India's Pathbreaking CSR Mandate: Reflections on the Journey

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The decision to mandate for Corporate Social Responsibility in India was not a spur of the moment decision, nor was it made lightly without depth of insight. Beginning with the gargantuan Public Sector, the guidelines took the path of consultative deployment, informed implementation and enabled evaluation. The debate was loud and long and a host of divergent and diverse opinions swept the corridors of government, administration, corporations and non-governmental organizations. Should not CSR be voluntary as it was across the world? Do the corporate entities not know their responsibility towards society that they must be governed by a law? What should be the amount that would be set aside for such mandatory obligation? Fast and furious were the questions and equally well designed and presented the answers. The journey from unmindful philanthropy to mindful discharge of responsibility is one that has been well documented and discussed both within India and across international fora. However, well into the first half decade of implementation, it behoves us to take a look at how the experience has been met by the architects, the implementers and the beneficiaries. Has the mandate for CSR really powered national development and encouraged corporate participation?

What the Act says in Section 135

In a very real sense, the history of modern, strategic CSR in India began with the issuance of the first ever "Guidelines" which were applicable for Central Public Sector Enterprises. Made effective from the 1st of April, 2010, these were a set of comprehensive instructions to Public Sector Companies, on the modalities they needed to adopt for executing their CSR activities. These historic "Guidelines" were the precursor to the ensuing legislation of 2013 and they already incorporated many of the salient features that were to be imbedded in Section 135 of the Companies Act of 2013.

This section, on the passage of the Act, changed the entire CSR landscape for India Inc. Bringing within its ambit all companies above a certain level of profits, net worth and turnover, the new law, in a brief andsuccinct manner, laid down several provisions that raised the bar for CSR activities to a whole new level.

A summarised version reads like this:

Effective 1 April, 2014, the Companies Act 2013 (MCA, 2013) mandated for companies, that have shown net profit of Rs. 5 crore (US $ 1 million) or more or net worth of Rs. 500 crore(US $ 200 million) or more or a turnover of Rs. 1000 crore (US $ 100 million) or more in any financial year[1] private limited or public limited, listed or unlisted, to spend a minimum of 2% of such profitaccrued in three immediately preceding financial years, on corporate social responsibility (CSR) activities[2].

The size of the CSR space

Today, approximately 10,500 of India's richest and most successful companies fall under the purview of the Act. They collectively will bring in approximately Rs. 15,000 crores (US $ 3 billion) into India's development kitty and will address directly the needs of our poor, deprived and under privileged.

The why of the Act

The mandate, by itself, was simple, easy to understand and with ample elbow room and flexibility to operate. The numerous multi-stakeholder debates, consultations and awareness generation forums ensured this. The government had already identified corporate obligation with the issuance in 2011, of the national voluntary guidelines (NVGs) which were advisory rather than mandatory - listing out the social, environmental and economic responsibilities of businesses in India. The new Companies Act, 2013, made CSR spending a statutory obligation for companies incorporated under the Act thus ensuring that companies deriving commercial benefit from business operations participate in the growth and development of that very society within which they function.The simple truth - that corporates cannot succeed in a society that has failed – was being brought tellingly home!

It must be remembered that the unique Indian legislation also had a unique reason for being passed. The raison d'être of the new law, first of its kind anywhere in the world, was simple and direct – provide to India Inc. the chance to participate in the inclusive development agenda of the nation. Whereas development would continue to remain the primary responsibility of the Government, corporate entities would be given the opportunity and scope of complementing and supplementing Government's efforts.

There was also, another very strong reason. It is a truism – across our entire world and particularly in South Asia – that the implementationprocesses of governmentsare notoriously slow, tardy and often riddled with leakages. By contrast, the implementation now conceived by companies would harness their well-known strengths – flexibility, agility, innovation, close monitoring and supervision, outcome-orientation and value for money.

Thirdly, the idea – completely novel in the CSR domain – was to harness the ground-level, grassroots capacities of India's non-governmental and civil society sector. With an estimated 3.3 million registered NGOs, India is the best endowed country in the world for non-profits. They can bring into the implementation process their community level competencies and knowledge thereby imparting to all CSR efforts a mass-level orientation never before heard or seen.

The how of the Act

The main thrust and spirit of the law was two-fold:

- focus on the poor, the marginalized and the down-trodden;
- generate a "conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country."[3]

Several new facets were also brought into play creating not just a paradigm, but a tectonic shift, from the traditional manner in which CSR objectives were generally being pursued not just by Indian companies but mostly by countries across the world. **It is these new facets that made the Indian legislation so distinctive, so different and so new – and, marked such a departure even from the well-known theoretical frameworks such as the "shared value concept" of the Harvard duo of Porter and Kramer**.

The novel Indian approach enjoined upon corporates to:

- Unhitch CSR from the traditional horse cart of philanthropy, charity and a mere cheque writing exercise;
- Do away with the approach of donor and receiver. Treat recipients as partners;
- Begin the whole thought process with the beneficiary directly in mind;
- Remember the adage – what is not measured is usually not done – at least with real seriousness. Hence make each CSR activity rupee-measurable;
- Move away from the story-telling, narrative mindset and focus on creating hard, objective data;
- Realize that the do-no-harm principle is no longer an acceptable philosophy. CSR efforts need to go far beyond in a positive and concrete direction in doing tangible good for the community;
- Look upon every single CSR activity as a stand-alone project. Give it a start date and an end-date; provide both monetary and human resources; assign a credible implementing agency in the shape of an NGO/ Voluntary Organization or Non-profit and ensure meticulous documentation and monitoring.
- Create a clear and cogent CSR Policy for the company delineating the activities/projects to be pursued in the following financial year;
- Constitute a Board level CSR Committee and disclose its composition on the web site;
- Ensure that all CSR decisions are taken only at the Board level so that there is full accountability;
- Insert in the Annual Report of the Company a special section on CSR;
- Report to Government each year in a specific format, details of all CSR projects undertaken indicating money allocated, geographical location and details of implementing agencies – thus ushering in an era of complete and objective transparency[4].

A whole new regimen was sought to be created that suited Indian conditions best, asked Indian companies to join in the national development effort and focus on the basic social and human needs of our country. They were required now to undertake sustainable activities under CSR in a **program mode** with **measurable outcomes**. The new approach also envisioned that companies could design CSR activities to dovetail with the ongoing development programs of the government in order to derive maximum benefit on all fronts. Clearly, the idea was to ensure that companies moved away from doing CSR in a haphazard, intermittent or on-and-off manner and shifted instead to a systematic, planned and consistent approach that looked to leave sustained, measurable and tangible impacts at the ground level. The message was clear – HANG THE GREENWASH OUT TO DRY!!

Perceived Challenges

Undoubtedly, a handful of the better known and bigger companies were already fairly entrenched in the CSR mode, with social responsibility being an integral part of their corporate identity. These companies required both a realignment and an enlargement of their ongoing initiatives and a careful planning of their new ones, so as to conform with the newly envisioned regime. They needed to take several corrective steps and make policy amendments so that resources could be made available, key products identified and produced, services rendered, human resources assigned and communications designed for the programs. The **challenge lay in the companies that were either not pursuing any CSR activities at all or at best practicing mere lip-service**. They needed to begin virtually ab initio, align their vision, missionand company image conceptions totally anew, put in place fresh CSR teams, earmark separate budgets and build capacities both within and without the company.

Administrative Challenges

Companies required time to understand the many facets of the new legislation and to realign both mindsets and internal capacities. They needed to create their own CSR policies, make a 2% provision in their budgets, set up the CSR Committee, bring the entire Board up to speed on CSR, look for dependable and reliable implementation agencies, quickly scale up the CSR competencies of their concerned staff, and prepare for an era of total transparency and accountability. All this required a fairly long gestation and preparation period.

Ideological Challenges

Among the many stumbling blocks in the smooth transition towards adherence with the law are several that are embedded in the culture and ideology of organizations. Primary among them is the difficulty in making a business case for CSR: Organizations are yet unable to perceive value in the practice of CSR and therefore chafe at the so-called stick of the law being wielded upon them.

The next major challenge is that of integrating CSR with organizational values and practices. Most companies believe their expertise lies in creating value through their products and/or services and fail to align CSR philosophy with their own value standards and vision.In addition, several organizations lack buy-in and commitment to CSR.

Operational Challenges

It takes a whole new level of organizational, financial and leadership support to meet the challenge of strategic CSR. Companies, used to the check box approach, now find it that this a whole new ball game where “commitment” is the key word. The requisite financial commitment has been slow to come by in most middle to lower range companies among those who still are India’s most profitable companies. Lack of trained Human Resources is an allied problem that has had to be addressed. It has also been observed that the need for collaboration between credible non-governmental organizations and non-profits on the one hand, and the corporate entitieson the other, has called for a gradual reduction in the trust deficit between the two sides. Add to this the perceived complexity of the legislation-especially in terms of its reportage and functional implementation, has posed challenges not faced by corporates more used to an informal approach to CSR.The need now for a more rational and systematic approach to project identification, based on empirical data, has led to a true wake-up call.

Gestation Period

Experts however, have opined that this period is the gestation period for the companies and for the implementation of the law. It is within these initial years that the administrative and legal compliances will be met by the designated companies. Indeed, we have seen the highest degree of compliance in the constitution of the CSR committees and the laying down of the CSR policy. As the High LevelCommittee put it so succinctly, “It would be premature to comment on the qualitative and quantitative aspects of CSR without giving it sufficient time to brew and have reports coming in. There is no need for penalty at this point – let us allow companies to graduate in 2-3 years’ time to usher in a culture of compliance.”

Trends in activity, reporting and strategy

By and large, this prediction has been proved true. The past three years have witnessed a seismic shift in the approach to CSR – from the side of both corporate India and non-profit India. Companies have started to embrace the new regulation with zest. Many organizations have joined the league along with the earlier front-runners who already had an enviable track record.With the rules of the game written clearly, CSR expenditure has seen a positive growth of around 7.38% that too amidst turbulent economic conditions worldwide. A recent report which closely analyzed the CSR Expenditure of 2000 companies revealed a double digit growth in CSR expenditure which is a positive sign.

In the first two years of the operation of the law, the companies that have chosen to comply, have confined their activities more or less to four or five major areas of the Schedule VII[5] including those of Health, Education, Environment and Sanitation.[6] The areas of healthcare, poverty, hunger - combined as a single cause under the CSR

Rules - 35% of all CSR spending, while education, received 28.2% in the last financial year[7].

It has been observed, that since the onset of the law, corporate entities, instead of just engaging in cheque-book philanthropy, are actually spending time and effort on aligning their social interventions with business expertise and social needs.

Reports have found that compliance to the requirements of the Act has improved. An added spur has been seen by the compliant companies in laying an emphasis on reporting, with detailed program outlines and clearly elucidated evaluation criteria for impact measurement. The number of companies who now place their CSR report on display has risen considerably, and this is a trend that seems to be catching up.[8] A positive trend is visible in the availability of information as compared to the previous reporting year while governance systems – an integral part of reporting mechanisms, also seem visibly strengthened.

Organizations are treating NGOs as business partners and entering into two-way contracts with them for their CSR programs. Strategic partnerships are being built between the two hitherto unamicable partners and companies are moving beyond fund allocation for the project alone, entering into the capacity building scenario with intensive capacity audits of partners. While the lack of trust is still a major stumbling block in partnerships, openness and mutual dependence is certainly on the rise-one of the results that had been envisaged at the time of laying the parameters of the law.

This closer interaction between Corporates and Non-profits may well be termed as a process of "NGO-ization of Corporates and Corporatization of NGOs". NGOs are bringing into the equation their grassroots connect and feel for communities as well as their experience of working with the poor. Corporates are imparting to the Non-formal sector their culture of "presentations", financial statements, monitoring through MIS, systematic funding procedures and the value of audits and impact assessments.

Going by the analysis of the Indian Institute of Corporate Affairs , under the Ministry of Corporate Affairs[9], when it comes to the quantum of spending, the energy sector bags the first slot followed by IT & Electronics and Metal & Mining.Although, as pointed out earlier, companies have largely stuck to the beaten track of education, health, environment and poverty alleviation, it is heartening to see significant initiatives under way in the sectors of gender equality, rural development and care for the aged and the disabled. Activities pertaining to sports, heritage and cultural restoration, slum development, benefits to armed personnel, feature low on the expenditure scale and have to face tough competition from their counterparts which attract maximum takers. Given the manner and speed with which the CSR scenario is gaining traction, it will not be surprising at all, however, to see changing trends that see corporates going for innovative projects in these sectors as well.

Conclusion

With the landmark legislation of 2013, the Indian government has provided a power-start to India's new initiative on CSR by getting India Inc to provide the seed capital needed for growth. As the players in the game acquire experience, gain better understanding and see the new law no more as a challenge, but as a unique opportunity, what will emerge as positive trends will be higher degrees of engagement between companies and their NGO partners, more participation in the CSR activities through skilling of personnel and enhanced focus on outcomes rather than outputs.

Additionally, hard data will, more and more, become available in the public domain. This will ensure transparency on the one hand, and on the other, provide a gold mine for researchers. The latter will now be able to slice and dice easily available data to reach or substantiate research observations and conclusions..

The new dispensation will become a platform forinjecting new and innovative ideas into development and creating transformative social initiatives, not merely as a regulatory measure to be complied with. Company resources will be more and more gainfully deployed and we will see far more emphasis on third-party, objective evaluations of CSR projects. Most recently, the Department of Public Enterprises has already taken a major step in this direction by calling for proposals that will evaluate the CSR activities of Public Sector companies externally and objectively.

In our collective dream of a sustainable future, the government, corporates and civil society will have to play roles that are inter-connected and inter-dependent. Corporates must be motivated to adopt socially responsible practices that enrich, empower and enlighten the communities with which they engage. By exhibiting socially, environmentally and ethically responsible behavior, businesses can generate value and long-term sustainability for themselves while, at the same time, making positive contributions to the betterment of society as time progresses and innovative ideas take centre-stage.

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1 Section 135 (1).
2 Section 135 (5).
3 Recommendation of the High Level Committee on CSR, Ministry of Corporate Affairs, Sept, 2015.
4 For a detailed elaboration, see 'The Genesis of the CSR Mandate in India: Demystifying the Chatterjee Model", Nayan Mitra in Corporate Social Responsibility in India – Cases and Developments After the Legal Mandate, (Switzerland: Springer International Publishing, 2017), pp. 11-19.
5 Permissible sectors for CSR intervention/activities as laid down in Section 135.
6 Crisil Foundation report on CSR spending trends-2016.
7 NextGen Analysis of Top 100 Company's CSR spend for FY 2015-2016.
8 NextGen Analysis of Top 100 Company's CSR Spend in FY 2015-16.
9 IICA CSR REPORT - A Snapshot of CSR Spend in FY 2015-16, September 2016.