

CSR INITIATIVES, NECESSITIES OF MORAL PRACTICES, AND RELIGIOUS INFLUENCE ON CORPORATE CITIZENSHIP IN INDIA

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Abstract: The essay will start with an argument that stakeholders and corporations are consciously motivated by their religious beliefs for CSR activities. Corporations must respect the different interests of minority groups and should participate in those CSR activities which are not driven by religious considerations. The very object of CSR will be defeated if there is no inclusion of secular idea in the efforts of social development. Presently in India corporations are required to invest 2% of average net profits in CSR as a compulsory activity who have net worth of 500 crore or more, turnover of 1000 crore or more and net profit of 5 crore or more. However, it is not only the law that requires the corporations to invest for CSR in India. As often argued - Corporates do not exist independently. It is the nexus of contract between different directors, shareholders, customers, and vendors that make the corporate bodies operative. The essay will be concluded by arguing that the secularism in CSR is one thing which must exist directly at the heart of social development model in India to protect the minority group interest.

INTRODUCTION

The Government of India made it compulsory for certain classes of companies to contribute in corporate social responsibility by investing 2% of their average net profits made during the three immediately preceding financial years.

This amendment was brought in by the Companies Act [amendment], 2013 by the insertion of section 135¹ which states:-

Corporate Social Responsibility- (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall an independent director.

*(2)**

(3) The Corporate Social Responsibility Committee shall-

a) Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

*(4)**

*(5)**

According to **World Business Council for Sustainable Development** “Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute

¹ The Companies Act, 2013 (Universal Law Publishing co pvt Ltd 2015).

to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".²

CSR has become an important activity in which companies are voluntarily participating in. Corporations are adopting CSR initiatives as this has become one of the ways of showing to the public at large that corporations are consciously concerned for them. It is often argued that corporations do not exist independently. It is the nexus of contract among different directors, shareholders, customers, vendors that make the corporate bodies operative. Company does not have its own mind and even after having separate legal existence, it has to work on the desires of directors and managers.³

Government of India made CSR a compulsory activity for some companies in India. This means that all the stakeholders including minority shareholders have to compromise with their net profits. As per section 135(5) of the new Companies Act, 2013, the corporations have to invest 2% of their average net profit of three years.⁴ 2% does look to be a very small proportion but on a broader understand of the concept, it definitely puts some amount of pressure on business corporations by pushing them to compulsorily get involved into CSR activities, and this compulsion itself is not being appreciated by many stakeholders in India. Companies Act, 2013 prescribes that every such company which compulsorily have to participate in CSR, must form a CSR board which will form the policy of CSR investment for the company. However, such policy will have to be approved by the board of directors.

As Majumdar says, Asian corporations tend to be family and individual driven – such families and individuals may have a propensity to inculcate their individual traditions into inanimate and juristic bodies such as the corporations they run and control. As a result, CSR activities of the companies proportionately get affected due to the religious and cultural biases.⁵ It is submitted that a company as a separate legal entity does not have any religion of its own, but its board of directors or the managers who are the functioning branches of the corporation, do have their religion and religious biases.

Section 135(3) of the Companies Act mandate that all the companies who fall into the requirement of CSR investment must invest in the projects on those subjects which are mentioned in Schedule 7 of Companies Act. The main point of contention here is that all the managers of companies, having their religious biases, may tend to invest in those projects which fulfil their sub-conscious/conscious religious obligations. For instance, a board comprising of Hindus in majority might decide that the 2% CSR requirement must be fulfilled through investing on those projects which are involved in building temples in rural areas or helping the state governments, who share similar ideologies, in development projects which promote prohibition on cow slaughters.⁶ Similarly, a company which has Muslims in majority may tend to work on projects which relate to promoting their religious interests. Jains may support some social cause that aim to build public consensus on quitting smoking

²Jain, Shubham and Jain, Shruti, *Corporate Social Responsibility: A Need of Present and Future* (January 22, 2014). OIDA International Journal of Sustainable Development, Vol. 06, No. 07, pp. 22, 2013. Available at SSRN: <http://ssrn.com/abstract=2383421>

³ Majumdar, Arjya B., *Zakat, Dana and Corporate Social Responsibility* (April 6, 2014). Available at SSRN: <http://ssrn.com/abstract=2421001> or <http://dx.doi.org/10.2139/ssrn.2421001>

⁴ Supra note 1

⁵ Majumdar, Arjya B., *Zakat, Dana and Corporate Social Responsibility* (April 6, 2014). Available at SSRN: <http://ssrn.com/abstract=2421001>

⁶ tom balkcom, *'Cognitive Bias In The Boardroom* Chief Executive Magazine' (ChiefExecutive.net | Chief Executive magazine, 2007) <<http://chiefexecutive.net/cognitive-bias-in-the-boardroom>> accessed 2 April 2015.

or drinking or even fund the various projects which are run by various NGOs in India like PETA for promoting vegetarianism.⁷

Definitely all this seems very remote and not really connected with the heart of CSR, which is “PUBLIC INTEREST”. Why would the minority shareholder support those CSR activities which they do not subscribe to? A minority shareholder whose partial part of profit is being used for CSR activity, would not like that amount to be invested in the causes that he or she does not support *in toto*. Social development is one thing which might not work in India through CSR compulsions. The problem does not lie in supporting the projects which are motivated by certain religious compulsions or even moral obligations, but with the issue of protecting the minority shareholders interest.

MINORITY SHAREHOLDERS:-

Due to CSR, minority shareholders are at a certain disadvantages. Firstly, they sacrifice a small amount of their profits for companies’ CSR involvement. Secondly, they do not have a say in deciding the projects for their companies, e.g. in a situation where a company performs its CSR obligations, for instance by supporting the project which promote vegetarianism. The interest of those minority shareholders may get effected who love to eat beef or have mutton. They in a way are forced by the directors or managers to sacrifice a partial amount of their own profits for a cause that they do not morally or even religiously support.

Arguendo: - if the intention of public interest behind CSR, is used arbitrarily by Corporations via going against the interest of minority shareholders, that day is just ahead when Corporations’ CSR activities would start attracting “CLASS ACTION SUITS”.

THE IDEA OF SECULARISM IN CSR ACTIVITIES IN INDIA

In other parts of the world, especially in some Muslim countries, practice of **ZAKAT** is compulsory. Corporate social responsibility is an obligation for Muslim citizens and corporations too, being artificial persons, are required to pay Zakat. The amount of Zakat to be paid by Malaysian corporations on assets is 2.5%. Zakat, in the corporate sector is based on the principle that anything obtained to trade for a profit is subject to it.⁸ Even corporations in Pakistan are required to pay *Zakat* at the rate of 2.5% on some 11 specified categories, some of which includes savings bank accounts, NIT units, and government securities.⁹

Corporate social responsibility is anyway not a newly emerging concept in India. From ancient times the concept, *Vasudhaiva Kutumbakam [the world is one family]*, is well connected to India.¹⁰ In India, CSR obligations do not exist because of any religious obligation, but it is there because of the principle shared responsibility. Schedule 7¹¹ of Indian Companies Act, 2013 states certain fields, from entry (i) to (x), in which corporations are required to invest. *Prima facie* it seems that all the entries which are stated in the schedule 7

⁷ The Independent, 'The Vegetarian Town: They Wouldn't Hurt A Fly But The Jains Upset Palitana With Meat-Free Plea' (2014) <<http://www.independent.co.uk/news/world/asia/the-vegetarian-town-they-wouldnt-hurt-a-fly-but-the-jains-upset-palitana-with-meatfree-plea-9588087.html>> accessed 2 April 2015.

⁸ Supra note-3, p.g. 10

⁹ Ibid, pg. 11

¹⁰ Narayan Lakshman, "Vasudhaiva Kutumbakam' Is India'S Philosophy: Modi' (*The Hindu*, 2014) <<http://www.thehindu.com/news/national/vasudhaiva-kutumbakam-is-indias-philosophy-modi/article6453203.ece>> accessed 2 April 2015.

¹¹ Supra note-1

are nothing but those fields which are directly or indirectly connected to government functions. Some of the entries talk about those fields which are clearly even stated in the constitution of India under part IV i.e. *Directive Principles of State Policy*.¹²

In a way, by classifying different categories for CSR investments, government is indirectly asking for direct help of corporations in fulfilling governmental obligations. It is certainly not appreciated by many on grounds of ethics and morality, but if corporations do not have any options, they should act in a way by which the best interest of the public at large is served.

Obviously the intention behind CSR compulsion is not completely wrong. CSR is one of those ways by which the gap in between capital inequality can be bridged.¹³ As long as companies are doing it in a just manner, there is only one way that is visible from this end i.e. progress. Thus corporate social responsibility is enjoying a valuable status today but still in a country like India, it is at developing stage and has a long path to travel before it finishes into tangible course of action.¹⁴

Private companies do have freedom to decide and take every decision that serves their purpose, and there should not be any course of action against those companies who indulge in business activities on preferential basis. Private companies should obviously not be seen from the same lenses as we see government undertakings. But it is submitted that while helping government in its governmental obligations or functionalities, corporates should set aside their preferential choices. At the time of doing business, it is completely fine to be biased, preferential or selective. However when companies are helping government in carrying out governmental functions, Companies should act without any personal preferences motivated by religion on CSR activities. This argument might seem a bit far reached. However, India is a secular country, and while doing governmental functions indirectly, corporations should also behave in a way which is in conformity with secular ideas.

CONCLUSION:-

India is very different from other parts of the world. People are divided by different castes, moral principles, cultures choices, and ethnic preferences. People in India do not even share a common language to communicate. The Constitution of India recognises 22 national languages and interestingly English is not one of them. The whole purpose of CSR is to serve public interest. As long as the object of CSR would remain exactly proportionate to the principles of secularism, the novel idea of bringing about a change will not be vitiated.

¹² *The Constitution Of India* (12th edn, UNIVERSAL LAW PUB COPLTD 2013).

¹³ *Bridging the Gap: An Exploratory Study of Corporate Social Responsibility among SMEs in Singapore*
Mui Hean Lee , Angela Ka Mak , Augustine Pang . Journal of Public Relations Research Vol. 24, Iss. 4, 2012

¹⁴ Supra note- 2, p.g. 21