, charge reasonable prices, don't indulge in any other malpractices, treat their employees with compassion, make all their due payment of taxes etc. to the government, use environment resources sensibly. But all the above mentioned practices are in one way or the other related to making business sustain in the long run and earn more profits by acting responsibly and thus be counted among good companies to do business with. In a way all these measures or actions make lot of business sense. But the kinds of activities which have been mentioned in the latest Companies Act,2013 are not directly related to the business proposition. It is meant to make this society a better place to live in.It is an opportunity given to the corporate sector to make an impact on the society. NandanNilkani has said that 'Philanthropy should go where markets don't go and governments cannot go'. Former president Abdul Kalam Azad said that sustainability has assumed great importance as 'it directs towards conservation of the environment and building social infrastructure so that a part of the prosperity reaches the bottom of the pyramid and touches the lives of the citizens'. Azim Premi ji of Wipro has shared that "if things have to change in the society then involvement of the whole eco system is must. One cannot rely on government alone to do social good and one has to become a co-sharer of the goal and the outcome". The new act says that CSR should not be considered as charity or donation. Sachin Pilot the minister of corporate affairs has said in an interview that 'CSR should be viewed as something which you are doing –whether through cash or kind or man hours or anything else-to bring smiles to the people's faces and not for your EBITDA(earnings before Interest, taxes, depreciation, amortisation)".

Taking care of social aberrations or distortions of the society should no longer be the ambit of the voluntary sector or non government organisations. Corporate social responsibility is the most accepted form of philanthropy with organisations involving themselves at various levels in making a lasting impact on the society. Companies can forge alliances with the non profit organisations to pursue social goals and the emphasis can be shifted from charity to supporting causes by institutional giving. The new Companies Act has also allowed the companies to set up trusts or other separate non profit entities to facilitate implementation of their CSR activities.

**Companies Act 2013 and CSR**

The section 135 of the new Companies Act says that all companies including foreign firms with a net worth of Rs. 500 crore, turnover of Rs. 1000 crore and net profit of at least Rs.5 crore to spend at least 2percent of their profit on CSR. The new rules would be applicable for the financial year 2014-15. The basic differences in the new and previous rules regarding CSR are that earlier the rules included the basic operating principles of business to be integrated with economic, environmental and social objectives. So the CSR was doing business in such a way as to contribute to the overall social good. But now those entire activities stand excluded from the new list of activities.

Many big companies were already engaged in the CSR activity but the spending was not much.At the time of the passing of the bill in the Lok sabha only two companies out of NIFTY 50 were spending 2 percent of their profits. Wipro chairman shared at the Awards ceremony that the responsibility of philanthropy rest with them since the wealthy and powerful corporate sector cannot put the entire responsibility on the government. With increasing national income and enhanced participation of the private sector in the economic activity they are in a much better shape now in terms of their asset size and profitability. The change which everybody including the corporate sector wants to see in the society cannot happen overnight and without its own active involvement for brining that change. The CSR activity by the company does not mean just donating money to its own foundation or giving funds to some NGO, it has to be project or activity based. Looking at the huge number of companies operating in India (9 lakh active companies), only 1 percent will come under the ambit of the new rules. The new rules of CSR are as under:

- Covered under Section 135 and schedule VII of the companies Act 2013
- Came in to force from 1st April 2014 via notification from Ministry of Corporate Affairs
- Applicable to companies meeting either of the three conditions of net worth Rs.500 crore, turnover of Rs.1000 crore or net profit of Rs.5 crore.
- At least 2 percent of the net average profits generated by the company in the preceding years to be earmarked for CSR
- Constituting Corporate Social responsibility Committee of three or more directors with at least one being independent
- CSR committee will formulate policy, select projects or activities and monitor the expenditure
- Mandatory to disclose CSR Policy by the Board
- CSR activities to be undertaken in India only
- Two or more small companies can set up a registered trust, society or a separate company to undertake CSR activities
- CSR expenditure is separate from expenditure incurred normally in business
- Surplus of CSR is not be considered as profits
- Foreign companies making profits from operations in India would also spend on CSR
- The board reports of companies spending on CSR have to include an annual report on CSR According to the new Companies Act donation by corporate sector to political parties is not covered under the CSR.
- The law will be applicable to foreign companies with branches and offices in India and their CSR activities have to be carried out in India.
- Balance sheet of foreign company will have an annexure on CSR spending

**Figure 1: List of Activities to be coveredUnder CSR**

**Concerns of Firms in the Recent Past and Future Dilemmas**

The corporate sector in India has not voluntarily contributed significantly for the well being of the society. One reason given by businessmen is that in comparison to the US the phenomenon of wealth creation is very recent in India. In any society philanthropies inflexion point often comes at the end of a long wealth creation curve.India is still placed early in this curve.

Secondly just asking firms to contribute since they are making profits is not motivating enough. If companies and businessmen are given a call to take a plunge in the social sector with entrepreneurial spirit of finding solutions to the long pending ills afflicting the society,this might motivate them to take up social responsibility more willingly. If the focus shifts from how much they give to how they give, that can make a lot of difference in the approach of the firms interested in philanthropy. The corporate sector should be cajoled to show the same spirit for finding solution for the problems of the society as they show for earning wealth. Making a difference in the society by making a choice for some philanthropic activity can be more stimulating for companies to indulge in CSR activities.

(Mohana, et.al, EPW 2014) have expressed their opinion that just specifying the amount to be spent and the kind of activities to be undertaken under CSR will not suffice rather all the stakeholders need to be taken into confidence. Increasingly there is greater demand for disclosure on companies from different stakeholders. Employees, customers, suppliers and civil society organisations all want companies to come out clearly with its CSR activities. Corporations have a decisive impact on the outcomes of employment,consumption, environment quality,social inequality and a host of other issues.

With the implementation of the new act the NGOs, the development sector experts and the government all are expecting big action on CSR front as an astounding amount of Rs.10,000 to 15,000 crore is expected to be available to be spent on meeting this obligation by the corporate sector. Smaller companies have been allowed to make joint alliances or share resources for achieving shared goals. Government has set up a dedicated cell under National Foundation for CSR, an arm of Indian Institute of Company Affairs for helping forge alliances. Joining hands makes sense as per a report in the Economic Times, of the 16,400 companies in the CSR net this year 14,000 are going to contribute less than Rs.1 crore each(ET,2014). Individually they may not achieve much but splitting their bills can help them rationalise administrative, back office and other common spends and attain economies of scale and make a meaningful difference, says Dorin, Chief Principal of GFS, an international development consultancy (ET, 2014). It also leads to better social return on investment

Consumers as well as investors show greater interest in companies who behave socially and environmentally more ethically.

**Conclusion**

On the one hand, India being a developing country with crores of people living below poverty line with no access to basic amenities, life is a daily challenge. On the other hand advent of new technologies along with the forces of privatisation and globalisation has resulted in the growth of large corporate sector which is impacting societies and environment negatively in host of ways. With the passing of the new Companies Act (2013) it has become mandatory for firms to spend 2 percent of their profits on CSR activities.No doubt on the face of it there may seem to be conflict in the raison deter of the firms and the requirement of CSR but companies must use this opportunity to develop and convey their vision and values to the society and consider as an extension of their being. This makes business sense as well since companies doing meaningful CSR would be able to market its image in a better way. It does not make much sense to compartmentalise the commercial and social functions and hence give companies excuse to remain away from the social reality. If companies know how to sell shampoo and chocolates to rural and poor people they can develop expertise to how to improve the physical and social environment of the people. The companies act need to be applauded as instead of discharging social responsibility just by taking care of its business processes and procedures as paid down in the previous act, this act expects firms to play a proactive role by choosing a project or activity and then incur spending in such a way as to bring about a difference. The CSR activity has to be carried on like companies develop and expand their business; identifying projects, setting targets making investments and evaluating outcomes. CSR makes marketing sense as companies make profits from people and when they focus their profits back into same people that makes marketing sense.(Maria, 2013) has looked at this mandatory spending of 2 percent of profits by the corporate sector on CSR as regressive as this move tries to shift the focus on the way hundred percent of revenue is being generated. He has shared that need today is to create genuine business responsibility and societal trust in business.It is taking care of profits people and planet together, and not only of people immediately connected to business but people in the society as such.

And most importantlyorganisations must look at the social responsibility as developing genuine trust in the operations of business by the society by improving their operations and products so as not to harm the societies and environment rather than trying to meet the 2%requirement as per companies Act 2013.This pandemic has proved that corporates are not shying away from their responsibility during these tough times but they are contributing monetarily and in kind to help centre and state government to overcome this situation. By associating themselves to these socially responsible measures it will become a win-win situation for both businesses houses as well as customers.

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