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CORPORATE SOCIAL RESPONSIBILITY AS REGULATED BY THE COMPANIES ACT, 2013: STATUTORY PROVISIONS AND LEGAL FRAMEWORK

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Abstract

Corporate social responsibility, or CSR, is the practice of conducting business in which businesses make a noticeable contribution to the entire ecosystem in which they operate. Businesses that engage in social responsibility take into account equitable growth and sustainable development in addition to measures that boost their earnings. Businesses utilize corporate social responsibility (CSR) to align their operations and growth with their social, environmental, and economic objectives. CSR is believed to build a company's reputation and goodwill among consumers and the broader public. The hallmark of business is to prioritize three things: people, the environment, and profit in addition to the bottom line. When they use the term "society," they mean the worldwide concern for sustainable business practices, the environment, or ecology. According to government regulations (Section 135 of "The Companies Act, 2013," under rules of 2014, Schedule VII), businesses with net worth, turnover, or profit after tax (PAT) above a specific threshold are required to report on their annual report, give an explanation, or donate 2% of their net earnings over the preceding three years to social development. The "Companies Act, 2013" need for required spending and disclosure of CSR efforts is the main topic of this essay. The research also discusses the primary shortcomings of the provision that would make it unworkable. As it examines the CSR phenomena within the framework of "The Companies Act, 2013," this article is both exploratory and descriptive. It also gathers data using a survey approach that aims to provide information and explicit knowledge in the public domain.

Keywords: Corporate Social Responsibility, Section 135, the Companies Act 2013, Schedule VII, Sustainable Development.

1.Introduction

A company's sense of obligation to the society and environment (both ecological and social) in which it operates is referred to as corporate social responsibility, or CSR. Businesses can fulfil this responsibility by reducing waste and pollution, contributing to social, environmental, and charitable causes, and taking comparable steps. The phrase "social responsibility" refers to an organization's altruistic endeavours to enhance society. The fundamental moral precept is that enterprises must give back part of the resources they utilize to society. Donations and charity are not the same as corporate social responsibility. According to Peter Ducker, "Corporate Social responsibility needs executives to believe to what extent their deeds are likely to endorse the community excellence, to promote the basic faith of the

general public, to add to its stability, potency, and harmony."

Over the past three decades, India's economy has undergone economic liberalization, privatization, and globalization, making it one of the fastest-growing in the world. The industrial sector has produced a great deal of wealth over the years. However, a significant portion of the population still lacks access to basic amenities like clean water, sanitary restrooms, medical care, and educational institutions because the general public has not yet benefited from economic growth and development. India is ranked 135th out of 187 countries in the most recent Human Development Report. The country still has the biggest percentage of impoverished, malnourished children with limited access to healthcare and educational resources, despite being regarded to be an emergent global player.

The unequal distribution of income may be the primary source of societal discontent. With the rich getting richer and poverty statistics showing no indications of decline, the government made every effort to involve the corporate sector as a major contributor to social development projects. Additionally, the Indian government has shown bravery by allocating company profits to those who most need them. "The Companies Act, 2013" introduced corporate social responsibility (CSR) laws, making it the first nation to do so. Certain corporations are required by law to comply with certain CSR obligations. Companies that have a net worth of at least Rs. 5 billion, a turnover of at least Rs. 10 billion, or a net profit of at least Rs. 50 million greater than in the prior fiscal year are subject to net of statutory CSR provisions. This also applies to foreign companies with project offices or branches in India that meet the aforementioned criteria. If a company fails to satisfy the aforementioned standards for three consecutive fiscal years, it is released from CSR Provisions until it meets the requirements. Government regulations require businesses whose net worth, turnover, or profit exceeds the aforementioned criteria to donate 2% of their net earnings from the previous three years to social development, either in their annual report or by providing an explanation if they did not. According to the "Comply or Explain" policy, failing to provide an explanation for a short investment or non-investment can result in a punishment of at least Rs. 50,000 and up to Rs. 2.5 million.

The CSR provision in "The Companies Act, 2013" seems to be an earnest attempt to further the goals of equitable development while also promoting increased openness and disclosure. In his draft proposal for the Corporate Social Responsibility Rules under Section 135 of the Companies Act of 2013, the Chairman of the CSR Committee defined corporate social responsibility (CSR) as the process by which a company considers and develops its relationships with stakeholders for the benefit of all, and it shows commitment by implementing the proper business practices and strategies. For this reason, CSR is not charity or simple presents. CSR is a business strategy that allows organizations to directly support the community. Companies that practice social responsibility integrate environmental and social goals into day-to-day operations and business expansion in addition to allocating resources to programs that boost earnings.

Several laws and guidelines cover topics including investor transparency, health and safety, and the minimum wage. None, however, address supplier ties, community impact, or environmental impact disclosure in its books of account. Opinions on CSR are equally divided; some want a legal framework, while others think it would ruin everything. This is a common explanation for why new laws will be detrimental to corporate social responsibility. This suggests that companies would only comply with legal requirements if CSR were governed by rules. Right now, voluntary CSR has the benefit of being innovative.

However, the claim is that legislation would eliminate moral drive. The Companies Act of 2013, which requires companies with a

minimum net profit of Rs. 50 million to spend money on such programs, is expected to encourage more SMEs to engage in CSR, according to a report by CIIs. Products are being marketed to business-to-business (B2B) at competitive pricing or low profit margins, rendering businesses unviable with added CSR charges. This will provide a whole new set of challenges for this industry. According to a Forbes India survey, only six of the top 100 Indian companies (based on net sales figures) donated more than 2% of their post-tax income to CSR initiatives.

2.The History of Legislation and Execution: A Corporate Social Responsibility Movement

For more than 50 years, India's primary corporate law statute was the Companies Act, 1956, which was passed soon after the country's independence in 1947. Following the primacy shareholder model, the Act was passed during a time when shareholder centricity was presumed. This shareholder arrangement was founded on the Companies Act of 1956. The Companies Act was created for a non-free market economy, and numerous lawmakers have tried, but failed, to amend it.

2.1 Initial Actions for Social Responsibility

Even in 1999, the corporate governance reforms committees of the Securities and Exchange Board of India (SEBI) demonstrated a shareholder-centric approach. According to the 1999 Kumar Mangalam Birla Committee on Corporate Governance Report, for example, their suggestions would "ultimately serve the objective of maximizing shareholder value." This report said that shareholders constitute the "raison de etre" for corporate governance and also the primary constituency of SEBI, but acknowledging that corporate governance encompassed the interests of "all other stakeholders." Nevertheless, the finding is noteworthy because it may be the first time non-shareholder interests have been recognized in Indian corporate regulatory history. Clause 49 of the Listing Agreement from 2000 eventually codified the Birla Committee's recommendations.

In its preamble, the 2003 Report of the SEBI Committee on Corporate Governance emphasized the importance of shareholder primacy. Financial disclosures, such as those pertaining to related party transactions, non-executive director salaries, and IPO profits, were the main topics of this report. In 2004, clause 49 was amended in response to the committee's suggestions.

The government created a thorough concept paper in 2004 following unsuccessful attempts to amend the Companies Act to incorporate CSR standards.8 In order to satisfy the demands of a nation that has moved from a socialist to a hybrid free-market economy, this draft sought to modernize and unify business legislation. Additionally, the Indian government established the Expert Committee on Company Law, which is led by Dr. J.J. Irani.

The 2005 Expert Committee on Company Law Report advanced the shift to a broader perspective of stakeholders. It signalled the beginning of a gradual shift toward taking non-shareholders' interests into account. "The framework for regulation... has to...enable protection of the interests of the investors and other stakeholders," the report stated, taking into account the interests of non-shareholder constituencies. The framework that "ensures the credibility of corporate operations in the minds of the stakeholders" is also highlighted in the report. The Report highlights the significance of disclosures, stating that "the presence of an informed and vigilant group of stakeholders is the best enabling environment for compliance with the law." Additionally, The Report describes a hierarchy of sanctions such that the punishment is appropriate for the offense. According to this judgment, "violations of a procedural nature that do not irretrievably damage stakeholder's rights need to be treated differently," but "actions that deprive shareholders of their rights need to be treated seriously."

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It's interesting to point out that while the report considers non-shareholder interests, only the denial of shareholder rights is subject to "serious" consequences. Consequently, it is most likely no accident that the CSR clause that was eventually included to the Companies Act of 2013 stipulates a penalty for failing to disclose CSR information in the board's report but excludes any punishment for failing to meet the CSR spend requirement. In the end, a large portion of the Companies Act of 2013 was derived from this report.

2.2 The 2009 Voluntary Guidelines for Corporate Social Responsibility

The Corporate Social Responsibility Voluntary Guidelines 2009 were released by the MCA shortly after the Expert Committee on Company Law's Report. Salman Khurshid, the Minister of State for Corporate Affairs at the time, stresses the growing wealth disparity in the nation in the Guidelines foreword by contrasting the expansion of business with the issues of "poverty, unemployment, illiteracy, and malnutrition, etc." Guidelines, however, make it clear that the CSR under consideration is not altruism. In contrast to the Companies Act of 2013, the 2009 Guidelines take a more comprehensive approach to CSR. The Guidelines concentrate on both CSR activities and the ethical and sustainable conduct of organizations, whereas the Act only considers CSR expenditure in the designated activities. The rights of all parties involved and human rights in general are also outlined in the Guidelines. Through the commerce goal, the plan provides assurance that the Corporate Social Responsibility program is a crucial component of the entire commerce strategy.

2.3 Voluntary Social, Environmental, and Economic Guidelines Business Responsibilities, 2011

The Ministry of Corporate Affairs created the National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business two years after the Voluntary CSR Guidelines were released. These rules are based on the following principles:

(1) companies should conduct and govern themselves with ethics, openness, and responsibility;

(2) companies should offer products and services that are safe and contribute to sustainability throughout their life cycle;

(3) Businesses should support the welfare of all employees;

(4) Businesses should respect the interests of all stakeholders, particularly those who are marginalized, vulnerable, and disadvantaged;

(5) Businesses should respect and promote human rights;

(6) Businesses should respect, protect, and work to restore the environment;

(7) Businesses should act responsibly when influencing public and regulatory policy;

(8) Companies should promote equitable development and inclusive growth;

(9) Companies should responsibly interact with and offer value to their clients and consumers.

These guidelines include a methodology for reporting on business responsibility and mandate that businesses disclose the actions they have done to put these principles into practice. Interestingly, Annexure A to the Guidelines offers a "Business case" for the advantages of adhering to the Guidelines, despite the fact that they have been justified as a way to support the nation's inclusive growth. The business case offers advantages that go beyond social responsibility, suggesting that it also improves a company's financial performance.

2.4 The 2012 SEBI Circular on Business Responsibility Reports

In 2011, SEBI added clause 55 to its listing agreement in accordance with the MCA's National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business, 2011.The clause mandates that

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business responsibility reports be included in yearly reports for the top 100 listed entities. Since the listed companies "have accesses funds from the public, they have an element of public interest involved and are obligated to make exhaustive continuous disclosures regularly," SEBI General Manager Sunil Kadam noted that businesses are increasingly being viewed as part of the social system. Clause 55 of the listing agreement mandates, among other things, that businesses declare their list of CSR initiatives and the total amount they spend on CSR as a percentage of their annual earnings after taxes.

SEBI acknowledged that a large number of India's top 100 listed businesses are cross-listed on foreign stock markets and must meet those stock exchanges' listing requirements. As a result, the amendment freed businesses from this need when they submitted sustainability reports to stakeholders or regulatory bodies abroad. As long as the information required by the business responsibility report is covered, it is sufficient for such enterprises to make the sustainability report available to their stakeholders.

2.5 Passage of The Companies Act of 2013

Before the Companies Act of 2013 was passed, there was intense discussion on the Corporate Social Responsibility clause. Under pressure from the Standing Committee of Finance, the Ministry of Corporate Affairs first included a Corporate Social Responsibility clause in the Act. The then-secretary to the government at the Ministry of Corporate Affairs acknowledged that it was debatable whether the "government should mandate anything," but that the Ministry of Corporate Affairs had taken a "considered view" in introducing the provision, reflecting its contentious nature. "The whole emphasis of the Act is disclosure method," the secretary said in response to the Standing Committee Chairman's inquiry regarding corporate social responsibility monitoring.

In later drafts, the CSR clause was modified to make the requirement more mandatory. Interestingly, the 2009 draft only mandated that the board "make every endeavour to ensure" that the necessary CSR expenditures are paid. This was changed to "the board shall ensure" in the 2011 version of the bill, making it a requirement for the board. Shri Sachin Pilot, the Minister of State for Corporate Affairs, defended the clause as "clearing the air" and "correcting the divide between the rich and poor which is getting bigger and bigger" during the bill's debate in the lower house of Parliament. This could "only be done if the companies themselves move forward and show they are responsible, sensitive, and they want to give back to the society," according to the minister.

Finally, in 2013, reformers were able to push legislation through Parliament via a painful process. The Ministry of Corporate Affairs refused to yield in the face of conflicting demands. The final version of the Companies Act of 2013 retained the mandatory CSR mandate included in section 135.

2.6 Statutory Provision for Corporate Social Responsibility (starting April 1, 2014)

Any commercial enterprise's ability to operate successfully depends on its ability to fulfil its obligations to society and other stakeholders. The scope and character of fulfilling this obligation are always evolving due to a variety of social, political, and economic factors. In terms of civilization, there isn't a single, universally applicable prescription. The strategy must remain adaptable in order to satisfy the evolving demands of society.

After much discussion, an amendment to the Companies Act of 2013 was made, and on April 1st, 2014, a specific legal provision under section 135 was inserted, making corporate social responsibility (CSR) mandatory for the comparatively larger profit-making companies for the first time.

Sub-section (1) of section 135 lays forth requirements for the companies that fall under this legal regulation, including those that have:

- The 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 during any financial year.

The statutory liabilities of the companies, which become liable under the above, fall under four heads, viz.

i)Establishment of a board-level CSR committee with three or more directors, at least one of whom must be independent [under Sub-section (1) of section 135].

ii) A CSR policy outlining the company's operations should be developed and recommended by the CSR committee. Activities. Those are included in schedule 7 of the Act and may be carried out under these provisions. Schedule 7 was first announced on February 27, 2014, and has since undergone periodic revisions. The final section of this work includes an appendix with the revised timetable.

iii) Spending on these initiatives in accordance with the CSR policy at least two percent of the company's average net profit over the prior fiscal years,

The committee will oversee the CSR policy's execution and suggest how much money should be spent on various initiatives.

iv) Disclosure and reporting on CSR activities: in the annual report, the CSR committee's structure and makeup are disclosed, along with the activities carried out during the year and the reasons why the required two percent of average net profit could not be spent in a given year. [under the second proviso of section 135's subsection (5).

On February 27, 2014, the Companies (CSR) Policy Rules, 2014 were released, providing information on how the aforementioned rule would be implemented. In the final section of this work, this is annexed.

2.6.1 Penalties for Noncompliance

According to the general requirements directing infringement of any provisions of the Companies Act, 2013, every firm falling under the aforementioned legal regulation is liable for failing to establish a CSR Committee and/or formulate a CSR Policy, among other things.

The legal requirements pertaining to reporting the expenses incurred along with the grounds for not spending the authorized amount, which is two percent of the average profit of the previous three years. If you don't spend the allotted amount, there is no penalty. However, under section 134(8) of the Act, the corporation faces penalties for failing to submit the reasons. Section 134 clause 8 applies to the corporation that does not provide an explanation in its annual report.

Unspecified omissions will fall under section 450, read in conjunction with section 451, which offers residual provision. In February 2015, a high-level committee (HLC) was established to investigate the law provision's implementation. In order to execute the legal provision, some of the HLC's recommendations have been taken into consideration while changing the Schedule and Rules' provisions.

In the Circular dated June 18, 2014, the government clarified a number of concerns pertaining to the application of the legal requirement.

The annexure at the end of this thesis work contains the provisions of section 135 of the Companies Act, schedule VII, which lists the activities that are allowed under CSR, the rules outlining the procedural aspects of implementation, and the Ministry of Corporate Affairs' clarification on this legal provision.

The aforementioned legal provision seems to have been motivated by the idea of encouraging and persuading corporations to support social causes rather than pressuring them to do so. Companies who are losing money are exempt from the legal requirement to spend on CSR since it is based on the average earnings over the previous three years. In many government-managed Central Public Sector Enterprises, earmarking two

percent of the profit for CSR initiatives also seems to be based on current practices.

The concerned company has been granted complete autonomy in selecting, creating, and carrying out CSR initiatives. It has been mandated that these organizations establish an exclusive partnership with a board-level CSR committee that includes at least one independent director in order to ensure optimal utilization.

Furthermore, these businesses have been required to develop a CSR policy for long-term effects. The business has been offered the choice to pursue initiatives in the outlying areas of its organization. where the company's operations have an impact on the local population or in other parts of the nation. In order to make the interventions relevant and durable, the companies must prepare projects that show the connections.

By requiring each company to provide information about its CSR activities throughout the year in its annual report, including a list of projects undertaken and the amount spent, the control on CSR implementation has been kept indirect. The need has been maintained for the expenditure of two percent of the profit, primarily to reveal the real amount spent and, in the event that it is less than the two percent restriction, to explain why the amount could not be spent. This legal provision and method are in line with the spirit of democracy and the Constitution for disclosing information so that the stakeholders—which include investors, employees, customers, and the general public—are aware of the significance the company places on CSR and the activities carried out. The fundamental ideas assume that the market and consumers would value a company's CSR initiatives. This will therefore influence consumer behaviour and establish the company's reputation and brand value in the marketplace.

As a result, the punishment has only been retained for withholding information. Therefore, if a firm does not spend the allotted two percent of profit, it is not considered to have broken the law as long as it provides the public with information about its CSR initiatives and the reasons behind its inability to do so. The penalty only applies if the information is not disclosed in a timely manner, in which case both the defaulting company and the specific officer handling the matter would be held accountable.

The legislation governing CSR has been novel in that it aims to incentivize businesses to invest in and disclose CSR initiatives.

3.Conclusion

In a nutshell the government of India has not abandoned its obligation to the private sector as a result of the new CSR regulations. When compared to the government's overall social sector investment, the anticipated yearly corporate social responsibility (CSR) spending is only about 2% of what listed businesses would have spent under Section 135. Instead, it is best to view the new CSR regulations as an attempt by the government to encourage the corporate sector to contribute to the larger societal objective of comprehensive development.

Numerous businesses and big corporations are willingly investing significant sums of money in CSR initiatives. These expenditures are mostly used for neighbourhood development, primary healthcare, education, safe drinking water, etc. in the areas where the firms are situated. However, the nation's CSR initiatives are hampered by a lack of knowledge, underqualified staff, a lack of reliable data, and particular information about the kinds of CSR initiatives that businesses ought to fund.

The flexibility granted to businesses in selecting and overseeing projects under the new CSR regulations is likely to increase project implementation efficiency and effectiveness without seriously interfering with the main goal of businesses, which is to maximize shareholder value. The new CSR regulations appear to have struck a good balance between social and commercial incentives, and it is reasonable to assume that business will voluntarily assist the

government in promoting the country's inclusive development.

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