CORPORATE SOCIAL RESPONSIBILITY (CSR) AND THE ENVIRONMENT PROTECTION IN INDIA: AN ANALYSIS UNDER THE COMPANIES ACT, 2013

Abdul Jabbar Haque

I. Introduction

‘By now it should be clear that the environment is becoming less capable of sustaining the growing impact of our economic develope

---------- Edward Goldsmith

The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013 and replaced the nearly 60-year-old the Companies Act, 1956.

Corporate Social Responsibility (CSR) is not a new concept in India. However, the new Act has introduced several new provisions which changed the face of Indian corporate business. One of such new provisions is Corporate Social Responsibility (CSR). The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc. from the society. By performing the task of CSR activities, the companies are giving something back to the society.

The new Act has prescribed for companies, an expenditure on corporate social responsibility activities in their respective geographical areas of operation in an outcome and time-driven manner. This is a historic development making India the only country in the world to mandate Corporate Social Responsibility (CSR) for companies. Although there is an increasing emphasis on social responsibility across the world, other countries only require companies to disclose information about

1 Assistant Professor-in-Law Haldia Law College
their environmental, social and employee-related impact, as well as their diversity policy.

II. Definition of Corporate Social Responsibility (CSR)

While there may be no single universally accepted definition of CSR, each definition that currently exists underpins the impact that businesses exist in society at large and the societal expectations of them. The concept of CSR has evolved and now encompasses all related concepts such as triple bottom line, corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability and business responsibility. This is evident in some of the definitions presented below:

The European Commission (EC)\(^2\) defines CSR as “the responsibility of enterprises for their impacts on society”. To completely meet their social responsibility, enterprises “should have in place a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders”

The World Business Council for Sustainable Development (WBCSD)\(^3\) defines CSR as “the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.”

According to the United Nations Industrial Development Organisation (UNIDO)\(^4\), “Corporate Social Responsibility is a management concept


\(^3\)Ibid.

\(^4\)Ibid.
whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (Triple-Bottom-Line Approach), while at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be a strategic business management concept, and charity, sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that.”

From the above definitions, it is clear that:

- The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses.
- CSR needs to address the well-being of all stakeholders and not just the company’s shareholders.
- Philanthropic activities are only a part of CSR, which otherwise constitutes a much larger set of activities entailing strategic business benefits.

As per Rule 2(1)(c) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 "Corporate Social Responsibility (CSR)" means and includes but is not limited to —

(i) Projects or programs relating to activities specified in Schedule VII to the Act; or

(ii) Projects or program relating to activities undertaken by the board of directors of a company (Board in pursuance of recommendations of the CSR Committee of the Board as per declared CSR policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

The term "Corporate Social Responsibility (CSR)" can be referred as corporate initiative to assess and take responsibility for the company's effects on the environment and impact on social welfare. The term generally applies to companies efforts that go beyond what may be required by regulators or environmental protection groups. Corporate social responsibility may also be referred to as "corporate citizenship" and can involve incurring short-term costs that do not provide an immediate financial benefit to the company, but instead promote positive social and environmental change. Moreover, while proposing the Corporate Social Responsibility Rules under Section 135 of the Companies Act, 2013, the Chairman of the CSR Committee mentioned the Guiding Principle as follows:

"CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies. Thus CSR is not charity or mere donations. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate

---

economic, environmental and social objectives with the company's operations and growth."

III. Main Components of Corporate Social Responsibility

The scope of CSR is conceptually quite unbound at the present times. As there is no single commonly accepted definition of CSR, there is no universally accepted classification of the main components of CSR. CSR is related to Environment Protection, Labour Security, Human Rights, Community Involvement, Business Standard, Enterprise and Economic Development, Health Promotion, Education and Leadership Development Human Disaster Relief.

IV. Provisions of Corporate Social Responsibility (CSR) in Companies Act, 2013

IV.I. Implications of CSR

There was no provision for Corporate Social Responsibility spending by companies under the Companies Act, 1956. But the present Companies Act, 2013 has incorporated various provisions with regard to Corporate Social Responsibility. The Act, seeks to make CSR spending compulsory for companies that meet certain criteria. The companies will have to mandatorily spend 2% of their average net profit for CSR activities. If companies are unable to meet the CSR norms, they will have to give explanations. In case, the companies are not able to do the same, they have to disclose reasons in their books. However, an important point to be noted is that even though CSR provisions have been made mandatory for certain types of companies, there is no penalty for non-contribution to CSR. Section 135 and Schedule VII of the Companies Act, 2013 deals with Corporate Social Responsibility. The Companies (Corporate Social Responsibility Policy) Rules, 2014, issued under the Companies Act,
2013, also deals with the procedure to be followed for complying with the CSR norms.

IV.II. Applicability and Constitution of A CSR Committee

The CSR provisions will be applicable to all companies incorporated in India (private or public) as well as foreign companies having a branch office or project office in India. A company which fulfils anyone of the criteria mentioned below in any financial year is required to spend a part of its profits towards its CSR activities.

Section 135 of the Companies Act, 2013 states that every company having:

- net worth of Rs. 500 crore or more, or
- turnover of Rs. 1000 crore or more, or
- net profit of Rs. 5 crore or more.

Every company to which CSR is applicable should, during any financial year shall constitute a Corporate Social Responsibility Committee of the Board. The committee would comprise of three or more directors, out of which at least one director shall be an independent director.

Where Corporate Social Responsibility is applicable to an unlisted public company or a private company which is not required to appoint an independent director, then it shall have its CSR Committee without such independent director.

A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

---

7N. D. Kapoor, *Elements of Company Law* 142 (Sultan Chand & Sons, New Delhi, 2016).

8Ibid.
In case of a foreign company, the CSR Committee should comprise of at least two persons of which one person should be a person resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company and another person should be nominated by the foreign company. The Board's report under Section 134(3) of the Companies Act, 2013 should disclose the composition of the Corporate Social Responsibility Committee.

**IV.III. Nature of CSR Activities**

Activities which may be included by companies in their Corporate Social Responsibility Policies is given in Schedule VII to the Companies Act, 2013. They are as follows—

(i) eradicating extreme hunger and poverty;
(ii) promotion of education;
(iii) promoting gender equality and empowering women;
(iv) reducing child mortality and improving maternal health;
(v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
(vi) ensuring environmental sustainability;
(vii) employment enhancing vocational skills;
(viii) social business projects;
(ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and

---

V. Environmental Protection under Corporate Social Responsibility (CSR)

Out of ten major areas of CSR activities, the item (vi) refers to activities directly relevant to environment and environmental sustainability. The broad areas include ‘ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water’. This is the most positive feature among other scheduled activities under the CSR. These activities are going to contribute in a significant way for the betterment of environment.

The environmental benefits due to practice of environment CSR arise out of recycling of pollutants or waste or effluent, effective disposal of waste, proper treatment of smoke or ash, installation of equipment to protect environment, regular environmental audit, tree plantation, natural resource management, integrated watershed development, rain water harvesting, reclaiming of waste land and environmental awareness programs in schools or colleges.\(^{10}\)

VI. Environmental Impacts and Benefits under CSR

Nowadays when corporate world is growing and almost covering all of the world economy and helping in the progress of all the nations, in this situation corporate world has the highly responsible for the protection of environment and to reduce the environment pollution. To

\(^{10}\)Environment CSR initiatives of manufacturing units in India—An empirical study, available at [http://www.academicjournals.org/AJBM/environment_CSR_initiatives_of_manufac
protect the environment and to reduce the environmental pollution companies can do many things and it helps them in increasing their profits also and by the small things also the companies can increase their profits like:\(^{11}\):
(a) Switch off the light and equipment’s when not working.
(b) Reduce the waste.
(c) Use recycle waste.
(d) Reduce use of water.
(e) Reduce the amount of paper.

The Environmental Benefits under the CSR are as follows:

- Greater material recyclability;
- Better product durability and functionality;
- Greater use of renewable resources;
- Integration of environmental management tools into business plans, including life-cycle assessment and costing, environmental management standards, and eco-labeling.

VII. Constitution of India vis-a-vis CSR

Environmental problem is a burning problems now a days, the need of its protection is a global issue. Industrialisation, urbanisation, population explosion, poverty, over exploitation of resources, depletion of traditional resource of energy and raw material etc. are some of the factor which has contributed to environmental deterioration the world over.

It is the basic right of every human being to live in a healthy environment under Article 21 of the Constitution of India. The crying need of hour is the sustainable development. The expansion of right to

---

life under Article 21 of the Constitution of India inspired the judiciary to open the new ideas in this regard. However, Article 21 of the Indian Constitution contains a right to healthy environment, although the High Courts had gone ahead much earlier. On the other hand, the Constitution (42nd Amendment) to has imposed the duty on the state and the citizens to protect and improve environment, by adding Article 48-A to the Directive Principle of State Policy and Article 51A(g) as a fundamental duty. These insertions have acted as the foundations for building up environmental jurisprudence in the country. Corporate sustainability essentially refers to the role that companies can play in meeting the agenda of sustainable development and entails a balanced approach to economic progress, social progress and environmental stewardship.

VIII. Environment Protection Measures

Courts are the guardians of justice. Therefore the fountain of justice flows through the courts. It is the court to give effect to the provisions of law. It is court to give directions in case of legislative gap to enact new law and give the guidelines. Various judicial pronouncements shall be analysed to find out the directions of justice in the field of protection of environment.

In the case of **Subhas Kumar -vs- State of Bihar**\(^{14}\), the Hon’ble Supreme Court said that pollution free air, water and a life from diseases are a part of Article 21 of the Constitution of India.

---


14 AIR 1991 SC 420
In the case of **B. L. Wadhera-vs- Union of India**\(^{15}\), the Hon’ble Supreme Court said that right to life under Article 21 of the Constitution of India includes right to enjoyment of pollution free water.

In the case of **M.C. Mehta -vs- Union of India**\(^{16}\), the Hon’ble Supreme Court in this case directed that whenever applications for licenses to establish new industries are made such applications should be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories and that immediate action should be taken against the existing industries if they are found responsible for pollution of water.

In the case of **Rural Litigation and Entitlement Kendra, Dehradun -vs- State of Uttar Pradesh**\(^{17}\), the Hon’ble Supreme Court directed to totally stop the operation of mining in certain area on the ground of environment protection.

In the case of **M.C. Mehta -vs- Union of India**\(^{18}\), the Hon’ble Supreme Court issued following direction:

1. Licensed brick kilns within 20 kms. Radial distance of Taj Mahal and other significant monuments in Taj Trapezium and Bharatpur Bird Sanctuary to be closed.

2. District Magistrate and Superintendent of Police concerned to close all unlicensed brick kilns in said area.

3. No new Licensed to be issued for establishment of brick kilns in said area.

---

\(^{15}\) AIR 1996 SC 2969

\(^{16}\) AIR 1988 SC 1115, popularly known as *Ganga Water Pollution Case*.

\(^{17}\) AIR 1989 SC 594, popularly known as *Doon Valley Case*.

\(^{18}\) [(1997) 2 SCC 353], popularly known as *Taj Trapezium Case*. 

183
IX. CSR and Sustainability

In 1972 the first United Nations Conference on the Human Environment was held in Stockholm, Sweden from June 5 to 16, where the seed of the concept of sustainable development was sowed which took 20 years to grow and develop and became an unique and most dependable theory to coincide both development and environment protection in a single given situation.

The concept of ‘Sustainable Development’ is not a new concept. It has also been observed that the concept of ‘Sustainable Development’ was also introduced for the first time by the Stockholm Conference of 1972. Now, this concept has been accepted as a part of the Customary International Law. It had been stated in the declaration that:

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generation”.\(^{19}\)

But the concept Sustainability, i.e., corporate sustainability is derived from the concept of sustainable development which was given a definite shape in a report by world commission on environment, which was known as ‘Our Common Future’. The Commission, which was chaired by the then Norway Prime Minister, Ms. G.H. Brundtland defined ‘Sustainable Development’ as:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.\(^{20}\). It contains within it two key concepts:

---


• The concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and
• The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

The report was popularly known as 'Brundtland report' the concept had been further discussed under Agenda 21 of United Nations Conference on Environment and Development held in June, 1992 at Rio de Janeiro, Brazil.

Environmental sustainability involves making decisions and taking action that are in the interests of protecting the natural world, with particular emphasis on preserving the capability of the environment to support human life. Dimensions of environmental sustainability may vary from place to place and with time. Hence, while undertaking CSR activities there is need for identification of issues that are relevant to the area and working on those. Currently issues such mitigation of adverse effects of climate change, generation and supply of clean energy, augmentation of water resources and its supply, public health, sustainable consumption and production of resources, environment friendly transport facility, conservation and management of natural resources etc. are some of the issues relating to environmental sustainability. CSR can be of great help in ensuring environmental sustainability, also by developing the knowledge and skills of people, helping in implementation of programs promoting environmental innovation, monitoring the environmental impacts and actions for
mitigation of impacts, promoting an environmentally sustainable and responsible culture etc.\textsuperscript{21}

There are variety of cases have been come before the Supreme Court of India and before various State High Courts, where corporate houses are made liable for environment pollution and is degradation. But it would be unwise to hold that the courts always favour environment without giving any significance to the development aspect when dispute arises between environment and development.

The first case on which the apex court had applied the doctrine of ‘Sustainable Development’ was \textit{Vellore Citizen Welfare Forum -vs- Union of India}\textsuperscript{22}, the Hon’ble Supreme Court held that remediation of the damaged environment is part of the process of ‘Sustainable Development’ and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

In the case of \textit{Rural Litigation and Entitlement Kendra -vs- State of Uttar Pradesh}\textsuperscript{23}, the Hon’ble Supreme Court allowed a mine to operate until the expiry of lease as exceptional case on condition that land taken on lease would be subjected to afforestation by the developer. But as soon as the notice was brought before the court that they have breached the condition and mining was done in most unscientific way, the Supreme Court directed the lessee to pay a compensation of three lacks to the fund of the monitoring committee. This has been directed on the principle of ‘polluter pays’.

\textsuperscript{21} Environmental Protection and Sustainability through Corporate Social Responsibility (CSR) in India, \textit{available at:} http://www.apexjournal.org.environment.protection.sustainability.csr (Last Visited on January 1, 2017)

\textsuperscript{22} AIR 1996 SC 2715

\textsuperscript{23}[(1985) 2 SCC 431]
Likewise, various forests have also been protected. In a landmark case of *Tarun Bhagat Singh -vs- Union of India*\(^{24}\), the Hon’ble Supreme Court issued directions that no mining work or operation could be continued within the protected area.

In the case of *M. C. Mehta -vs- Union of India*\(^{25}\) (Popularly known as *Delhi Industrial Pollution Case*) the Hon’ble Supreme Court ordered for the shifting of 168 hazardous industries operating in Delhi as they were causing danger to the ecology.

In the case of *Kinkari Devi -vs- State Himachal Pradesh*\(^{26}\), the Hon’ble High Court of Himachal Pradesh Relied on *Doon Valley Case* and pointed out that if a just balance is not struck between development and environment by proper tapping of natural resources, there will be violation of article 14, 21, 48-A and 51-A(g) of the Constitution. It is further observed by the Hon’ble Court that tapping has to be done with care so that ecology and environment may not be affected in any serious way.

In the case of *M. C. Mehta -vs- Union of India*\(^{27}\) (Popularly known as *Industrial Closure and Relocation Case*) the Hon’ble Supreme Court ordered the shifting, relocation and closure of certain industries to control increasing air pollution in Delhi.

In the case of *Ishwar Singh -vs- State of Haryana*\(^{28}\), the Hon’ble High Court issued the directions for closing down the stone crushing business of those which were not situated within the identified zone.

\(^{24}\)AIR 1992 SC 514
\(^{25}\)[(1996) 4 SCC 750
\(^{26}\)AIR 1988 HP 4
\(^{27}\)AIR 1996 SC 2231
\(^{28}\)AIR 1996 P & H 30
In the case of T.N.GodavarmanThirumulkpad -vs- Union of India\textsuperscript{29}, the Hon’ble Supreme Court issued interim directions that all the ongoing activities within any forest in any state throughout the country, without the permission of the Central Government must be stopped forthwith.

In the case of V. Lakshmipathy -vs- State of Karnataka\textsuperscript{30}, the Hon’ble Karnataka High Court in public interest litigation directed the Municipal Corporation to stop the industries set up in the residential area.

In the case of M. L. Sud -vs- Union of India\textsuperscript{31}, the Hon’ble Supreme Court issued the necessary directions to the concerned authorities for maintaining the city.

In the case of Ajay Singh Rawat -vs- Union of India\textsuperscript{32}, the Hon’ble Supreme Court issued certain direction regarding the preventive and remedial measures to be taken on war footing so that Nainital may regain its unsoiled beauty and attract tourists.

In the case of Dr. B. L. Wadehra -vs- Union of India\textsuperscript{33}, the Hon’ble Supreme Court held that the authorities’ concerned (municipal corporation of Delhi and New Delhi Municipal Council in this case) have a mandatory duty to collect and dispose of the garbage /water generated from various sources in the city.

**X. Corporate Social Responsibility in India**

India is one of the largest economy in the world and increasingly an important player in the emerging global order with the largest number

\textsuperscript{29}AIR 1997 SC 1228, popularly known as Forest Conservation Case.  
\textsuperscript{30}AIR 1992 Kant 57  
\textsuperscript{31}[1992 Supp. (2) SCC 123]  
\textsuperscript{32}[1995 (3) SCC 266]  
\textsuperscript{33}[(1996) 2 SCC 594]
of people living in state of poverty. However, India has a large public sector with several huge corporations and companies operating in various sectors like petroleum, heavy industries, aviation, mining, steel, equipment manufacturing and shipping. The Indian public sector has had a long tradition of corporate social responsibility and the initiatives of corporations like the Oil and Natural Gas Corporation Ltd. (ONGC), Steel Authority of India Ltd (SAIL) and Gas Authority of India Ltd. (GAIL) have played an important role in the development of several backward regions of the country. Indian Airlines and Bharat Heavy Electronics Ltd. (BHEL) have been widely acclaimed for their disaster management efforts. The National Mineral Development Corporation Ltd. (NMDC) has contributed a lot in building infrastructure like school buildings, roads, Anganwadi buildings and also providing ambulance and medical facilities in and around its operational area. Although various NGOs have started giving attention towards their social responsibility, the private sector has to go a long way in coming up to the expectations in the area of social responsibility. It is not true that only achievement and success has only recorded with, some failures are also there. Therefore, it is important to strengthen the law enforcement and monitoring authority to control such anomalies in future to guarantee environmental and social responsibility of the corporate houses.

XI. Conclusion and Suggestions

The introduction of Section 135 in the Companies Act, 2013 has wide-ranging implications for nation’s social, environmental and economic development. This paper outlines the implications of the provisions of the section on companies and NGOs. Although Schedule VII lists the focus areas, i.e., education, environment, health, hunger, gender equity

\[34\text{Supra Note 4.}\]
and women empowerment, it is important to note that they are not mutually exclusive. Therefore it is also important that a coordinated approach is adopted to develop a national level framework such that investments made by individual companies align with the overall framework.

The healthy environment is central to economic activity and growth. It provides the resources economy needs to produce goods and services, and it absorbs and assimilates unwanted by-products in the form of pollutants and wastes. Normally it is believed that economy and environment are contrasting to each other. In fact, it is not true and both can flourish simultaneously if corporate, people and governments act in a responsible manner. Incorporating environmental elements in CSR activities in the Companies Act, 2013 and making it obligatory for the companies are significant positive steps in saving environment. If implemented properly the CSR can be of great help in protecting environment and achieving environmental sustainability. There is need for sensitizing corporate and business houses towards regarding the importance of the three pillars of sustainable development i.e. economic, social and environmental. For better performance of CSR, it is also required that all stakeholders such corporate, civil society, academia, technocrats and regulatory agencies should work in cohesion by making valuable contributions in their respective domains.

To conclude CSR as a business imperative must not be accepted grudgingly or half-heartedly. Instead, it must be practiced with full vigour and straight from the heart passion and this certainly helps the companies' in the long run meaningful impact on society and its future is bright in coming years. After all, business is by the people, for the people and of the people.
Suggestions

The success of CSR lies in practicing it as a core part of a company’s development strategy. It is important for the corporate sector to identify, promote and implement successful policies and practices. It is a joint and shared responsibility of civil society, activist groups, Government and corporate sector to create appropriate means and avenues for the marginalized and bring them to the mainstream. Every company in the world have to adopt the corporate social responsibility as their bottom line to protect the environment because the environment protection issue are on the peak and if every company adopted the policy than it will help the countries to protect the environment and society. CSR is highly responsible for the protection of the environment and to reduce the environment pollutant. In order to crystal gaze the future of CSR in India and take time bound steps to mainstream it, few recommendations are suggested.

i. CSR as a subject or discipline should be made compulsory at schools, in colleges and universities to sensitise students about social and development issues.

ii. To develop partnerships between all stakeholders including the private sector, employees, local communities, the Government and society.

iii. To take compensation from the company which pollutes the environment.

iv. To make Government policies for the protection of environment.

v. To adopt CSR is compulsory for the companies.

vi. To take Companies voluntarily the steps to protect the environment.

vii. Lay more focus on education, health, environment protection, livelihood, women empowerment, disaster management, green
marketing, ethical practices, etc., and other social and community relevance issues.

viii. Partnerships between companies, NGOs and the government should be facilitated so that a combination of their skills such as expertise, strategic thinking, manpower and money to initiate extensive social change will put the socio-economic development of India on a fast track.