

India's Mandatory CSR Law: Issues and Challenges

Navjeet*

Abstract

On April 1, 2014 India became the first country in the world to make CSR mandatory. The Coming in of the Companies Act of 2013 catapulted India into taking lead in establishing a mandatory framework for CSR. The new rules in Section 135 of India's Companies Act make it mandatory for companies of a certain turnover and profitability to spend two percent of their average net profit for the past three years on CSR. Following the government mandate a large number of companies have dedicated teams to identify CSR needs and plan their CSR programs. These programs range from supporting education, environment, health care, women empowerment, raising the standard and helping farmers attain self-sufficiency. The selection of areas by companies depends on a host of factors namely the nature of business of the company, relevance of the issue to the communities, availability of finances with the companies. However Education, Environment, Healthcare, women empowerment, Livelihood promotion and agricultural development remain the priority areas. The paper explores the main provisions of the act and the 2014 rules. It attempts to analyse the provisions of the act and their efficacy and the issues arising out of the implementation of the Act.

Keywords: Corporate Social Responsibility, Legal Issues, CSR Spending, CSR Activities, Companies Act 2013

*Assistant Professor, Vivekananda Law School, Vivekananda Institute of Professional Studies

Introduction

Although India has seen a surge in CSR reforms since the year 2013, however the concept of giving is not new to Indian Businesses. Groups like The Tata's, Birla's, Goenka's, Bajaj's, Dalmia's and Modi's had been practicing philanthropy in their business operations since decades¹ The country has a strong history of corporate philanthropy and industrial welfare since the 1800's. Large family based organisations set up businesses with strong community ethos² In recent times also the examples of corporate philanthropy are numerous from disaster relief efforts by all major businesses to scholarships for deserving and needy students and education and health facilities for employees' families as well as neighbouring communities.³

In India since 1956 the corporate activities were governed by the Companies Act of 1956. However year 2013 brought fundamental changes in the way companies were governed the old act was replaced by The Companies Act 2013. The Act introduced section 135 and Schedule VII which makes it the first country in the world to mandate CSR spending along with a framework to identify potential CSR activities.⁴ Section 135 of the Companies Act brings in important change in the business and society relationship. The recent revision mandating qualified companies to contribute a minimum of 2% of their net profit towards CSR opens the door to a significant investment in social, environmental and economic development activities across the country.⁵

1. Stipulations of the Companies Act, 2013

(i)Eligibility Criteria: The provisions of Section 135 outline a significant step in attempting to change the way business and society engage with each other. The section is applicable to every company which has a net worth of Rs 500 crore or

¹ SAUMITRA N BHADOURI,& EKTA SELARKA, CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY OF INDIAN COMPANIES 5(2016).

² *Id.*, at 43.

³ K.V.BHANU MURTHY& USHA KRISHNA, POLITICS, ETHICS AND SOCIAL RESPONSIBILITIES OF BUSINESS 143 (2010)

⁴ *Supra* Note 1 at 43.

⁵ Priya Nair Rajeev, Suresh Kalagnanam, *Section 135 of Companies Act (2013): Implementation challenges faced by Companies and NGOs* Working Paper IIMK/WPS/182/OBHR/2015/18 April 2015 available at <https://www.iimk.ac.in/websiteadmin/FacultyPublications/WorkingPapers/182fullp.pdf?t=00> (last accessed on September 22, 2016).

more, or turnover of Rs 1000 crore or more ,or net profit of Rs 5 crore or more during any financial year⁶.

Every such Company to which Section 135 applies shall constitute a Corporate Social Responsibility Committee of the Board. The 2014 rules mandate that the CSR requirements are applicable to every qualifying company including its holding /subsidiary company.⁷ More importantly, the final rules expand the coverage of the Act's CSR requirements to foreign companies with branches or project offices in India, so that foreign companies with Indian businesses will be subject to the Act's mandatory CSR provisions.⁸ This gives an expansionist scope under the CSR Rules to regulate such companies which prima facie are not included under Section 135. Thus, the CSR Rules which were supposed to be supplementary to the main provision, seem to have overreaching effect well beyond the scope of Section 135 as originally contemplated. Further, it seems to be an overarching provision and applicability of the same may be perceived by the foreign companies as an additional tax, over and above their corporate taxes, for doing business in India.⁹

(ii) Composition of the Committee: The committee would comprise of three or more directors, out of which at least one director shall be an independent director.¹⁰ Upon the passage of the Companies Act, there was significant confusion over constitution of the CSR committees for companies which otherwise do not need to appoint independent directors. The CSR Rules have dispensed with the requirement of appointing an independent director on the CSR Committee of the board of an unlisted company or a private company which does not otherwise need to have independent directors on its board. Further, the CSR Rules have relaxed the requirement regarding the presence of three or more directors on the CSR Committee. For a private company with only two directors on the Board, the CSR Committee can be constituted with these two directors. For a foreign company to which the CSR rules apply, the CSR

⁶ Section 135(1) of the Companies Act 2013.

⁷ "Ministry of Corporate Affairs Notification," Government of India, February 27, 2014, available at http://mca.gov.in/Ministry/pdf/CompaniesActNotification1_2014.pdf. (last accessed on October 18, 2016)

⁸ *Supra* Note 7

⁹ B. Ramesh, Savia Mendes , *CSR perspectives in Indian Context* , 95 AUSTRALIAN JOURNAL OF BUSINESS AND ECONOMICS STUDIES, Vol 1, No 2 , (2015)

¹⁰ Section 135(1) of the Companies Act 2013

Committee must comprise of at least two persons, with one person a resident of India and the other person nominated by the foreign company.¹¹

(iii) Mandate of the Committee: The mandate of the said CSR committee shall be:

- to formulate and recommend to the Board, a Corporate Social Responsibility Policy, which shall indicate the activities to be undertaken by the company as specified in Schedule VII.

- to recommend the amount of expenditure to be incurred on the activities referred to above;

- to monitor the Corporate Social Responsibility Policy of the company from time to time.¹²

(iv) CSR Policy: The CSR Policy of the company shall, inter-alia, include the following, namely –

(a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and

(b) monitoring process of such projects or programs: Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company. Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act. (2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.¹³

(v) Responsibility of the Board: The Board of every company referred to above shall, after taking into account the recommendations made by CSR Committee,:

¹¹ MCA Rules Section 5.

¹² Section 135(3) Companies Act 2013.

¹³ Section 6 MCA rules.

- approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website,¹⁴ and

- ensure that the activities as are included in CSR Policy of the company are undertaken by the company,¹⁵ and

- ensure that the company spends, in every financial year, at least two per cent of the average net profits.¹⁶

• If the Company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.¹⁷

• "Average net profit" shall be calculated in accordance with the provisions of section 198 of the 2013 Act.¹⁸

(vi) Activities which may be introduced by Companies in their CSR policies: In addition to defining CSR, the MCA added a new Schedule VII in the Act which expands the scope of CSR activities included in the Companies Act and adds several new activities under the rubric of CSR. Schedule VII (as amended), gives the prescriptive channels for undertaking CSR activities. It includes¹⁹:

- (a) Eradicating hunger, poverty and malnutrition, promoting preventive care and sanitation and making available safe drinking water;
- (b) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently-abled and livelihood enhancement projects;
- (c) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

¹⁴ Section 135 (4) (a) Companies Act 2013

¹⁵ Section 135(1) (b) Companies Act

¹⁶ Section 135(5) Companies Act

¹⁷ Section 135(5) proviso ii Companies Act 2013

¹⁸ Explanation to Section 135

¹⁹ Ministry of Corporate Affairs, Notification, Amendments to Schedule VII of the Companies Act, 2013, February 27, 2014 http://mca.gov.in/Ministry/pdf/CompaniesActNotification3_2014.pdf (Last accessed on October 20, 2016)

- (d) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air and water;
- (e) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts
- (f) measures for the benefit of armed forces veterans, war widows and their dependents;
- (g) training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;
- (h) 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 the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (i) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (j) rural development projects.

The 2013 Act provides that the company shall give preference to the local area and areas around it where it operates.

(vii) Scope & Limitations of CSR activities: The final rules define CSR to mean and include (but not limited to) projects or programs relating to activities specified in the schedule; or projects or programs relating to activities undertaken by the board in pursuance of recommendations of the CSR committee as per the declared CSR policy, subject to the condition that such policy covers subjects enumerated in the schedule.²⁰

The final rules provide important limitations regarding what counts as CSR, so that CSR activities and expenditures do not include²¹:

- expenditures incurred in undertaking normal course of business;
- CSR activities undertaken outside of India;

²⁰ MCA, CSR Rules. Some experts have noted that it appears that activities outside Schedule VII would not be considered as permitted CSR activities. See "Political Funding Kept Out of CSR Ambit," THE HINDU BUSINESS LINE, February 27, 2014 (www.thehindubusinessline.com/companies/political-funding-kept-out-of-csr-ambit/article5733385.ece).

²¹ MCA, CSR rules available at http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf (Last accessed on March,18, 2016)

- projects, programs, or activities meant exclusively for employees and their families; and
- direct or indirect contributions to any political party.

Companies may build CSR capacities of their own personnel and/or of the implementing agencies through institutions with established track record of at least 3 financial years. However, such expenditure is restricted to not more than 5 per cent of total CSR expenditure of the company in a financial year. The CSR policy of the company must also specify that any surplus arising out of the CSR activities shall not form part of the business profit of the company.

(viii) Modalities for undertaking CSR activities

The CSR Rules provide several different acceptable methods through which companies can undertake CSR activities:

- Conducting CSR through a third party: CSR activities may be undertaken through a registered society or trust or a Section 8 Company (i.e. a non-profit company) under the Companies Act so long as such entities have a track record of three years in undertaking similar projects or programs. Such an entity would have to follow the specifications and modalities regarding utilization of funds, monitoring and reporting requirements as provided by the spending company.²²
- Conducting CSR through group entities: Companies may also carry out their CSR activities through their own or holding or subsidiary or associate company's registered society or trust or Section 8 Company.
- Collaborating or pooling resources: Companies may also collaborate with other companies for undertaking CSR projects or programs so long as the collaborating companies are in a position to report separately as per the reporting requirements under the Companies Act.²³

(ix) Calculation of Net Profits: Every Company has to report its net profits during a particular financial year to trigger the application of Section 135 of the Companies Act. The rules further clarify that "Net profit" means the net profit of a company as

²² CSR rules, CSR activities Section 4(2)(i) and (ii) at 7.

²³ *Id* at Section 4(3) at 7.

per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely ²⁴:-

- (i) any profit arising from any overseas branch or branches of the company' whether operated as a separate company or otherwise; and
- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.

In case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of subsection fl) of section 381 read with section 198 of the Act.

(x) Reporting and Disclosures: Another highlight of the new act is a move towards greater disclosure, The Act requires that The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website. In addition, if the company fails to spend the prescribed amount, the Board, in its report, must specify the reasons.²⁵

(xi) Penalties for Non-Compliance: As per Section 134(8) of the Act, if a company contravenes the provision, i.e., if the Board of Directors' "report does not include details about the policy developed and implemented by the company on CSR initiatives taken during the year [Section 134(3)(o)], then the company shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 2.5 million.²⁶ Moreover, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with a fine which shall not be less than Rs. 50,000 but which may extend to Rs. 500,000, or with both.

If a company fails to spend the mandatory amount on CSR activities, it has to specify the reasons for not spending the amount, else the company and/or the officers are punishable. Thus, if a company does not spend the mandatory amount on CSR activities, "not spending", in itself, is not punishable. "However, Section 450 of the

²⁴ CSR rules, Section 29(f).

²⁵ CSR rules , Section 8, 9.

²⁶ Section 134(8), Companies Act.

Act invokes some omnibus punishments where no specific penalty or punishments are provided elsewhere for contravening any of the provisions of the Act. As per this section, the company and the officers of the company who are in default are punishable with a fine which may extend to Rs.10,000. If the contravention is a continuing one, a further fine may extend to Rs. 1000 per day after the first during which the contravention continues.²⁷ In principle, therefore, if a company does not spend on mandatory CSR activities, the company and the officers are punishable. It remains to be seen whether or not the government will invoke this omnibus provision for CSR violations.²⁸

“The so-called 2% law has brought CSR [corporate social responsibility] from the fringes to the boardroom,” argues Bimal Arora, chair of the Delhi-based Centre for Responsible Business. “Companies now have to think seriously about the resources, timelines and strategies needed to meet their legal obligations.” While these CSR provisions have many benefits there are some implementation challenges thrown up by them.²⁹

2. Implication of Mandatory CSR in India:

(i) Role of NGO's: As per Associated Chambers of Commerce and Industry of India 67% of domestic companies have chosen non-government organisations (NGOs) as partners to undertake their CSR projects. A number of think tanks and research organisations have started training programs for NGO's keeping the growing need for trained NGO personnels for undertaking CSR activities. The Indian Institute of Corporate Affairs (IICA) has launched CSR implementing hub that will:

- Provide a database of implementation partners with information about their geographical presence, area of work and previous projects executed.

²⁷ Section 450, Companies Act.

²⁸ Satish Y. Deodhar *India's Mandatory CSR, Process of Compliance and Channels of Spending*, 7 W.P. NO. 2015-05-01 May 2015 available at <http://www.iimahd.ernet.in/assets/snippets/workingpaperpdf/16048663442015-05-01pdf> (last accessed September, 25, 2016).

²⁹ Oliver Balch, *Indian law requires companies to give 2% of profits to charity. Is it working?* available at <https://www.theguardian.com/sustainable-business/2016/apr/05/india-csr-law-requires-companies-profits-to-charity-is-it-working> (last accessed on September, 26, 2016).

- Present a database of agencies conducting baseline surveys, impact assessments and social audits.
- Assist with relevant training and development, convene sectorial events and showcase success stories.
- To facilitate the IAs to showcase their work.³⁰

“With so many NGOs in India and the funding involved in the CSR spend it is a big challenge to identify a right NGO who could be engaged for CSR intervention. It is most unlikely that the companies would be able to carry out CSR interventions on their own and they need to take help of local NGO for effective implementation of CSR activities. The success of CSR projects largely depends on suitable NGO, its role and accountability. Just allocating or donation funds is not adequate but it is expected that the company need to work in the CSR interventions alongwith the NGO. For this purpose effective monitoring and evaluation mechanism also needs to be in place else it has lot of loose end where there is a threat that the money may be siphoned off under the name of CSR.”³¹

- (ii) **Build up of CSR activities around Geographic areas where Corporates are Located:** An unintended fallout of the mandatory provision is that certain states are likely to receive relatively high levels of the CSR spending. States like Bihar, Assam, Jammu and Kashmir and others are likely to have fewer corporates operating there. Just seven states – Maharashtra, Karnataka, Tamil Nadu, Haryana, West Bengal and Gujarat are home to 87% of ET 250 companies.³² High levels of CSR spending by such companies can benefit certain regions/states disproportionately more while other localities with sparse corporate sector activity can fall further behind. To avoid such unintended consequences at the macro level would necessitate the setting up of a coordinating agency

³⁰ Available at <http://iica.in/IA%20HUB/Aboutiahub.aspx> accessed on September 26, 2016

³¹ *Emerging Role of NGO's in CSR intervention*, CSR TIMES Nov 27, 2014 available at <http://www.csrtimes.com/community-articles/emerging-role-of-ngos-in-csr-intervention/352> last accessed on September , 26,2016.

³² *Supra* note 28 at 11.

at a Central or at least at the State level to see that CSR spending of companies are harmonized for the betterment of all.³³

(iii) Spending on Social causes vs Spending on Causes related to the Company Business

The new law not only mandates a minimum spending on CSR activities, but also limits the activities for which CSR funds could be used. As per the new mandate, any spending on social causes that are related to the company's core business or which directly benefits its stakeholders will not be treated as CSR spending. This clause goes counter to the implications of prior research that has suggested strategic benefits accruing to companies that invest in CSR activities related to their businesses.

For CSR to be sustainable and effective, it has to be aligned with the company's goals. All stakeholders (employees, customers, suppliers, banks, etc.) of a company, except one (shareholders), have enforceable contracts which explicitly promise benefits to the stakeholders. Only the shareholders are not promised explicit rewards. Shareholders are claimants of residual value after all other stakeholders have been compensated from a corporation's profits. Mandating CSR spending is effectively an expropriation of shareholder wealth. To make such an expropriation sustainable in the long run, it is necessary to ensure that the shareholders gain some value-enhancing benefits from such spending. Therefore, to make CSR spending sustainable in the long run, it is necessary to align such spending with the core business and overall goals of a corporation.³⁴

(iv) Absence of a monitoring body

Another feature of the Companies Act is that the government has decided it will not police or monitor the implementation of the CSR mandate. Clause 135(5) of the Act states that when the company fails to spend 2% of its three years' average profits on CSR initiatives, the Board of Directors are required to state the reasons for the same in the report required to be produced under clause 134(3)(o). Surprisingly, there is no mention for the

³³ Jayati Sarkar and Subrata Sarkar :, *Corporate Social Responsibility in India - An Effort to Bridge the Welfare Gap* , retrieved from <http://www.igidr.ac.in/pdf/publication/WP-2015-023.pdf> (Last accessed on September 27, 2016).

³⁴ *Supra* Note 28

report to be submitted to the government or to a monitoring body.³⁵ The absence of an independent, unbiased agency which examines the failure of companies to undertake expenditures under Section 135; and penalizes the company for unacceptable failures (i.e., when the explanation for non-expenditure is unsatisfactory) renders Section 135 an almost irrelevant provision.³⁶ The absence of social accountability or any provision by which a company's CSR activities may be scrutinized by society or at least a representative of society is a rather glaring omission in Section 135.³⁷

3. The Road Ahead

Since the new law lacked precedent, several questions were raised by the stakeholders. The Ministry of Corporate Affairs, therefore, constituted a high level committee(HLC) chaired by Sh. Anil Bajjal to look into the provisions relating to CSR in the Companies Act and suggest measures for monitoring of progress of implementation of CSR policies.³⁸ The high level Committee adopted a consultative approach to arrive at the recommendations consulting various industry bodies and organisations like IICA, ICSI and others.³⁹

The panel suggested uniform tax treatment for all CSR activities carried out under the new Companies Act while recommending leniency towards non-compliant companies in the initial 2-3 years of the implementation. According to the committee, differential tax treatment for expenditure on various CSR activities may create unforeseen distortions in allocation of funds across development sectors wherein the board's decision could be guided more by tax savings implications "rather than compelling community social needs. The committee, therefore, feels that there should be uniformity in tax treatment for CSR expenditure across all eligible activities". Currently, certain activities such as contribution to the Prime Minister's National Relief Fund qualify for tax exemption.

³⁵ Priya Nair Rajeev, Suresh Kalagnanam, *Section 135 of Companies Act (2013): Implementation challenges faced by Companies and NGOs*, WORKING PAPER IIMK/WPS/182/OBHR/2015/18, April, 2015.

April 2015 Available at <https://www.iimk.ac.in/websiteadmin/FacultyPublications/WorkingPapers/182fullp.pdf?t=00> (Last accessed on 10th Febtuary,2016)

³⁶ Arjya B. Majumdar, *India's Journey with Corporate Social Responsibility – What Next?* 165 JOURNAL OF LAW AND COMMERCE, Vol 33,No.2, 2015.

³⁷ *Id.*, at 36

³⁸ Report of the High Level Committee to suggest measures for the improved monitoring of implementing of Corporate Socialresponsibility policies, Ministry of Corporate Affairs , Government of India, 2015, available at http://www.mca.gov.in/Ministry/pdf/HLC_report_05102015.pdf (Last accessed on 24rth March, 2016)

³⁹ *Id.*, at V

Ruling out the need to monitor the CSR spending of firms, the panel said that the existing principle of ‘comply or explain’ is sufficient for the time being and “the government should have no role to play in engaging external experts for monitoring the quality and efficacy of CSR spend. The boards and the management are sufficiently empowered to engage any external firm if they want.” “CSR should not be interpreted as a source of financing the gaps in inclusive growth. Use of corporate innovations and management skills in the delivery of public goods is at the core of CSR implementation by the companies,” the six-member committee said while adding that since the initial period is the learning phase, CSR should be reviewed after three years.⁴⁰ -

Seeking more clarity on applicability of the CSR provisions on foreign companies, the panel urged the government to look more deeply into the issue even as it recommended that section 8 — non-profit firms — should be exempt from the compliance.⁴¹

After reflecting on its terms of reference, the Committee identified some of the issues pertaining to provisions of CSR in the Companies Act and CSR rules. The committee pointed out that without the annual returns of the boards report and annual returns on CSR filings, it was difficult to assess the level and dimensions of CSR compliance by the companies. Still, the consensus reached through discussion with stakeholders pointed out that companies should be given a chance to learn from their experience and be provided some grace period for capacity building in the field.⁴²

Deliberating on the permissible CSR activities under Schedule VII of the Act, the committee observed that owing to persistent pressure on the Ministry of Corporate Affairs to expand the list by including many more activities, the government should incorporate, as far as possible, all the public goods in the list of permissible activities and provide an omnibus clause to cover those activities that are left out.⁴³

With reference to increasing the cap on administrative overhead expenditure of companies, the panel suggested for increasing it from the present 5% of total CSR expenditure to 10% of CSR expenditure. The panel also felt that the administrative overhead

⁴⁰ High Level Committee Report on CSR para 2.2.5

⁴¹ *Id* at 3.9

⁴² *Id* at 4.7

⁴³ *Id* at 4.5

expenditure of a company on CSR should not include expenditure incurred on capacity building of the implementation agencies.⁴⁴

The overall intent of the recommendations proposed by the high level committee is to encourage companies to undertake CSR activities in the right spirit. The measures suggested pave way for an efficient corporate system/mechanism for ensuring accountability & effectiveness, provided they get adapted into the law. An ideal assessment of the qualitative and quantitative aspects of the CSR implementation, however, will only be possible once sufficient data is gathered in the next two or three years.⁴⁵

4. Conclusion

“In the final analysis, the CSR legislation, despite its mandatory tone, is more self-regulatory rather than punitive, requiring a mature approach from both companies and governments. Both parties need to see how they can collaborate in using company resources to achieve the greatest public good. Companies need to shed their earlier approach of deeming that they have met their social obligations if they contribute to a schoolroom or a balwadi (a kind of preschool). Rather, the emphasis should be on CSR investments that contribute to ongoing improvements in the social and economic status of communities for which the CSR expenditure is intended. Companies should also interact on a regular basis with government departments and agencies to jointly examine how they can contribute to building managerial capabilities of the public service delivery machinery and introducing innovations in ongoing government programmes to ensure better outcomes. On their part, governments (especially state and local) should pro-actively assess and list programmes and activities where government efforts will be positively boosted by private support. The objective should be to develop a menu of activities which can be posed to various private sector partners for participation along with the government in improving standards of life. The Upanishadic exhortation Vasudhaiva Kutumbakam (the whole world is one family) has special relevance in the context of these efforts to improve the lot of one’s brothers and sisters.”⁴⁶

⁴⁴ *Id* at 4.12

⁴⁵ A Summary of the High Level Committee Recommendations for the Effective Implementation of the CSR Mandate, THE CSR PRACTICE available at <https://thecsrpractice.com/2015/10/08/a-summary-of-government-appointed-panel-recommendations-for-effective-implementation-of-the-csr-mandate-in-india/> (Last accessed on October 29, 2016)

⁴⁶ CSR: The Indian experiment, THE FINANCIAL EXPRESS, Jan 23, 2016

Given its global influence, there is immense potential for a more mandatory vision of CSR as framed in India to spread to the rest of the world. India's move can be tied to the massive transformation in its economy and some of the resulting unrest related to economic disparities and corporate governance failures. Its CSR efforts have also been an important, if often overlooked, part of its larger corporate governance reform efforts. With other regions of the world, such as Latin America and Africa, undergoing similar economic transformation, the development of the Indian CSR model may provide important lessons as countries around the world embark on corporate governance reforms. However, questions remain about whether India's legal changes will translate into actual changes on the ground. Institutional enforcement weaknesses, a lack of transparency, and corruption remain significant problems, and unless they are addressed, the full potential of India's CSR efforts will go unrealized.⁴⁷

Yet, India's progress in the realm of CSR should not go unrecognized. In attempting to develop a CSR regime with its own national characteristics, India is rejecting the concept that CSR is solely a Western import. It is also rejecting the notions of CSR as purely voluntary and of shareholder wealth-maximization. These developments may enable India to develop a CSR model with greater cultural adaptability or acceptability, as well as to organically develop a model of CSR and corporate governance that presents viable alternatives to those that developed under different circumstances and pressures in the West. India is increasingly privatizing its economy, creating a space for corporate action in a realm previously dominated by the state, and appears to be seizing the opportunities that CSR presents to improve economic growth and address public concerns.⁴⁸

⁴⁷ Afra Afsharipour and Shruti Rana, "Corporate Social Responsibility in India" 10, available at https://www.conference-board.org/retrievefile.cfm?filename=TCB_DN-V6N14-14.pdf&type=subsite (last accessed on October 12, 2016).

⁴⁸ *Ibid*