CSR: Assessing the impact of law

Preeti Malhotra
Partner, E-Vehicles &
Executive Director
Smart Global Group

Our world is unequal. Every year, our newsfeeds are inundated by reports that less than 1% of the world owns more than 50% of the world's wealth. The statistic, enrages in part and awe-inspires in the other. Should they own so much wealth? Is it fair that some people are just born into wealth and others are not? People astutely take sides for an argument that no one is going to win.

Despite the tirades of utopian equality and the promises of a few imprudent political theories, there is a deep set inequality in the world that we cannot necessarily fight against. That being said, while we cannot completely defeat inequality, we can always take small measures to cushion the impact of it on those who are less fortunate than us and hopefully pave a more equal platform for the generations of the future.

Corporate Social Responsibility does exactly that.

Across the globe, there is a growing call for public-private partnership to solve the issues we face today. The sheer cost of alleviating the world's problems necessitates investment from the private sector. Any way you look, the business case for CSR is too strong and helps to create a more equitable society.

In 2013, the government of India passed a landmark law – the first of its kind in the world. The new CSR act mandated that companies give 2% of their net profit to charitable causes. This one of a kind judgment confirmed that India had arrived in the age of advanced polity – our public and private sector could look beyond the boundaries that have divided our nation for so long and together play a constructive role in developing the country. However, 3 years on, there is much to be done and debated, if we are to wholly involve the private sector in making the 'New India' that the Hon'ble Prime Minister talks about.

Tying CSR into Corporate Agenda

As per the Companies Act, 2013 – a mandatory 2% spend by companies for CSR was prescribed from a list of 9 schedules pre-identified within the law. Non expenditure on CSR was to be appropriately justified by a reason. For the first time, CSR began to be officially monitored and 4 years later, the results have begun to trickle in. According to a report on CSR expenditures by firms for the fiscal year 2015-16 released in December, it was heartening to know that the collective response of corporates to this law has been highly compliant. According to the Prime Database, collectively, Indian companies have spent INR 9, 309 crore on CSR projects in 2015-16, which is INR 163 crore more than the amount required by law - and INR 703 crore more than the previous year.

In the past decade or so, the Indian society – and rightfully so - has become more conscientious. Corporate Image and brand building are inextricably linked to CSR and corporate efforts for social development.

The Prime Database report also gave a detailed breakup of the sectors receiving charitable aid. Of the nine different schedules prescribed by The Companies Act, two schedules: combating various diseases and promotion of education accounted for 44% of the total CSR expenditure, while reducing child mortality received no funding and eradicating extreme hunger and poverty received only 6% of the total CSR expenditure. The difference in the level of funding received, tells us more about the agenda of CSR undertaken by corporates. Given that about 50% of children in India are malnourished due to pervasive poverty – why did malnutrition and child morality receive little to no aid?

CSR by corporates continues to remain largely disconnected with the larger problem that CSR should seek to resolve. More likely, it is indicative of a marketing agenda inbuilt in CSR - corporates will invest in marketable CSR activities that are played up in the media and reflect well with their urban consumers. People living in cities are more likely to respond to calls for education and preventive healthcare rather than malnourishment, simply because we don't see it in our immediate vicinity.

CSR ACT: Enforcement

While the CSR act has been largely lauded across the country – and even in some parts of the world. There is a subtle nuanced critique that has been floating in the realms for a while.

The charter of the act lays the onus on disclosure rather than action. Noncompliance by non-disclosure is penalised, but CSR spending is voluntary. Also, the act is not supported by regulatory measures that seek to establish the credibility of the NGOs that benefit from CSR.

Because the law is nascent, the government chose to penalise non-disclosure to gain more information about CSR spending patterns and preferences. This has been done to lay the foundation for a more stringent law that could be implemented in the future and may penalise non-investment in CSR also.

Making CSR more effective: Regulating the beneficiary

The scale of CSR investment into charities, necessities regulation of the beneficiary to establish the credibility of the NGOs and monitor the change that these exorbitant sums of money are being used to initiate. Several organisations like TATA, Wipro and Reliance etc have their own foundations to which the 2% funds are directed to. Those corporates without in house foundations can choose to donate to any organisation. The verisimilitude of this expenditure must be being questioned and their impact closely monitored, especially in the light of accusations that the money may be covertly redirected back to the corporate through auditing back channels.

There are also accusation that using the basis of the CSR schedules prescribed in law - companies are now also charging certain activities that they are already undertaking under the head of 'CSR'. Thereby, reducing their social liability without actually changing the way the company operates.

My purpose is not to debate the accusations but to highlight the significance of regulatory provisions if the government is serious about bringing real change and assimilating corporates in to the social welfare agenda of the nation.

This, of course is a global problem. A few years ago in 2015, Mark Zuckerberg famously pledged to donate 99% of his shares to charity. His generous and completely voluntary donation has left millions awe-inspired. But doubts resurfaced almost instantly, as the beneficiary of this $45 billion donation was a Limited Liability Company (LLC) under whose ambit 'advocacy' and lobbying activities for Facebook initiatives such as internet.org neatly fell. How ethical is the use of charitable organisations for advocacy is part of a larger debate – can lobbying help the needy more than real, on ground support?

So, in the case of in-house charities and foundations, there must be legal provisions and a clear tracking mechanism to ascertain the actual total amount spent and the real time impact thereof of the expenditure. Correspondingly, in the case of donations to NGOs not related to the corporate, there needs to be an accreditation system that encourages them to be transparent in order to receive more donations. Social audits, online filing and digitization of disclosures & activities can be made mandatory. This will not only ensure that CSR money is spent in the right manner but also help the government monitor the not for profit sector that has been a regulatory nightmare for successive governments.

Lastly, since the purpose of the CSR clause was to encourage and identify CSR participation – it is now time to initiate a comprehensive data collection and evaluation process on CSR patterns and draw inferences. Policy experts can review this information at the national level and prescribe new guidelines. They can debate either increasing – or decreasing the schedules in which CSR is to be propagated. More detailed norms and qualitative guidelines for 'good' CSR could be outlined on the basis of demographic and financial information that the government has access to. The government can gently cajole private sector investment to be more impactful and responsive to the real needs of social development in India.

Impact Assessment: 3 years on

Overall, it is generally regarded that in the first two years since the CSR Clause in the Companies Act 2013 it came into effect, corporates were more focused on compliance rather than impact. Words like 'impact assessment', 'course correction' were introduced later into the corporate CSR vocabulary.

This experimental relationships with NGOs is coming to an end and companies across the board are entering into projects that fulfil community needs. Impact assessment – as a concept and tool needs to be built-in to charitable projects undertaken by companies enabling them to claim their success in real numbers rather than simply handing over a generous sum of money under the head of 'CSR' in their annual report.

For example, under the aegis of the Swachch Bharat Abhiyaan, most Public Sector Undertakings were asked to build toilets across the country. The only impact assessment this project had was measured in the number of toilets built. However there is no detail on how it has changed the lives of local communities. Has the distance that people often travel to use a toilet been reduced? Has there been any reduction in sanitation borne diseases? How many people does each bio toilet cater to? And more importantly – has the toilet been integrated into the local lifestyle considering that sanitation illiteracy is a real problem.

A CSR project can be a success only when it answers the doubts that its implementation poses. Companies like ITC, Maruti etc have already started considering a projects ability to assess itself before commissioning it. It is highly likely that this is trend that will catch on as CSR becomes more commonplace.

As a regulatory mechanism, Impact Assessment will have to be broken into diverse and multiple units for the government to keep tabs over the actions of companies and their impact on communities. Maybe in the future, a list of local/regional guidelines can be prescribed by state/municipal bodies which can also be audited by independent auditors - any project implemented in a particular area must adhere to these guidelines.

Cost-Shifting: Maximising the impact of CSR for real change

In 2008, Microsoft founder Bill Gate spoke about 'Creative Capitalism' which he defined as "an approach where governments, businesses, and non-profits work together to stretch the reach of market forces so that more people can make a profit, or gain recognition, doing work that eases the world's inequities." With one speech he made social entrepreneurship famous, and encouraged companies to stretch their expertise and bring it closer to the people – especially those who could neither afford nor had the capability to gain more knowledge about it. This offset of capitalistic entrepreneurship started to be recognised as social entrepreneurship – a unique model that encourages profit by doing good.

Social entrepreneurship has become quickly popular because it carries the best of Capitalism and Socialism. Across the globe, the millennial population who are also the leaders of the start-up revolution are attracted by this perfect amalgamation of channelling their sympathy into real action while also making a perfectly sound income as a result of it.

Another way to maximize CSR is by 'cost-shifting'. Albeit a little controversial, this model does hold some potential to be a champion of CSR and rapid social development. Typically, cost shifting would refer to a practice by the company where certain products are made to cost more so cover mark ups on certain other services while the cost of the latter is kept artificially low. Such a marketing strategy allows firms to maintain profits while also doing CSR.

Because it is nascent, the rules for social innovation and development by the private sector are still evolving. Companies must be allowed to play with them within a strong predefined framework that allows independent experimentation without misuse to work out the most effective model for corporate social development for each corporate.

Today, CSR is the only way in which corporates can take responsibility for a society that we all live in and make it better. Simplistically put – a child who is a beneficiary of CSR today will grow up to be a consumer of tomorrow. CSR can be a social tool of the present and the marketing tool of the future – companies across India (and the world) must recognise its potential.