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Sapovadia, Vrajlal

Shanti Business School, Ahmedabad, India

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Dr. Vrajlal Sapovadia

Abstract:

CSR activities as applicable under the new company law in India may be used as sustainability strategy by the business. In order to comply with the mandate and with a positive mind set to augment implied benefits thereof, author investigates selected business scenarios to find an optimal pattern of CSR activities that may have long term beneficial impact to the critical stakeholders. This strategic framework propose sustainability model over triple bottom line by addressing holistic issues in the business process: internal & external stakeholders, active & passive stakeholder, and living & non-living stakeholders.

The first part of the paper includes the outset and the context of the subject matter of research. The second part list out the activities covered under CSR of new legislation. The third part of the paper links activities, its impact and the beneficiary. The final part after discussing the framework of cost-benefit analysis builds a broad inclusive model for strategy formulation.

Under the provisions of The Companies Act 2013, the Ministry of Corporate Affairs has notified the Companies (Corporate Social Responsibility Policies) Rules 2014 on 27th February 2014. All companies covered under the Act are required to constitute Corporate Social Responsibilities (CSR) committee under Section 135, if they meet any one of the following conditions:

- Turnover of INR 10,000 million or more
- Net worth of INR 5,000 million or more
- Net profit of INR 50 million or more during any financial year

The paper describes in detail some of the first hand following activities if undertaken, how it complies with CSR Rules and create value for the company & society:

- Educating people and employees to find & use alternative sources of energy, use of efficient and environmental friendly equipments and its accounting
- Conservation of natural resource in staff colonies and other surroundings
- Renewable energy projects in employees colonies and other surroundings
- Sensitizing people on healthy life style and balancing career, family & personal life

- Creating awareness on usage of food, preventing food waste and its preservation
- Educating the masses and promotion of road safety awareness in all facets of road usage, particularly in area where employees reside
- Supplementing government schemes like mid-day meal by corporate through additional nutrition
- Food supply as a disaster relief measure
- Consumer education and awareness
- Undertaking renovation or modernization of any grant-aid/public education institute
- Research and studies in above items to bring improvements, the employee creativity & innovation may build strong base

The paper concludes with some concrete suggestions, limitations that are visualized and lead for future research.

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Introduction

Corporate Social Responsibility (CSR) is a buzz word in all public platforms, research conferences, universities, politics and media. CSR is neither new in India, nor widespread in its real sense. Few companies carried out implicitly and seldom explicitly CSR activities as part of their routine activities since decades. CSR activities became topic of discussion in last decade. As a result many companies joined the flock to carry out CSR in absence of any mandate, on their own. Then came the law on CSR in India. CSR activities as applicable under the new company law in India may be used as sustainability strategy by the business. In order to comply with the mandate and with a positive mind set to augment implied benefits thereof, author investigates selected business scenarios to find an optimal pattern of CSR activities that may have long term beneficial impact to the critical stakeholders. This strategic framework propose sustainability model over triple bottom line by addressing holistic issues in the business process: internal & external stakeholders, active & passive stakeholder, and living & non-living stakeholders.

The structure

The first part of the paper includes the outset and the context of the subject matter of research. The second part list out the activities covered under CSR of new legislation. The third part of the paper links activities, its impact and the beneficiary. The final part after discussing the framework of cost-benefit analysis builds a broad inclusive model for strategy formulation.

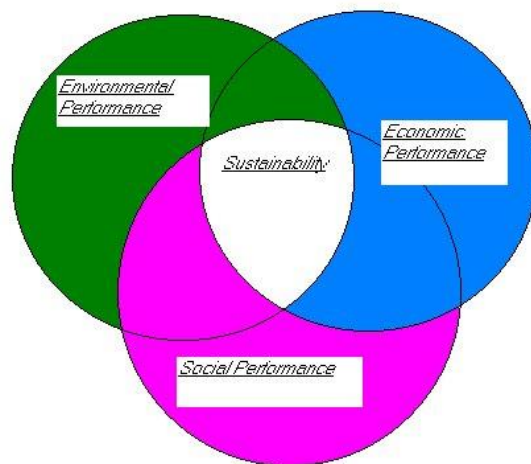
Significance of the study

Many large companies believe in their sustainability initiatives and are keen to continue their endeavours for social empowerment. They are streamlining their current CSR activities to meet the provisions of law. For instance, the welfare initiatives which were so far restricted to the company's workforce and their families are now opened up to other sections of society as well. Some of the CSR committees have also proposed to undertake CSR programmes involving a large outlay. They have recommended to the boards accumulation of CSR reserve for initial years to ensure availability of adequate funds when the project is launched. Spending the entire

budget of 2 per cent of net profit is also proving to be a challenge. While the CSR initiatives of multinational engineering company Siemens fulfill most requirements under the Companies Act, 2013, it doesn't meet the 2 per cent net profit contribution as mandated. The companies were willingly contributing as their self-responsibilities prior to the Act of 2013. The stringent guidelines may demotivate companies as new rules are narrow and specific. This paper may provide mutuality of interest and legal compliance by adopting those CSR activities that are part of the compliance but also improved internal HR policies that help employees of the company in terms of self-esteem, exposure to new activities and building skills.

Sustainability: Triple Bottom Line

The term “Triple Bottom Line” dates back to the mid 1990’s, when management think-tank AccountAbility coined and began using the term in its work highlighting importance of contribution of not only investors, but society and future generation. By this means, the business should take care of economic profit, social cost benefit and environmental cost benefit. Sapovadia depicted sustainability in the form of following venn diagram¹, showing larger the mutual pie, larger the sustainability.



¹ <http://sustainableurbanisation.blogspot.com/>

Historical Perspective

The concept of CSR originated in the 1950s in the USA but it became prevalent in early 1970s . During the 1980s to 2000, corporations recognized and started accepting a responsibility towards society. Indian history goes back to Hindu ancient literature like *Vedas*, *Upanaishads* and thinkers like Chankya and Gandhiji, who without naming CSR, preached and practiced for CSR. Gandhi's trusteeship principle and customer is king are deeply rooted to CSR. Creation and utilization of wealth for the optimal benefits of its various stakeholders like shareholders, employees, customers, environment and society. Among other countries India has one of the oldest traditions of CSR. The story of corporate India begins with Jamsetji Tata, Founder of the Tata Group, who has been a doyen of promoting corporate responsibility. In pre-industrialization period, which lasted till 1850, wealthy merchants shared a part of their wealth with the wider society by way of setting up temples for a religious cause. The industrial families of the 19th century such as Tata, Mafatlal, Godrej, Bajaj, Modi, Birla, Singhanian were strongly inclined towards economic as well as social considerations. However it has been observed that their efforts towards social as well as industrial development were not only driven by selfless and religious motives but also influenced by caste groups and political objectives.

Mahatma Gandhi introduced the notion of "trusteeship", according to which the industry leaders had to manage their wealth so as to benefit the common man. "I desire to end capitalism almost, if not quite, as much as the most advanced socialist. But our methods differ. My theory of trusteeship is no make-shift, certainly no camouflage. I am confident that it will survive all other theories." This was Gandhi's words which highlights his argument towards his concept of "trusteeship". Gandhi's influence put pressure on various Industrialists to act towards building the nation and its socio-economic development. According to Gandhi, Indian companies were supposed to be the "temples of modern India". Under his influence businesses established trusts for schools and colleges and also helped in setting up training and scientific institutions. The operations of the trusts were largely in line with Gandhi's reforms which sought to abolish untouchability, encourage empowerment of women and rural development.

The corporate groups like TATA, Wipro, Infosys and many other business houses have their unique way to contribute in CSR. The fact has its testimony even today - as per the latest ranking of global corporate reputation, the Tata Group proudly stands as the only Indian company among the 20 best globally reputed companies. The Tata Group is a giant family of businesses that dominates Indian markets. There is a long history of the CSR within the group, and it is no surprise that all Tata companies have adopted a Tata Code of conduct as well as many international standards. The Tatas exemplified before world a desirable combination of its economic and social objectives.

The CSR in India has its own ways and models., on one hand, the government, being 'model employer' for the public sector units (PSUs). On the other hand in the private sector too, Tata Group translated the vision of the CSR into action with a great zeal and commitment in India way back in 1920 at Tata Iron and Steel Co. Ltd (TISCO), which was seen as a 'role model' to be followed by others subsequently. Corporate Social Responsibility has always been taken care of by the Tata group. In words of Mr. Jamshedji Tata "In a free enterprise, the community is not just another stakeholder in business but is in fact the very purpose of its existence." In pre and post-independence era of India , TATAs have contributed largely in the overall development of nation covering various spheres like health, education ,environment ,science and technology , research ,sports ,culture etc.

Amendments in Companies Act 2013

The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 to come into effect from April 1, 2014. Every company, private limited or public limited, which either has a net worth of Rs 5000 million or a turnover of Rs 10,000 million or net profit of Rs 50 million, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities. The CSR activities should not be undertaken in the normal course of business and must be with respect to any of the activities mentioned in Schedule VII of the 2013 Act. Contribution to any political party is not considered to be a CSR activity and only activities in India would be considered for computing CSR expenditure.

The net worth, turnover and net profits are to be computed in terms of Section 198 of the 2013 Act as per the profit and loss statement prepared by the company in terms of Section 381 (1) (a) and Section 198 of the 2013 Act. While these provisions have not yet been notified, it has been clarified that if net profits are computed under the Companies Act, 1956 they needn't be recomputed under the 2013 Act.

Profits from any overseas branch of the company, including those branches that are operated as a separate company would not be included in the computation of net profits of a company. Besides, dividends received from other companies in India which need to comply with the CSR obligations would not be included in the computation of net profits of a company.

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The CSR Rules appear to widen the ambit for compliance obligations to include the holding and subsidiary companies as well as foreign companies whose branches or project offices in India fulfil the specified criteria. There is a need for clarity with respect to the compliance obligations of a company as well as its holding and subsidiary companies.

The activities that can be undertaken by a company to fulfil its CSR obligations include eradicating hunger, poverty and malnutrition, promoting preventive healthcare, promoting education and promoting gender equality, setting up homes for women, orphans and the senior citizens, measures for reducing inequalities faced by socially and economically backward groups, ensuring environmental sustainability and ecological balance, animal welfare, protection of national heritage and art and culture, measures for the benefit of armed forces veterans, war widows and their dependents, training to promote rural, nationally recognized, Paralympic or Olympic sports, contribution to the prime minister's national relief fund or any other fund set up by the Central Government for socio economic development and relief and welfare of SC, ST, OBC²s, minorities and women, contributions or funds provided to technology incubators located within academic institutions approved by the Central Government and rural development projects. However, in determining CSR activities to be undertaken, preference would need to be given to local areas and the areas around where the company operates.

To formulate and monitor the CSR policy of a company, a CSR Committee of the Board needs to be constituted. Section 135 of the 2013 Act requires the CSR Committee to consist of at least three directors, including an independent director. However, CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee and stipulates that the Committee for a private company and a foreign company need have a minimum of only 2 members.

² Schedule Caste, Scheduled Tribe, Other Backward Class

A company can undertake its CSR activities through a registered trust or society, a company established by its holding, subsidiary or associate company or otherwise, provided that the company has specified the activities to be undertaken, the modalities for utilization of funds as well as the reporting and monitoring mechanism. If the entity through which the CSR activities are being undertaken is not established by the company or its holding, subsidiary or associate company, such entity would need to have an established track record of three years undertaking similar activities.

Companies can also collaborate with each other for jointly undertaking CSR activities; provided that each of the companies are able individually report on such projects. A company can build CSR capabilities of its personnel or implementation agencies through institutions with established track records of at least three years, provided that the expenditure for such activities does not exceed 5% of the total CSR expenditure of the company in a single financial year.

The CSR Rules specify that a company which does not satisfy the specified criteria for a consecutive period of three financial years is not required to comply with the CSR obligations, implying that a company not satisfying any of the specified criteria in a subsequent financial year would still need to undertake CSR activities unless it ceases to satisfy the specified criteria for a continuous period of three years. This could increase the burden on small companies which do not continue to make significant profits.

The report of the Board of Directors attached to the financial statements of the Company would also need to include an annual report on the CSR activities of the company in the format prescribed in the CSR Rules setting out inter alia a brief outline of the CSR policy, the composition of the CSR Committee, the average net profit for the last three financial years and the prescribed CSR expenditure. If the company has been unable to spend the minimum required on its CSR initiatives, the reasons for not doing so are to be specified in the Board Report. Where a company has a website, the CSR policy of the company would need to be disclosed on such website. As per SEBI rules every listed company must have its own website.

Environmental Law & Sustainability

CSR emphasize sustainability through triple bottom line. Thus business cannot ignore future generations. It is their important obligation that they use natural resources to the extent minimal and take utmost care to protect environment. Indian constitution in its Chapter IV, directs state to enact law to protect environment, (Art 48A, The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country) and is part of fundamental duty of every citizen u/A 51A (It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures) to protect environment. After Stockholm Declaration 1972 followed by other international conventions, India enacted several legislations to take care of environment. India enacted Water Act in 1974³, Air Act in 1981⁴ and Environment Act in 1986.

Conclusion

Rather than taking CSR as a law, it is in the long term benefit of the business to adopt CSR as part of their business strategy. This will increase customers base in long run and enhance image of the company in mind of customers and other stakeholders. More customers means more sale, and hence more profit. The employees are the most valuable assets of the business, and its potential is unlimited. Employees will motivated and feel self-esteemed for a company going extra mile in CSR. Motivated employees will enhance productivity and raise profitability. This will lead to cascading effect to enhance and sustain profitability. Businesses are now recognizing the benefits of CSR, from cost savings on energy and materials to direct benefits like enhanced reputation among customers and clients and indirect benefits like employee satisfaction. Most importantly, CSR programs provide rewards—and increased monetary value—through the creation of products and services that support sustainability.

Companies are working to mitigate their impacts on community resources such as water through conservation and by promoting sustainable develop-

³ Provide for the prevention & control of water pollution, the maintaining or restoring of wholesomeness of water

⁴ Provides a regulatory framework for the "prevention, control and abatement of air pollution"

ment that benefits communities and employees. The companies gathering credible data about the carbon emissions in their global supply chain—and BSR is designing a calculator tool to help them. Beyond reducing their climate impact through decreased carbon emissions, advanced companies are working to monetize and develop markets for environmental services like water, nutrients and biodiversity.

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