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### RESEARCH ARTICLE

## SUSTAINABLE DEVELOPMENT AND CORPORATE SOCIAL RESPONSIBILITY IN INDIA: A CRITIQUE

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#### Abstract

Corporate Social Responsibility (hereinafter referred to as CSR) holds the profit striving corporate entities accountable towards contemporary social needs. One such area that needs consideration from both Government, as well as corporate entities, is environmental protection and development. Though the corporate sector in India has been contributing in bits and pieces towards environmental protection, by and large, there has been a lack of policy approach in contributing towards sustainable development by the corporate entities. The scenario seems to have changed a bit in the last few years, especially post statutory mandate of CSR under the Companies Act, 2013. This research paper is an attempt to analyze the statutory mandate of CSR u/s 135 of the Companies Act and subsequent amendments to it. It also contains a critical overview of Sustainable CSR activities by the corporate sector in India.

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#### Introduction:-

India is a country with extreme diversity in all socio-economic spheres. Socio-Economic diversity between urban and rural India is baffling. On one hand collective revenue of the top ten Indian Fortune 500 enterprises have increased steadily from just over Rs. 21 trillion in 2016<sup>1</sup> to more than Rs. 23 trillion in 2017<sup>2</sup>, and Rs. 27 trillion in 2018.<sup>3</sup> On other hand, data indicates that 74% of the rural population earned less than Rs. 5000 (approximately USD 72) per month, and 24% of the urban population still lived in slums in 2014.<sup>4</sup> Bridging the gap between these socio-economic extremes is a hefty task which Government alone cannot do. Hence, along with Government, Corporate entities may play a vital role in upliftment of socio-economic backward sections of society and resolving various social issues. Environment protection and sustainable development is one such area wherein, active role of corporate entities may provide fruitful results.

1. Fortune Global 500. Fortune India 2016. Available online: <https://www.fortuneindia.com/fortune-500?year=2016>
2. Fortune Global 500. Fortune India 2017. Available online: <https://www.fortuneindia.com/fortune-500?year=2017>
3. Fortune Global 500. Fortune India 2018. Available online: <https://www.fortuneindia.com/fortune-500?year=2018>
4. World Bank. *Population Living in Slums (% of Urban Population)*. Available online: <https://data.worldbank.org/indicator/EN.POP.SLUM.UR.ZS>

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World Business Council defines Corporate Social Responsibility as, “The continuing commitment by business to behave ethically and contribute 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”.

European Commission defines CSR as “A concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment.”

#### **CSR and Sustainability:**

World Commission on Environment and Development (WECD 1987) defines sustainable development as ‘development that meets needs of the present without compromising the ability of future generation to meet their own needs.’

Corporate sustainability refers to a systematic business approach and strategy that takes into consideration the long-term social and environmental impact of all economically motivated behaviors of a firm in the interest of consumers, employees, and owners or shareholders.<sup>5</sup>

According to Adam Fisherman, ‘CSR is a bridge that connects the accelerated production and profit with the sustainability of society and environment. It is also a bridge that connects the success of science and technology (Technological Investment) in business with peace and prosperity (values/spiritual capital) in life. Unless and until the supply of natural resources and peace in society prevail, progress of business and profit cannot be attained and sustained. Hence, business sustainability is a function of social peace (social sustainability) and nature’s balance (environmental sustainability).’<sup>6</sup>

It is a complete misnomer to believe that the purpose of business is to be profitable or to serve shareholders. Profit is simply a means to an end. Ultimately, the purpose of business is to serve society through the provision of safe high quality products and services that enhance our wellbeing, without eroding our ecological and community life support systems<sup>7</sup>

#### **CSR and Law in India:**

India is the first country in the world providing statutory mandate of CSR. Through amendment of the Companies Act 2013, it is now compulsory for companies to carry out CSR Activities. The Section 135 of the Act makes it mandatory for companies of a certain size and profitability to spend 2% of their average net profits of previous 3 years on CSR.

#### **Applicability of Sec. 135:**

The corporate social responsibility provision is applicable to companies with:

1. Annual turnover of 1000 Crores or more or
2. Net worth of 500 Crores or more or
3. Net profit of 5 Crores or more

On 26 July 2019, the Lok Sabha, the House of the People (lower house of the bicameral Parliament of India), passed the Companies Act (Amendment) Bill 2019, which provides that firms which fail to spend the required amount will face fines and their officers potential imprisonment.<sup>8</sup> All unspent money would be transferred to a special account, to be spent on CSR activities.

<sup>5</sup>Bergman, M.M.; Bergman, Z.; Berger, L. *An Empirical Exploration, Typology, and Definition of Corporate Sustainability*, Sustainability 2017, 9, 753.

<sup>6</sup>Dr. T V Muralivallabhan, *A Sustainability Model for CSR in India*, INDIA CSR NETWORK March 21, 2019, Retrieved from, <https://indiacsr.in/a-sustainability-model-for-csr-in-india/>

<sup>7</sup>Wayne Visser, *The Evolution and Revolution of CSR*, 2010, available at, [http://www.waynevisser.com/wp-content/uploads/2012/04/chapter\\_wvisser\\_csr\\_2\\_0.pdf](http://www.waynevisser.com/wp-content/uploads/2012/04/chapter_wvisser_csr_2_0.pdf)

<sup>8</sup>Ministry of Law and Justice, the Companies (Amendment) Act. 2019. Available online: [http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT\\_01082019.pdf](http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf)

It is the responsibility of Board of Directors to ensure that at least 2% of average net profit of last 3 preceding years is spent on CSR activities every year.<sup>9</sup>

Schedule VII of the Companies Act 2013 enumerates the ambit of CSR activities which includes:

1. Poverty eradication
2. Promotion of education, gender equality and women empowerment
3. Reducing child mortality and improving maternal health
4. Combating AIDS/HIV, malaria and other diseases
5. Ensuring environmental sustainability
6. Employment-enhancing vocational skills and social business projects
7. Relief and funds for socio-economic development such as for welfare of SC/ST, OBCs, minorities and women

CSR policy of the company should reflect the following:

1. Projects and programmes that are to be undertaken by the company in pursuit of CSR.
2. List of CSR projects/programmes which a company plans to undertake during the implementation year, specifying modalities of execution in the areas/sectors chosen and implementation schedules for the same.
3. A statement that surplus arising out of the CSR activity will not be part of business profits of a company.
4. A statement that the corpus would include the following:
  - a. 2% of the average net profits,
  - b. any income arising there from
  - c. Surplus arising out of CSR activities.

#### **Indian Companies and Sustainable CSR:**

Data analysed by the Ministry of Corporate Affairs for CSR expenditure of all Indian companies in 2014-15 showed that 14 percent (Rs 1,213 crore) of total CSR spending in India was made on activities focusing on conserving the environment. It was the third highest expenditure on a social impact issue after education (32 percent) and health (26 percent) and was greater than the amount spent on rural development (12 percent).

Among these companies, the top spenders in environment conservation were primarily from the following three sectors,<sup>10</sup>

1. FMCG - ITC (72 crore), HUL (22 crore)
2. Energy companies – NTPC (44 crore), IOCL (30 crore)
3. IT and financial services companies – Wipro (48 crore), Axis Bank (28 crore).

A decade ago, the most common CSR activity with a focus on the environment was planting trees. Indian companies today, are instead focusing on projects that have a sustainable long-term impact, such as installing solar powered lighting systems and water conservation projects.<sup>11</sup>

However, in a race to out power each other in profit making and business expansion, the giant corporate entities of India have contributed to the deforestation and environmental degradation.

Under Supreme Court orders, the Government notified the Compensatory Afforestation Fund Management and Planning Authority (CAMPA) to oversee the process. The Government was to collect funds from projects wishing to use forest lands based on rates set for different classes of forests, called the Net Present Value. These funds were then to be spent on greening other parts of the country in lieu of the forests handed over.<sup>12</sup>

<sup>9</sup> 2% CSR spending would be computed as 2% of the average net profits made by the company during every block of three years. For the purpose of First CSR reporting the Net Profit shall mean average of the annual net profit of the preceding three financial years

<sup>10</sup> Goodera, *CSR and sustainable development: Do Indian companies care about the environment?*, Forbes India, Retrieved from, <https://www.forbesindia.com/blog/life/csr-and-sustainable-development-do-indian-companies-care-about-the-environment/>,

<sup>11</sup> Id

<sup>12</sup> Sethi, N. (2013), *Green Norms Bent to Help Corporates*, The Hindu, September 7, 2013, New Delhi

In report of 2013, the Comptroller and Auditor General of India (CAG) has noted that, the Ministry's records reveal that against the receivable non forest land of 1,03,381.91 hectare, only 28,086 hectare was received during the period 2006-12 which constituted only 27 per cent of receivable nonforest land. The compensatory afforestation done over the non-forest land received was an abysmal 7,280.84 hectare constituting seven per cent of the land which ought to have been received.<sup>13</sup>

The report reveals that some of the leading corporate entities of the country were provided large financial and legal gains while distributing Government forest lands in violation of Supreme Courts' order and forest laws.<sup>14</sup>

Despite such gross non compliance with statutory conditions and orders of the Supreme Court, no action was initiated by Ministry of Environment and Forest (MoEF). In fact, MoEF had invoked penal provision only in three cases during the period August 2009 to October 2012 and even this action was limited to issue of show cause notices.<sup>15</sup>

Therefore, there is need for fixing the liability on corporate entities for sustainable development and accountability in CSR activities. Below mentioned suggestions may be relevant in this regard.

### **Suggestions:-**

Additional tax or other reliefs may be provided to the companies who are engaged in long term sustainable CSR activities.

Specific Sustainable Development Goals (SDGs) as identified by UN shall be integrated in Schedule VII of the Companies Act, 2013 which enumerates activities which may be included by companies in their Corporate Social Responsibility Policies.

Deterrent provisions for noncompliance shall be provided to ensure strict implementation of section 135 of the Companies Act 2013.

There should be proper monitoring mechanism ensuring effective, long term, sustainable CSR activities. Help of institutions like IIM, IITs, NIT's etc. may be taken by Government in monitoring and coordinating these CSR activities. Integrated efforts of educational institutes and corporate entities may yield better result in achieving sustainable development.

Need to sensitize corporate entities about sustainable development and importance of CSR activities focused on environmental sustainability.

Mandatory adoption of ecommerce (paperless) practices, application of ecofriendly technology, manufacturing of ecofriendly products and providing ecofriendly services is another way in which corporate entities can contribute to sustainable development.

### **Conclusion:-**

Today, CSR in India has gone beyond mere charity and donations, and is approached in a more organized fashion. It has become an integral part of the corporate strategy. Companies have CSR teams that devise specific policies, strategies and goals for their CSR programs and set aside budgets to support them.<sup>16</sup> According to Herrmann, an effective CSR regime needs to focus on four important issues: setting standards; monitoring compliance with standards and exposing abuses; creating binding legal obligations; and enforcing those binding laws<sup>17</sup>.

To sum up, the philosophy of CSR is well covered in the words of Gandhiji, *'the rich should ponder well as to what is their duty today... But understand that your wealth is not yours; it belongs to the people. Take what you require for your legitimate needs, and use the remainder for society.'*

<sup>13</sup> Comptroller and Auditor General (CAG) of India, Report No. : 21 of 2013, p. 61

<sup>14</sup> Sethi, N., *Green Norms Bent to Help Corporates*, The Hindu, September 7, 2013, New Delhi

<sup>15</sup> Comptroller and Auditor General (CAG) of India, Report No. : 21 of 2013, p. 62

<sup>16</sup> Araskumar, M.R., *Corporate Social Responsibility: Issues and Challenges*, Int. Educ. Sci. Res. J. IESRJ 2016, 2, 77-79

<sup>17</sup> Herrman K.K., *Corporate Social responsibility and Sustainable Development: The European Union Initiatives as a case study*, Indian Journal of Global Legal Studies, II(2)(2004)