MANDATORY CSR IN INDIA – A TRAILBLAZER FROM THE EAST

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The paper attempts to trace the evolution of the concept of Corporate Social Responsibility (CSR) and seeks to gather how it turned out to be a boon for the developing nations of the world, particularly countries like India. By the path-breaking promulgation of the Companies Act, 2013, CSR was made mandatory in India, for companies meeting the financial thresholds mentioned in Section 135 of the Act. The author seeks to study the journey of CSR in India, the present law, and the latest amendments made to the same in recent times. The paper evaluates the rationale behind the mandatory CSR law and how it can be a game-changer in India Inc.'s commitment to social causes. The author has also suggested how the mandatory CSR regime in India can be further strengthened to contribute meaningfully, particularly in the fields of education and healthcare, through better project identification, stronger execution linkages, an overhaul of the board committees, flexible and pragmatic government rules, and synchronization of the corporate CSR activities with the lead programmes of the Government of India. These reinforcements can go a long way in making the CSR approach much more effective and value accretive.

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Introduction

At the Responsible Business Summit, held on 7 and 8 May 2013 in London,[1] after hours of deliberations on the future of sustainability of business in the world, the most distinctive resolve of the participants was inspired by a Chinese proverb "*When the wind blows, there are those that build walls and then there are those that build windmills*." This was not only a powerful acknowledgement by the global business leaders about the extraordinary social role played by modern-day companies but more importantly, about the direction and form of their contribution.

Present-day corporations are political, economic, environmental, and cultural powerhouses without which today's increasingly globalised and commercially connected world cannot be visualized. They no longer work in isolation and their activities influence consumers, shareholders, suppliers, employees, and society at large. They have an impact on over a billion lives every day, a large number directly and many more in imperceptible ways. Hence, the modern perspective about corporations recognizes them as responsible corporate citizens and enjoins them to not only be financially secure but also function in line with societal expectations like equity, climate control, labour standards, human rights, and good governance, ensuring minimal negative impact on the external environment. This concept of corporate citizenship constitutes the central thesis of corporate social responsibility (CSR), which aims to align businesses with the objective of sustainable global development and not just profit.

Having broken the shackles of a controlled economy and buoyed by a highly liberalized economic regime since the early 1990s, India is presently not only one of the fastest-growing global economies, but also the fifth largest in the world.[2] However, it was the mandatory CSR mechanism introduced in India by the new

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1 The 12th annual Responsible Business Summit (7–8th May 2013, London), EuroCert Auditing & Certification Services (Sept. 1, 2022), available at https://www.eurocertglobal.eu/Pages/view.aspx?PostID=707.

2 India pips the UK to become world's 5th biggest economy, Times of India, 2 September 2022 (Sept. 1, 2022), available at http://timesofindia.indiatimes.com/articleshow/93955841.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

Companies Act, 2013, which has stood out as a most pioneering step and stunned the whole world. In a single stroke, India has become the first country globally to create a sizeable impact in the field of social sector and in mobilizing funds for social development. More than the merits of such a move by a country which still has a fifth of its population below the poverty line, it was the boldness in the decision which left the world community stupefied.

The paper seeks to trace the evolution of the CSR concept and examine how over time it occupied the corporate landscape worldwide. It then goes on to build how CSR turned out to be a panacea for developing countries, particularly a country like India. An attempt is made to fathom the rationale behind such a path-breaking corporate move of a mandatory CSR law in India and the progress and credentials recorded under this regime till now. The paper also talks about the various amendments made to the law relating to CSR in the last few years and how these amendments address the concerns raised about the new law. It explains how a successful implementation of mandatory CSR can lead to sustained social upliftment. It also offers many novel suggestions to turn CSR activities into agents for social change. Some execution gaps in the ongoing CSR projects have also been analysed and suggestions have been offered to plug them. The paper also explores possibilities of greater synergy between governmental efforts and the CSR activities of the companies. The judicial scrutiny undergone by the new CSR regime is also discussed to evaluate how the court verdicts and directions have benefited the growth of CSR in its initial phase. A mention is also made of the crucial role played by the new CSR regime in providing the necessary impetus to the government's fight against the COVID-19 pandemic. The contribution made by the companies shall certainly help the new regime consolidate its position in India.

1. Concept and Evolution of CSR

On the global front, philanthropic activities by the industrialists can be traced back to the industrial revolution. By the mid-to-late 1800s there were growing concerns about the well-being of the workers.[3] Business leaders like Andrew Carnegie and John D. Rockefeller not only gave the first real glimpses of the social responsibility actions of the businesses but also made solid contributions. However, all these efforts were informal and it was the American economist Howard Bowen who, in 1953, coined the term CSR in his publication titled "Social Responsibilities of the Businessman."[4] After a surprising lull for a couple of decades, CSR truly began to gain ground in the U.S.

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3 America at Work, America at Leisure: Motion Pictures from 1894 to 1915, Library of Congress (Sept. 1, 2022), available at https://www.loc.gov/collections/america-at-work-and-leisure-1894-to-1915/articles-and-essays/america-at-work/.

4 Howard R. Bowen, *Social Responsibilities of the Businessman* (2013).

in the 1970s when the concept of "social contract" was declared by the Committee for Economic Development in 1971.[5] The social contract was based on the idea that a business functions because of the public 'consent' and, therefore, the business has an obligation to constructively serve the needs of society. Corporations started accepting that their stakeholders went beyond the board room and that when their customers and communities were healthy and vibrant, their companies would be as well.[6] Later, the concept of CSR became central to the research of hordes of leading scholars of the 1990s and it started gaining acceptance as well as eminence.

A major thrust to the CSR movement came with the views of R. Edward Freeman who, in 2010, proposed his "stakeholder theory,"[7] according to which corporates should not remain limited to the interest of the shareholders only, but also of other stakeholders like employees, customers, suppliers, community, government, environment etc. who directly get affected by the actions of the corporation. This theory changed the perspective of managing modern businesses. Though the growth of these corporations is typically measured in economic terms – sales numbers, profits, profit margins, revenue, etc., in reality, their impact extends well beyond the bottom line. While the traditional approach focused on the idea of value creation and capture by the firm with shareholder primacy being an accepted norm, the stakeholder perspective obligated the business managers to manage the firms while taking into consideration the interests of all concerned stakeholders. The natural outcome of the stakeholder theory was the recognition of CSR as a value creator.[8] Gradually but certainly, CSR has become a new paradigm of inclusive development and businesses are fast accepting CSR spending as investments and not expenditure.[9]

Companies at large now realise that they extract resources from society, in the form of human resources, minerals, raw materials, etc. By way of CSR activities, the companies endeavour to pay back to society. Besides, a well-implemented CSR programme can lead to a bouquet of positives like enhanced customer engagement and loyalty, commitment to investors, spirited human resources and a much-improved brand image, clearly making the community an important and crucial

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5 Corporate Social Responsibility: A Brief History, Association of Corporate Citizenship Professionals (Sept. 1, 2022), available at https://accp.org/resources/csr-resources/accp-insights-blog/corporate-social-responsibility-brief-history/.

6 *Id.*

7 R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (2010).

8 Birte Freudenreich et al., *A Stakeholder Theory Perspective on Business Models: Value Creation for Sustainability*, 166(1) J. Bus. Ethics 3 (2020).

9 Forest L. Reinhardt et al., *Corporate Social Responsibility Through an Economic Lens*, 2(2) Rev. Envtl. Econ. Pol'y 219 (2008).

stakeholder for the growth and sustainability of a company.[10] Though many CSR projects may look small in the beginning, but is it not true that polio got eradicated from the world because every two drops given to an infant counted? This way CSR is fast becoming a steady commitment by businesses to integrate social and environmental concerns in their operations.

Thus, across geographies, businesses have evolved with the primary purpose of serving the interests of their stakeholders, consumers, workers, vendors, the board of directors, shareholders, government agencies, trade unions, political factions, and the media, among others. Together such actions constituted the core of the global CSR movement. Yet, the geographical progression of the CSR concept also called the "*green consciousness*," did not follow a predicted course. No wonder, in the first few decades, CSR as a concept gained more ground in Europe than in the US, while the latter was responsible for its early induction into business literature. The presentation of the Green Paper by the European Commission in 2001 was a landmark moment and laid the groundwork for CSR in Europe.[11] A levelling off took place in recent years, with the US government acknowledging the need for companies to be held accountable and to take action to regain the lost ground.[12] The subsequent mainstreaming of the concept of CSR, fuelled by the efforts of leading campaigners like Greenpeace and many others, has now contributed to its acceptance as a business imperative in the West.[13]

2. CSR – A Panacea for Developing Countries

The significance of CSR in the developing countries vis-à-vis the developed world is higher because many developing countries are not only the most rapidly growing economies of the world today but also the places where social inequity and crises are rampant, and the CSR activities are most potentially placed to make a lasting impact. Unfortunately, since these countries have significant segments of the population, which is at the *bottom of the pyramid*, the economic growth reported by them has often struggled to be inclusive and widespread. As Bill Gates, the charismatic business leader expressed in his famous 2008 speech at the Davos World Economic Forum,

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10 Asif Mahmood & Jamshed Bashir, *How Does Corporate Social Responsibility Transform Brand Reputation into Brand Equity? Economic and Noneconomic Perspectives of CSR*, 12 Int'l J. Eng. Bus. Mgmt. (2020).

11 Almerinda Forte, *Corporate Social Responsibility in the United States and Europe: How Important Is It? The Future of Corporate Social Responsibility*, 12(7) Int'l Bus. Econ. Res. J. 815 (2013).

12 *Id.*

13 Prachi Juneja, *The Practice of Corporate Social Responsibility (CSR) Around the World*, Management Study Guide (2015) (Sept. 1, 2022), available at https://www.managementstudyguide.com/csr-practice-around-the-world.htm.

> The world is getting better, but it is not getting better fast enough, and it's not getting better for everyone. The great advances in the world have often aggravated the inequities in the world. The least needy see the most improvement, and the most needy get the least – in particular, the billion people who live on less than a dollar a day.[14]

The desirability of robust CSR programmes in developing countries, with an inclusive development focus, could not have been stated better.

During the initial phase of the CSR movement, continents like Asia, South America and Africa remained laggards in the adoption of CSR as a compelling concept; some commentators from those areas even called this concept an imperialist construct[15] or an avoidable fad coming from the rich countries. Yet, in recent years, CSR efforts in developing countries have also registered traction, with inclusive development as the cherished goal. The green shoots started emerging from across the fraternity of developing countries in the last about a decade or more. As a result, Indonesia, Vietnam, India, the Philippines, Zambia, Brazil, Mexico, and Colombia have emerged as the bright spots of CSR.

A CSR marvel based in Mexico, *Fundacion del Empresariado Chihuahuense* (FECHAC), is worth mentioning. FECHAC is an independent, not-for-profit, and autonomous grant-making foundation. Its goal is to meet the vital needs of the community in three spheres – quality basic education, preventive health, and social capital. It is a platform, founded in 1984, practically populated by all the corporations of the state of Chihuahua, the biggest state in Mexico. It has implemented over 4200 projects in Chihuahua for the human and social advancement of the people of Chihuahua and has successfully addressed the problems of marginalisation and social exclusion.[16]

Some signal events and announcements at the global level have also catalysed the CSR movement tremendously. The announcement of the U.N. Global Compact at the World Economic Forum in January 1999 paved the way for promoting responsible practices among the global business community.[17] With more than 12000 signatories in over 160 countries already, the CSR landscape is now very well represented, and the ten principles of the Global Compact are fast becoming the norm across businesses, large as well as small.

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14 Caroline Van Zile, *India's Mandatory Corporate Social Responsibility Proposal: Creative Capitalism Meets Creative Regulation in the Global Market*, 13(2) Asian Pac. L. & Pol'y J. 269 (2012).

15 Juneja, *supra* note 13.

16 Fundacion del Empresariado Chihuahuense (FECHAC) (Sept. 9, 2022), available at http://os.fechac.org.mx/acceso#.

17 World Economic Forum, The U.N. Global Compact (Sept. 1, 2022), available at https://widgets.weforum.org/history/1999.html.

On 25 September 2015, 193 United Nations Member States embraced the Sustainable Development Goals (SDGs) to put an end to global poverty, protect the planet and safeguard the wellbeing of everyone as a part of a new sustainable development agenda. The seventeen goals, related to poverty eradication, gender equality, zero hunger, quality education and good health etc., which consist of one-hundred and sixty-nine targets, need to be achieved by the year 2030. The success of this fifteen-year programme primarily hinges on the participation of the developing countries in pulling millions out of the socio-economic miseries. Successfully implemented CSR programmes can provide the necessary fillip to the efforts of the member states. India has played an integral part in the establishment and evolution of SDGs and is committed to their attainment. NITI Aayog, the apex public policy think tank of the Government of India, is spearheading the execution of SDGs in India.[18] In order to achieve its SDGs targets, India needs the mobilization of USD 0.6 trillion per year, which in present times, means a financing gap of about USD 550 billion per year. In this context, CSR has a very vital role to play in India, especially in bridging the said financing gap through the fast-expanding canvas of projects undertaken by various companies.

3. Mandatory CSR and its Journey in India

In the ancient Indian tradition, charity always had a place of eminence. The concept of *Daana* in Buddhism, *Zakat* in Islam and innumerable references to compassion and assistance to others in Hindu texts like the Vedas, the Upanishads etc. are testimonies to the same.[19] The overpowering thought was that those endowed with the bounties of nature owe a duty towards the needy, leading to a belief that Indian business leaders shall carry this responsibility to their companies, which are still mostly individual, or family driven.[20]

From being predominantly a family value, culture, charity, and philanthropy driven in the 18th and 19th centuries, the growth of CSR was strongly influenced by Mahatma Gandhi's concept of trusteeship for societal benefits in the 20th century.[21] Yet, post the independence of India, from 1947 to the early 1980s, the corporate sector was under the sway of state controls and dominance of public sector undertakings, leaving little space for the private sector.

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[18] Sudershan Kuntluru, *Corporate Social Responsibility and Firm Performance: Indian Evidence*, Working Paper 317, Indian Institute of Management Kozhikode (2019) (Jul. 10, 2022), available at https://ideas.repec.org/p/iik/wpaper/317.html.

[19] Arjya B. Majumdar, *India's Journey with Corporate Social Responsibility: What Next?*, 33(2) J. L. & Com. 165 (2015).

[20] *Id.*

[21] Aruna Jha, *Auditing and Corporate Governance* (4th ed. 2021).

Since 1980s, and thereafter post the economic liberalization unleashed in the 1990s, a new paradigm of CSR concept started developing in the country, abandoning the tradition, and positioning CSR as a sustainable business strategy. A globalized economy and much-energised business chambers made the air abuzz with terms like responsive corporates, shared values, and strategic CSR. In this earlier phase of the CSR practice, the country witnessed exemplary work by leading business groups like Tatas, ITC and Mahindra and Mahindra in the fields of health, education, women empowerment, and environment protection.

The first mention of inclusive growth, the central concept of strategic CSR, appeared in India as a policy objective of the Eleventh Five Year Plan in 2007.[22] The next major change was the Corporate Governance Voluntary Guidelines, 2009, released by the Government hinting at the imperative of CSR activities. This was followed by the year 2010 announcement of a mandatory CSR for the Public Sector Undertakings (PSUs), above a given threshold. The framing and issuance of the guidelines of this first attempt at mandatory CSR for the PSUs was led by Dr Bhaskar Chatterjee. Later, he also played a major role in the inclusion of section 135 of the Companies Act, 2013 and in the establishment of the National Foundation for Corporate Social Responsibility, an apex national institution in the field of CSR.[23]

The Ministry of Corporate Affairs (MCA) released the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business in the year 2011 after extensive consultations with business, academia, and civil society organizations and based on the feedback received about the 2009 CSR Guidelines. Finally, in July 2011, a "*comply or explain*" CSR obligation was included in a comprehensive Companies Bill introduced in the Parliament which ultimately led to the new and pragmatic Companies Act, 2013, which comprised a mandatory CSR regime, making this the first such all-encompassing legislation globally. In view of the fact that the rapid economic growth of recent decades only exacerbated socio-economic inequity and the major corporations of the country contributed precious little, this legislation can prove to be a game changer.

The declaration of mandatory CSR drew loads of praise from across the cross-section of economists and political commentators, but it had to contend with unsparing critics also. So, while *The Economist*, called it the "*coerced do-goodery*,"[24] leading local business leader Mr Ratan Tata likened it to another tax on business. Some

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[22] Amit Lahiri & Pratik Phadkule, *Purpose of CSR in Current Social and Economic Context of India*, CSR Mandate (2018) (Sept. 9, 2022), available at http://www.csrmandate.org/purpose-of-csr-in-current-social-and-economic-context-of-india/.

[23] National Foundation for CSR, Ministry of Corporate Affairs (Sept. 1, 2022), available at https://www.mca.gov.in/content/mca/global/en/about-us/affiliated-offices/nfcsr.html.

[24] Indian firms make the best of coerced do-goodery, The Economist, 16 November 2017 (Sept. 1, 2022), available at https://www.economist.com/business/2017/11/16/indian-firms-make-the-best-of-coerced-do-goodery.

critics termed it as an exercise in outsourcing government social responsibility to the private sector to cover up its own failures.[25] At this juncture, it would be worthwhile to look into the architecture of the new mandatory CSR law and understand the nuances of the new regime.

Section 135 and Schedule VII of the Companies Act, 2013 and the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 are the relevant provisions pertaining to the mandatory CSR introduced by the new act. The act came into force with effect from 1 April 2014 and required companies meeting certain financial thresholds[26] were required to constitute a CSR Committee and devise a CSR Policy. These provisions were not only applicable to Indian companies but also to project offices of a foreign company in India. Every qualifying company is required to spend at least 2 per cent of its average net profit for the immediately preceding three financial years on CSR activities in India.[27]

The qualifying companies shall be required to constitute a CSR committee, consisting of three or more directors, including at least one independent director. Those companies which are not required to appoint an independent director shall constitute their CSR Committees to include two or more directors.[28] The CSR committee shall formulate a CSR policy, recommend the expenditure to be incurred on the activities referred and monitor the CSR policy.[29]

Schedule VII of the Companies Act, 2013 provides for twelve activities that could be taken up by the companies to achieve their CSR obligations. Such activities comprise the ones aimed at eradicating poverty, hunger, and malnutrition or those related to education, educational research, healthcare, and environmental protection. CSR projects can also be for promoting art, culture and sports, particularly rural sports. The list also includes activities like rural development, urban slum area development and disaster management. It is pertinent to note that the CSR projects or activities conducted by the companies which benefit only the employees of the company, and their families are not to be included in the CSR activities of the company.[30]

The Board of Directors of every company is required to disclose the contents of the CSR Policy of the company in the Board Report prepared annually. It is

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25 Kuntluru, *supra* note 18.

26 Section 135(1) of the Companies Act, 2013 provides for the following threshold limits for the applicability of CSR to a company:

a. Net worth of the company to be INR 5000 Crores or more; or

b. Turnover of the company to be INR 1000 Crores or more; or

c. Net profit of the company to be INR 5 Crores or more.

27 *Id*. Sec. 135(5).

28 *Id*. Sec. 135(1).

29 *Id*. Sec. 135(3).

30 Rule 2(d) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

incumbent on the Board to include details on activities undertaken, allocation of funds, destination state and place, etc.[31] The same is also required to be uploaded on the Company's website.[32] The company is obliged to communicate with its different stakeholders through this reporting and thereby demonstrate its commitment to its CSR obligations.

4. Amendments to the Mandatory CSR Provisions

The salience and appositeness of mandatory CSR cannot be overstated. Yet, after this pioneering legislation came into existence, concerns were raised about its provisions. The government also showed a lot of receptiveness and pragmatism and carried out appropriate amendments to the CSR law, majorly in the years 2019 and 2021, to make it not only more effective and robust but also more realistic.

Salient features of the 2019 Amendment:

a. In sub-section (5) of section 135, after the words "*three immediately preceding financial years*," the words "or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years" were added. As is evident, this was carried out keeping in mind many companies that may not have completed three years from their incorporation.

b. In continuation of sub-section (5) of section 135 of the Companies Act, 2013, a new sub-section (6) was added with the arrangement that any unspent amount of an ongoing project was to be kept in a separate bank account. The amount so carried forward must be spent in consonance with the CSR policy within three financial years from the date of such transfer. In case of failure to do the same, the company has to transfer this unspent amount to a fund specified under Schedule VII of the Act. This amendment was necessary to ward off any confusion regarding the parking of the unspent funds of an ongoing CSR project.

c. In the sub-section (5) of section 135 of the Companies Act, 2013, in the second provison, after the words "*reasons for not spending the amount*," the words "and, unless the unspent amount relates to any ongoing project referred to in subsection (6), transfer such unspent amount to a fund specified in Schedule VII, within a period of six months of the expiry of the financial year" were inserted. This amendment cleared the air about how the funds related to a non-ongoing CSR project were to be dealt with.

d. The provision offering recourse of explaining reasons for not spending CSR funds had diluted the mandatory CSR law substantially and the insertion of Sec. 135 (7) which brought in the penal provisions in the mandatory CSR law, was the first sign of the mandatory CSR regime moving from a "*comply or explain*" to "*comply or suffer*" approach.

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31 Rule 8 of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

32 *Id*. Rule 9.

Salient features of the 2021 Amendment:

The amendments effected in the year 2021 included several changes that were mooted in the latter half of the year 2019 and the year 2020, but their legislative clearance got considerably delayed due to the pandemic. The following were the salient amendments:

a. Non-compliance with CSR obligations was decriminalized by treating it as a civil wrong instead of a criminal offence, giving great relief to the companies. But, while the sword of imprisonment in case of non-compliance vanished, the penalties were made more stringent. Presently, a company's failure to comply with CSR requirements shall make it liable for a penalty of twice the amount needed to be transferred by the company to the fund referred to in Schedule VII or to the Unspent CSR Account, as the case may be, or to INR 1 Crore, whichever is lesser. Further, every officer of the company in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent CSR Account or INR 2 Lakhs, whichever is lesser.[33]

b. Companies with CSR obligations below 50 Lakh rupees were exempted from the need to form a CSR committee. The board of such companies needs to act as the CSR committee.[34]

c. While retaining the earlier list of permitted activities, a negative list of six activities was outlined for which no CSR projects can be undertaken. The excluded activities include those undertaken by the company in its normal course of business (barring a three-year exemption for COVID-19-related research and development activities), activities undertaken abroad, any political contributions, activities to benefit the company employees, activities for marketing benefits and for fulfilling any other statutory obligations.[35]

d. Another noteworthy addition by way of the amendment was defining an "Ongoing Project," as a project executed by a company over a few years, not exceeding three years (excluding the year of its inception).[36] The expanded meaning of this definition shall include projects not originally conceived to extend beyond one year for completion but, later approved by the board to so extend. This will help all those companies who may like to convert a short-term project into an ongoing project to avail themselves of the benefits that such projects enjoy.

e. The 2021 Amendment Rules allow companies to select CSR engagements that are in conformity with their CSR policies and carry out the activities independently

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33 Sec. 135(7) of the Companies Act, 2013.

34 *Id*. Sec. 135(9).

35 Rule 2(d) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

36 Sec. 135(6) of the Companies Act, 2013.

or through an outsourced implementing agency.[37] However, an outsourced entity will be able to operate only after completing a registration process made mandatory from 1 April 2021, wherein the Registrar of Companies shall ensure that the project implementation is entrusted only to agencies having the necessary wherewithal.[38] The board of the company may decide to entrust the CSR activities to a registered society or trust or Section 8 company with an established track record. Even two or more such companies can be assigned work, provided they report individually.

f. The amendment rules have capped the expense chargeable against the administrative overheads at 5 per cent of the total CSR spend.[39] This move would arrest the tendency of companies to book unlimited expenditure against this head. Additionally, any surplus arising out of the CSR activities undertaken by the company shall not constitute the business profit of the company.[40]

g. The most ground-breaking change introduced by the Amendment Rules is the requirement for the company to conduct an impact assessment through an independent agency and present the assessment report before the company board. However, this obligation applies only to companies with an average CSR obligation of Rs. 10 crores or more in the three immediately preceding financial years and to projects with financial outlays of Rs. 1 crore or more.[41]

The amendments to the CSR law symbolize a paradigm shift in the role of CSR projects, from an explanation-based approach to a consequence-based one and aimed at:

(i) Enhancing clarity about various CSR provisions and dispelling the prevalent confusion;

(ii) Controlling excessive discretion at the disposal of the companies; and

(iii) Striking uniformity in the application of the legal procedure.

5. Analysis of the Mandatory CSR Regime in India

Eight years of mandatory CSR regime may not be too long period to permit an opinion about its success, yet this has given enough opportunity to the private sector to collaborate with the larger objectives of the government for greater and lasting good. There are some visible signs of strength emerging from the working of the mandatory CSR regime, but there are some flaws too.

Strengths:

a. Corporations, backed by their large knowledge base and managerial skills, are better equipped to promote social goods than the government. For example, their

37 Rule 4(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

38 *Id*. Rule 4(2).

39 *Id*. Rule 7(1).

40 *Id*. Rule 7(2).

41 *Id*. Rule 8(b).

understanding of the skill set and the training needs of the local youth for different kinds of jobs would be more than that of the government.

b. India, having one of the highest concentrations of poverty, mere tax-revenue-driven welfare programmes of the government may fall short in accomplishing the cherished goals of lifting the masses out of severe privation. Through successfully executed CSR projects businesses and private wealth can shoulder a part of this burden. Given the inefficiency in most public programmes, the companies can generate more efficient public goods at a lower cost.[42]

c. India faces a severe dilemma wherein despite nearly dysfunctional education and health systems and over one-fifth of its population living in acute poverty, its manoeuvring capability through excessive taxation or regulations is limited.[43] It is in this context that the collaboration sought through mandatory CSR can be viewed as India's most innovative response to the complex set of economic pressures and challenges.

d. Ever since CSR spending became a mandatory provision in India, CSR became a buzzword across the corporate world. There have been seminars, conferences, and newspaper articles galore on the subject.[44] This augurs very well for the future growth of the CSR revolution in India.

e. The numbers clocked under the mandatory CSR regime are also very inspiring. Whereas the total CSR spend registered in the year 2014-15, the first year of the mandatory CSR, was INR 6388 crore, through 1790 projects run by 460 companies, the total spend reached INR 24689 crore by the end of the year 2019-20. The COVID-19 pandemic played havoc during the year 2020-21 and the total spend slipped down to INR 8828 crore, a dip of 64% compared to the preceding year. However, the CSR spending shot back in the year 2021-22 and registered a figure of INR 20539 crore, with 8632 companies successfully executing over 25000 projects. The current year is also poised to net strong numbers.[45]

f. Decades of experimentation with corporate governance have given India a hybrid system where owing to the adoption of the liberalized economy regime in the 1990s, the Indian economy has made rapid strides. As a result, though our Constitution remains socialist, the economy is now functionally capitalist. The mandated CSR is, therefore, aimed at securing the best consequences out of this divide. Because of the extraordinary circumstances prevailing in India, this law is not

42 Van Zile 2012.

43 *Id.*

44 Pushpa Sundar, *Five Years After CSR Became Mandatory, What Has It Really Achieved?*, The Wire, 21 August 2018 (Sept. 15, 2022), available at https://thewire.in/business/five-years-after-csr-became-mandatory-what-has-it-really-achieved.

45 India Ministry of Corporate Affairs, CSR Expenditure: Summary, National CSR Portal (Sept. 15, 2022), available at https://www.csr.gov.in/content/csr/global/master/home/home.html.

only a bold step but a pragmatic one also. Hence, the accusation of mandatory CSR being a "legal transplant from a dissimilar economic context" holds no ground.[46]

g. In its beginning, the mandatory CSR regime faced criticism for being bureaucratic and more of a marketing or tick-box activity to meet compliance standards with no lasting sustainable impact. The amendments of the CSR law in the years 2019 and 2021 were a serious step toward bringing in the *pay what it takes* philanthropy approach where the social impact of CSR activities is reckoned as a yardstick for appraising Indian companies' social contribution. For example, impact assessment can be a game-changer as it would help the company boards secure optimum utilisation of funds by segregating the projects offering the most significant impact from those with limited impact. In this way, greater insights into the social rate of return on its investment towards CSR activities can enable it to contribute meaningfully to the nation's sustainable development goals.

Possible concerns:

a. Historically India suffers from a lack of inclusive growth as the benefits of its socio-economic policies have not trickled down to the needy. The new CSR law offers no robust solution for the same.

b. Companies are neither equipped nor trained to be agents of welfare.[47] The new CSR law could turn out to be neoliberal thoughts locking horns with democratic demands. By forcing unprepared and often unwilling companies into the social sector, we may rather be making a place for malfeasance and wrong practices.

c. The new law could potentially patronise greenwashing where CSR credits could be sought on already existing efficient business models or practices. An example could be energy-efficient machines installed as a prudent financial decision but proclaimed as ensuring environmental sustainability.

d. The new law permits companies to engage with third parties in the execution of their CSR programmes. Although this opens huge opportunities for over 3 million NGOs to look for new partners and new funds, it also exposes them to a potential loss of moral legitimacy as most companies shall be skewed towards more quantifiable and result-oriented projects rather than longer-term transformational ones. Lack of transparency in CSR reporting is another area of concern. There is no fool proof mechanism yet to keep a vigil over this.

e. Identifying suitable projects for CSR obligations remains a challenge and companies, perforce, are biased to fund projects in their neighbourhood and that too into only a few fields. No wonder, the growth of CSR till now has been skewed, with only a few developed states like Maharashtra, Gujarat, Karnataka, Tamil Nadu, and

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[46] Van Zile 2012.

[47] Nandini Deo, *Why CSR does more harm than good*, The Hindu Business Line, 3 December 2019 (Sept. 15, 2022), available at https://www.thehindubusinessline.com/opinion/columns/why-csr-does-more-harm-than-good/article30151614.ece.

Andhra cornering the bulk of the CSR projects, while poorer and more populous states like Uttar Pradesh, Bihar, Jharkhand, and Chhattisgarh as well as the whole of north-east facing acute geographic inequity with negligible CSR footprints. The projects have been concentrated on education, health, and rural development only.

f. Section 135 of the Act and the corresponding rules seem rather prescriptive and fail to provide much flexibility to companies. The inclusion of the impact assessment requirement is a brilliant move, but the Amendment Rules prescribe no standard procedure or format. This fantastic tool may not yield desired outcomes unless the government clarifies the method to be followed for carrying out an impact assessment. The five per cent cap on the administrative overheads may be seen as an impediment by most companies as this could be too restrictive in the case of many CSR projects.

g. There is a concern that a mandatory CSR expenditure shall put India at a competitive disadvantage and retard its near-miraculous recent growth and turn it into a not-so-attractive destination for foreign investors.[48]

h. Some critics feel that mandatory CSR is inherently contradictory as it has legislated upon something which is characteristically inspirational. They call it a back-door attempt to tax companies.[49]

6. Bright Stars in the Mandatory CSR Regime

Despite the fact that the experience so far with the mandated CSR law is peppered with mixed results, some companies have exhibited tremendous success in their ongoing CSR projects in the last few years. The following are a few such shining examples:

Education: The *Nanhi Kali* project launched in the year 1996 by the Mahindra and Mahindra group, a leading automobile company in India, to educate underprivileged girls for a minimum of 10 years, is a shining example of the success of CSR programs. The core objective of the project is to address the challenges like low female literacy and workforce participation levels and thereby check the spread of evils like child marriages and child labour. Compared to supporting nearly 100,000 girl children countrywide in the year 2012, the project has at present reached out to over 500,000 underprivileged girls in 14 states of India. The project has opened its offices in the U.S. and the UK to garner support for the activities underway in India. Another initiative of this group, since 2005, which it runs in partnership with the Naandi Foundation,

48 Aneel Karnani, *Mandatory CSR in India: A Bad Proposal*, Stanford Social Innovation Review, 20 May 2013 (Sept. 6, 2022), available at https://ssir.org/articles/entry/mandatory_csr_in_india_a_bad_proposal.

49 CSR spending obligation on companies needs to be jettisoned in its entirety, The Hindu Business Line, 6 December 2021 (Sept. 15, 2022), available at https://www.thehindubusinessline.com/opinion/editorial/csr-spending-obligation-on-companies-needs-to-be-jettisoned-in-its-entirety/article29291440.ece.

is the Mahindra Pride Schools empowering the less privileged youth (18–25 years) from socially disadvantaged sections like Scheduled Castes, Scheduled Tribes, Other Backward Classes and the Notified as well as De-notified tribes, with job skills. With 9 such schools operational across India, the group aims to train 1 million youth by 2025, with 100% placement assurance.

Healthcare: Tata Steel, the bellwether company of the renowned Tata Group and a global steel giant, launched a very significant project called the Maternal and New-born Survival Initiative (MANSI) in the year 2009 in the Seraikela block of the state of Jharkhand. Buoyed by the stellar success registered in the parameters like Neo-natal Mortality Rate and the Infant Mortality Rate in the last about a decade, MANSI has been scaled up from the 167 pilot villages to now over 1700 villages in the states of Jharkhand and Orissa. By May 2026, the programme plans to cover 5000 villages with a primarily marginalised tribal population of over 4 million. In its first 5 years, the programme was able to reduce the neonatal mortality rate by 61.2% and the infant mortality rate by 63.1%. The company is moving full steam ahead with this stellar performance of the project.

Eradication of Hunger: India's most reputed IT company Infosys Ltd. has joined hands with the Akshaya Patra Foundation and together they spearhead the world's largest (not-for-profit run) and a path-breaking mid-day meal programme serving wholesome food every school day to over 1.8 million children from over 19000 schools across 14 states and 2 Union Territories of India. The programme made a very humble beginning in the year 2000 for just 1500 school children in 5 schools in Bengaluru, in the state of Karnataka.

7. Judicial Scrutiny Faced by the Mandatory CSR

Although section 135 of the Companies Act, 2013 made a robust provision for mandatory CSR and the various subsequent amendments to the CSR law in 2019 and 2021 were aimed at further consolidating its position, the new regime had to face judicial scrutiny. Though the case law related to mandatory CSR is still in its infancy, some cases merit mention for better appreciation of the new law and its provisions.

a. *S. Cyril Alexander v. Union of India*[50] – This case involved a writ petition filed at the Madras High Court with a prayer for the issuance of a writ of mandamus to authorities to exclude the tobacco industry from the purview of the CSR scheme to prevent the tobacco industry from earning goodwill through direct/indirect advertisement of tobacco products. The court held that it was a policy matter and directed the concerned authorities to devise an appropriate policy in this regard within four months.

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[50] *S. Cyril Alexander v. Union of India*, Writ Petition No. 9955 of 2014, High Court of Madras.

b. *MOIL Ltd. v. Commissioner of Income Tax*[51] – In this case, the appeal was against the orders of the Income Tax commissioner and the Income Tax Appellate Tribunal, remanding the assessment of the petitioner firm back to the Assessment Officer because of lack of sufficient information about the CSR expenditure. The court allowed the appeal with the observations that the record suggested that the Assessment Officer made enough efforts to secure the information about the CSR expenditure and took a reasoned decision in allowing the CSR expenditure.

c. *Parikh Enterprises Private Ltd., In Re*[52] – In this case, though the petitioner company, owing to its financials, was obliged to form a CSR committee and take up projects for CSR expenditure, it failed to do the same nor did it explain its failure in the financial statements. The petitioner firm pleaded that this being a new law, it failed to do the needful during the financial year 2013-14, but that it had constituted a CSR committee later on and that the compliance of its CSR obligations was being done continuously thereafter. The NCLT, Ahmedabad allowed the compounding of the violation and imposed a fine of INR 100,000.

d. *NTPC-SAIL Power Co. Ltd. v. Deputy Commissioner of Income Tax*[53] – The petitioner company, in this case, was obliged as per law to spend INR 2.37 Crore on CSR activities. It pleaded in front of the Income Tax Appellate Tribunal, New Delhi, that though it spent the above amount on tree plantation/environment protection, construction of a zoology laboratory, medical camps at various places, construction of a bus stop shed and an awareness campaign against drug abuse, the expenditure was disallowed by the Assessment Officer on the ground that the expenditure was incurred voluntarily and not because it was mandatory. The Income Tax Appellate Tribunal did not agree with the position taken by Assessment Officer and allowed the CSR expenditure of the petitioner.

e. *M/S Technicolor India Private Ltd. v. The Registrar of Companies, Karnataka*[54] – In this case the CSR spend incurred by the petitioner company was wrongly mentioned by its relevant department and the Board of Directors of the company issued its reports basis that information. Through this petition, the company pleaded in front of the NCLT, Bengaluru Bench, for permission to revise the Board of Directors' report on CSR spending. It admitted that the original report of the company was wrongly submitted owing to human lapse. The NCLT Bench allowed the petition and at the same time made its order without any prejudice to the right of the statutory authorities to initiate action against the company for any lapse as regards the requirements of section 135 of the Companies Act, 2013.

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51 *MOIL Ltd. v. Commissioner of Income Tax*, Income Tax Appeal No. 67/2016, Bombay High Court.

52 *Parikh Enterprises Private Ltd., In Re*, CP No. 4/441/NCLT/AHM/2017.

53 *NTPC-SAIL Power Co. Ltd. v. Deputy Commissioner of Income Tax*, ITA No. 2146/Del/2017.

54 *M/S Technicolor India Private Ltd. v. The Registrar of Companies, Karnataka*, CP No. 124/BB/2019.

Aside from the judgments of various courts and tribunals, the best endorsement for the mandatory CSR came from Justice Madan Lokur, a judge of the Supreme Court of India who called the mandatory CSR regime a step towards the realisation of directive principles of state policy enshrined in the Indian Constitution. He famously remarked:

> The state cannot merely rely on societal actions and responses of corporates' philanthropy, therefore practically and feasibly there is nothing wrong in the legislative mandate of the CSR. The concept has tremendous potential to bring out positive changes in society's major concerns.[55]

8. Way Forward: The Imperative of Constant Chiselling

India is in an unassailable position with its mandatory CSR programme. In a country where a large part of its 1.35 billion population is beset with perpetual problems like geographic inequity and a very poor record on the human development index, a mandatory CSR regime, if effectively implemented, can be a game-changer. It is, therefore, of paramount importance that this legislation is not allowed to remain just another legislation, devoid of a focussed implementation and result-orientation as is the case with many government schemes. The Government shall need to develop a strong collaborative partnership with the corporate world to meet the targets of sustainable and inclusive growth. This calls for a constant vigil and a proactive stance at the government level to affect all legislative and executive actions whenever required for the unhindered growth of the new CSR ecosystem.

A collaboration between the government and the business sector calls for a long-term view, not simply a meeting-the-numbers approach. For CSR practices to emerge as an alternative method for sustainable development, the primary prerequisite is to provide innovative solutions to make CSR sharper, wiser and more focused on what counts, and yes, it may often involve some dirtying of hands. Corporates have the experience, intellect, vision, strategic thinking, manpower and resources to promote wide-ranging social reform. What they require is a favourable environment for channelling their strengths in the realisation of the profound objectives of mandatory CSR.

Some strategic changes in the CSR approach of the companies can bring about lasting benefits as follows:

Education: The core objective behind a robust education system is to bring up the youth, armed with the necessary skills and empowered to carve a career

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[55] Supreme Court judge defends mandatory CSR provision, The Economic Times, 27 July 2015 (Sept. 15, 2022), available at https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-judge-defends-mandatory-csr-provision/articleshow/48218958.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

for themselves. Also, education for girls is more like a vaccination against child marriage, and bad maternal and child welfare and is the foundation of their economic freedom.

India has one of the largest student populations, nearly 200 million, in the K-12 segment. This segment, therefore, remains the most salient area where a focused CSR approach can bring about the most value accretive results. While this sector, together with skill development, receives about 38% of the total annual CSR expenditure, many CSR projects in the education sector are limited to raising school buildings, getting all the schools in an area painted, or arranging for books, study material, furniture, or fans etc., which is akin to raising a body without a soul. The focus areas should be trained teachers, leadership at the school level, great academic hygiene to keep students attracted to the schools, emphasis on skill development and linkages with vocational institutes.

In their CSR approach in the education sector, the companies shall be well advised to introduce the following strategic changes:

a. Teacher's training is an area where not much is presently being done. There have been 3 education policies introduced in India till now: 1968, 1986 and 2020. Simultaneously and otherwise, there have been innumerable changes in the subjects, curriculum, content, and pedagogical infrastructure. Yet, a very high percentage of teachers have never attended a formal teachers' training programme which is so crucial for aligning their profiles to the pressing requirements of the times. CSR programmes on teacher training can bring much greater value to the table as a trained teacher is going to be an asset for the school.

b. Vocational training projects in the CSR field need to migrate towards an apprenticeship-based model wherein the host companies may look at the twin benefits of fulfilling CSR obligations as well as finding resources for themselves. In India, sectors like retail and e-commerce, tourism, logistics, beauty and wellness and construction are examples of skill deficits. An apprenticeship-oriented CSR project can do wonders in such sectors.

c. Inspiration can be drawn from the 'Teach India' initiative of the Times of India group. This social programme connects children from the underprivileged sections of society to those who are willing to devote time to teaching them. A variant of the above initiative can be taken up as a CSR project wherein retired teachers at various schools could be approached to spearhead teaching programmes. Thousands of such retired teachers are scattered in various states and taking 60 years as the average retirement age, most such teachers can devote time, at least till they turn 70. With over 35 years of teaching career behind them, such teachers can bring a wealth of experience to the projects.

Education is an area where results do not come instantly and years of hard work and unstinted concentration lead to sustainable success. Therefore, companies need to have a long-term approach while formulating their CSR projects in the education sector. The Government also needs to have an accommodating stance as regards the application of its policy framework.

Healthcare: This is another high-priority sector from the CSR spend point of view and along with sanitation and Swachh Bharat Abhiyan, receives nearly 28% of the annual CSR expenditure. Much of this expenditure goes into health camps or building hospitals or donating funds for the upkeep of hospital facilities. While health camps create short-term ripples and are majorly number driven, the raising of hospitals is also often poorly targeted.

Some calibrations in the present approach can give much better results as follows:

a. Focus on primary care, not tertiary care. Train youth in the villages as a paramedical force in rural India. Develop pharmacies in the hinterland and train them to provide medications for common illnesses. They may also assist with primary diagnostics such as blood pressure, pulse, and sugar monitoring. This could emerge as a cheap and efficient health service at the cutting-edge level of our society. Strong primary health infrastructure in villages can also reduce the burden on the large urban hospitals.

b. Corporations may subsidise the provision of medical education to bright students. They can collaborate with established medical colleges to extend their services and update their teaching methodologies. Let us not forget that the per capita availability of doctors in India, particularly in rural areas, is abysmally low.

c. Given the high cost of medical treatment, companies can promote health insurance for the poor in a brand-agnostic way.

d. Companies can promote the traditional medicine system under the umbrella of the AYUSH system, for which there is a separate ministry at the Union level. Such medicines have natural acceptance in many segments of the Indian population and at the same time, the traditional medical system can be ancillary to the mainstream healthcare system.

e. Health check-up camps have been a focus area for many companies. The need is to track the follow-up treatment as suggested during such camps, which alone shall deliver lasting results.

f. There is a great need for supporting non-mainstream illnesses like mental health and autism, etc. Such facilities are nearly absent in major parts of the country.

Competencies of companies: Companies can leverage their specialized competencies for better results in their CSR projects. This qualifies as smart spending also as the value accretion out of such activities is much more. Some examples could be telecom companies setting up facilities in areas lacking such services or FMCG companies leading projects involving food processing or food preservation.

Project identification based on expert data: There are many excellent research platforms in India. Companies can rely on expert data while selecting projects for the purpose of their CSR obligations. An example could be the annual wastage of food recorded in India. Indians lose as much food annually as the whole of the United Kingdom consumes. According to the UNDP, up to 40% of food produced in India gets wasted. 194 million Indians go hungry every day according to the United Nation's FAO despite India wasting 67 million tonnes of food worth USD 14 Billion a year, which translates to more than INR 110000 Crore annually. This wastage has a knock-on effect also on the environment as the effort made to produce the wasted food generates greenhouse gases, uses water, and adds to deforestation.

Transportation in India needs to be improved, and so does the storage facilities, including cold storage chains. Food processing needs to be promoted as processed food has a much longer life than raw food articles.

CSR Projects covering themes like crop protection, higher yield realization, improved and modern warehousing infrastructure, food processing projects in most backward parts of the country and most importantly, development of linkages between containment of wastage and management of hunger, can bring about a world of difference in the efficacy of such projects. Successful execution of such projects shall do much more than the meeting of the CSR obligations by the companies; they could potentially be the best examples of nation-building and administrative efficiency. As a bonus, this unabated self-destruction shall also be arrested.

The boardrooms redux: Boardrooms need to rise to the occasion and lead a two-way transformation. Firstly, a shift in its approach – CSR must turn from a legislative requirement to a core constituent of the company's business plan. A clear vision of the long-term benefits of a CSR programme, driven principally by the top management of the company, can certainly secure smooth assimilation of this concept into the everyday functioning of the company. Secondly, the above approach needs to be reinforced by the constitution of a dedicated CSR cell within the company and the entrustment of its functioning to personnel with relevant profiles. The CSR cell needs to be accorded due importance by the top brass of the company to allow it to make a space for itself.

Though the data since the inception of the new law suggests that the CSR projects, to the tune of two out of three, are being run through outsourced agencies, an ideal way is for the companies to run them through their home-grown teams. The benefits are going to be many and lasting. A project run by the company itself instils exuberance in the team, brings efficiency to operations, makes supervision intense and meaningful and last but not least, develops a motivated and experienced team to run such programmes with greater success in future and consistently also.

In this respect, it is pertinent to highlight that for companies, not only selecting a suitable CSR project is a challenge, but even implementing a CSR project is a gargantuan task. It includes a myriad of aspects, such as evaluating regulatory enforcement, managing the organisation's budget, and performing frequent project audits. Over time, CSR implementation is going to get more complex. The good news is over the last few years, several online platforms have emerged in India, to aid businesses to strategize, define, execute, and monitor their CSR initiatives through data-driven knowledge and action. A few prominent agencies are Samhita GoodCSR, SociallyGood and Goodera.

Flexible and pragmatic government rules: There is a strong need to move away from the straight-jacketed rules and regulations and allow the companies some breathing space while they are raising sustainable social assets, like a school, a health centre, a skill training institute, etc. The companies need the flexibility of, for example, spending a major amount, to begin with, while raising physical assets, followed by a phase wherein greater focus shifts to developing the hygiene to make the system run. There are many projects in which the consistency of annual financial expenditure may not be possible. Some financial goals could be missed in a couple of years but if over a larger period the financial commitments are being met along with the successful execution of the project, the rules should grant that leverage to the companies. Remember, we are raising sustainable assets, not merely statistics.

Synchronization with the lead programmes of the Government of India: There is a strong need to align CSR initiatives of the companies with the major governmental programmes like Swachh Bharat Abhiyan, Beti Bachao Beti Padhao, Digital India, PM Ujjwala Yojana, Skill India and Make in India. These programmes are principally aimed at women empowerment, skill development, all-around cleanliness in the country, energy conservation etc. and can be highly value accretive in the social transformation of the country. CSR programmes can immensely benefit from the strong constituency around these flagship projects which the Government can build through awareness campaigns.

For instance, a brilliant programme like Swachh Bharat Abhiyan needs two very important follow-up projects – (a) Maintenance of millions of toilets built across the country. Keeping them clean and functional shall motivate people to adopt them completely; and (b) Behavioural orientation of the people for cleanliness through the banishment of the archaic habits. CSR projects involving the adoption of specific areas and programmes on the above two themes can be a huge fillip to the success already accomplished in this field.

All these programmes have the potential to change the very landscape of the country. For CSR projects built around such schemes, the company's focused execution and the Government's outreach can combine well to secure better results. The monetary sources are there, and the purpose is there; the right platforms need to be reached.

The Greenply CSR – A case in point: The skill development project of Greenply Industries, the leading wood panel manufacturer in the country, is a trendsetter. The company's adoption of new technologies and product innovation is changing the way furniture and wood fixtures are designed. The company runs programmes to extend opportunities to carpenters and contractors to upgrade their skills regularly.

It organizes training workshops for carpenters to familiarise them with the latest tools, techniques, and products in wood panelling.

The company has developed an Android App "Carpenter Guru" which hosts video tutorials, gives tips and shares best practices. Besides Hindi and English, this App is available in 7 more Indian languages.

Along the lines of the Greenply Industries CSR project, there is a critical need for projects for raising trained plumbers, electricians, and bricklayers. Urban India has seen a mushrooming of high-rise housing condominiums in the last two decades, but there is a dearth of trained personnel to contribute to the construction phase and then provide seamless housekeeping assistance to such settlements. In the absence of trained resources, the infrastructure sector, particularly the housing industry, is dependent on migratory labour from specific regions of the country. In the recent past, we witnessed how the reverse migration of such labour due to the pandemic threat, brought the infrastructure sector to its knees.

9. The COVID-19 Pandemic: A Test of the Resilience of CSR Activities

The efficacy and relevance of the mandatory CSR regime was put to its first big test in fighting the battle against COVID-19 as a partner with the Government. Needless to overstate, the companies in India, through their CSR efforts, provided the necessary fillip to the Government's actions to fight this evil. The government of India in March 2020 confirmed the novel coronavirus outbreak in India as a "notified disaster." Through the notification, the MCA declared that the expenditure of funds for COVID-19 relief is an eligible activity under CSR. The Government had referred to this change as "a special one-time dispensation," which would cause the money from each State's Disaster Response Fund (SDRF) to be made available for temporary housing and provision of food, water and medical services for patients and residents in quarantine camps.[56]

The Government also set up the "Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund" (PM CARES Fund) to combat the COVID-19 crisis and extend support and relief to those affected. Further, Schedule VII of the Companies Act, 2013, was amended to include donations and contributions made to PM Cares Fund as CSR spending.

In August 2020, the Government further updated the CSR regime to include research and development investments by companies in the development of novel vaccines, drugs, and medical devices related to COVID-19 and extended this arrangement till the year 2022-23. Such an arrangement is bound to encourage a private pharmaceutical firm, for example, to conduct research in the field of

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[56] Chandrashekar Srinivasan, *India Declares Coronavirus a Notified Disaster*, NDTV, 14 March 2020 (Sept. 2, 2022), available at https://www.ndtv.com/india-news/india-declares-coronavirus-a-notified-disaster-lists-compensation-2194915.

pharmaceuticals in association with institutions like the Indian Institutes of Technology or the Indian Council of Medical Research and obtain assistance from them.

While the Government proactively put in place a robust CSR infrastructure to strengthen its efforts, the corporate world also responded positively. The following are some examples:

(a) Leading corporate entities like Reliance Industries, Jindal Group, Hero Group, Mahindra and Mahindra, Bajaj Group, Tata Group, Infosys, Wipro, Adani Group, HDFC, etc. contributed sizeable amounts, ranging from INR 100 crore to 1500 crore, for fighting COVID-19, including separate contributions towards the PM CARES Fund. Many companies contributed or committed supplies like masks, sanitisers, PPE kits and ventilators.

(b) Some companies offered entirely novel services. Reliance group came up with a 100-bed hospital, in collaboration with the Brihanmumbai Municipal Corporation, for corona patients in Mumbai and also gave free fuel for all emergency service vehicles on COVID-19 duty.[57] Mahindra and Mahindra group had put all its resorts in line for being converted into temporary care centres and had offered to use its manufacturing units to make ventilators.[58] Infosys Foundation helped establish smart classes in 1,000 government higher primary schools in Karnataka in an INR 20 Crore project. India's largest carmaker Maruti Suzuki had tied up with AgVa Healthcare to manufacture 10,000 ventilators per month to bridge the shortfall of this life-saving medical device.[59] Hindustan Unilever Limited, Godrej group and biscuits major Parle supplied soaps, sanitisers, and biscuits respectively, to the vulnerable sections of society.

(c) The foreign companies were not far behind and made significant contributions. Companies like Xiaomi and Hyundai committed lakhs of masks and diagnostic kits. Google partnered with the Prime Minister's Office (PMO) to facilitate contributions to the PM CARES fund through Google Pay and also worked very closely with MyGov in helping dislocated migrant workers.[60] Companies like 3M and Uber also made significant contributions.

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[57] Reliance sets up dedicated Covid-19 medical centre with BMC, The Hindu Business Line, 23 March 2020 (Sept. 2, 2022), available at https://www.thehindubusinessline.com/news/reliance-sets-up-dedicated-covid-19-medical-centre-with-bmc/article31143591.ece.

[58] Piyush Pandey, *Anand Mahindra offers to convert Mahindra resorts to temporary care facilities*, The Hindu, 22 March 2020 (Sept. 2, 2022), available at https://www.thehindu.com/news/national/coronavirus-anand-mahindra-offers-to-convert-mahindra-resorts-to-temporary-care-facilities/article31134490.ece#:~:text=Industrialist Anand Mahindra%2C chairman of,fight the deadly coronavirus pandemic.

[59] Sumant Banerji, *Battle against coronavirus: Maruti ties up with AgVA Healthcare to produce 10,000 ventilators per month*, Business Today, 28 March 2020 (Sept. 2, 2022), available at https://www.businesstoday.in/sectors/auto/battle-against-coronavirus-maruti-ties-up-with-agva-healthcare-to-produce-10000-ventilators-per-month/story/399487.html.

[60] Shubham Verma, *Google reveals Google Pay users contributed over Rs 124 crore to PM Cares Fund*, India Today, 13 July 2020 (Sept. 2, 2022), available at https://www.indiatoday.in/technology/news/story/google-reveals-google-pay-users-contributed-over-rs-124-crore-to-pm-cares-fund-1700053-2020-07-13.

In this regard, three path-breaking policy reforms of the Government of India gave CSR a new persona. These included allowing the spending of CSR funds on COVID-related operations, making all donations for COVID-related initiatives eligible for a 100 per cent tax deduction and making all donations to the PM CARES Fund beyond a company's minimum specified CSR qualify for an offset against the future CSR liability.[61]

The tough pandemic time gave the corporates a few lessons also. It showed how interrelated the present world is and how critical is to prioritise innovation and raise resilient business entities. For India, the pandemic period can certainly be termed as the high point of CSR as the capital generated by this movement during the crisis shall propel it to its future success.

Conclusion

CSR, as a concept, has undoubtedly evolved from its modest beginnings in the 1950s to a full-fledged business imperative in the present times. It has traversed quite a distance between what Milton Friedman had to say more than four decades back:

> There is one and only one 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

to what the founder of Virgin Group, Richard Branson, had to say in April 2017:

> It should no longer be just about typical "corporate social responsibility" where the "responsibility" bit is usually the realm of a small team buried in a basement office – now it should be about every single person in a business taking responsibility to make a difference in everything they do, at work and in their personal lives.

Undoubtedly, the most powerful acknowledgement of CSR's arrival is coming from a top business leader of the contemporary times.

As for India, since independence, the government has been the sole agency for executing social welfare programmes. Though civil society has also contributed and given some bright examples of social upliftment, it has been majorly a government effort. But it is a truism that, the achievements of the government-run welfare schemes till now, are heavily outnumbered by their failures to meet the expectations of the

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[61] Pushpa Sundar, *Covid has pushed CSR deeper into corporate consciousness*, The Hindu Business Line, 9 September 2020 (Sept. 2, 2022), available at https://www.thehindubusinessline.com/opinion/indias-csr-a-work-in-progress/article32561479.ece.

masses. And it is a saga of not only mediocre government performance but much more than that the tragedy of having missed so many opportunities. No wonder, in the Human Development Index (HDI) report for the year 2022, India ranks a poor 131 among 188 countries, manifesting how much catching up it needs to address the deficit of social development goals. What disappoints more is the paradoxical situation one notices in India – India declared itself a food-grains surplus many years back and is self-sufficient with respect to products like milk, vegetables, fruits, and poultry. Why does India then rank so poorly in the World hunger index and the HDI? Most certainly, a case of lack of crucial linkages in the successful implementation of the various welfare programmes of the government.

Against the above backdrop the arrival of the new Companies Act, 2013 with a mandatory CSR provision, has heralded a new and comprehensive corporate law regime in India. The uniqueness of the new regime does not lie so much in making India the first county of this size to introduce such an all-encompassing mandatory CSR law, as in proclaiming, in no uncertain terms, its intent of entrusting the Indian corporate fraternity with a decisive social role.

We are still in the initial phase of the new CSR regime in India. The skew in favour of schools and hospitals in the CSR projects is understandable as it may simply lead to more appreciation, reciprocity, and goodwill in society since they are far more noticeable. The heightened awareness about CSR calls for initiatives to check regional disparity and usher in a new regime of inclusive social development with a transparent reporting mechanism. The strengthening of the law of mandatory CSR can prove more effective if the evaluation of the CSR activities is carried out by an outside autonomous agency. At the same time, the Government may be well advised to have a recognition platform for celebrating well-executed CSR programmes. Public recognition of the India Inc. and the NGOs can develop the required groundswell for mandatory CSR and enhance the participating companies' brand equity. Aside from the above, a stricter monitoring and evaluation regime with greater emphasis on accountability is the demand of the time.

Undoubtedly, by deploying mandatory CSR as an agent for inclusive development, India finds itself catapulted to the pole position in this field. The exemplary role played by India Inc. in the fight against COVID-19 is a case in point. As the popularity of CSR rises, more and more countries may embrace the Indian model and may seek to harness the power of corporate-funded investments in spearheading social welfare projects. In this way, India's mandatory CSR legislation may well represent the launch of a new wave of growth in the sphere of CSR and a novel solution to an increasingly crucial global conundrum. Come on India! This is your moment.

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