Corporate Social Responsibility(CSR) amendments

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***Source**: Business Standard*

Manifest pedagogy:

CSR and its importance can be understood from the dimension of stakeholders, governance and brand management. One needs to go through emerging issues such as companies act, philanthropy, value of giving etc not only as a means to understand CSR but also ethical, social and economic perspectives for the topic. CSR is also important in terms of UPSC for both Prelims and Mains, especially paper IV

In news: Companies Act amendment bill, 2019 is passed by Parliament.

Placing it in syllabus: Corporate Governance (Paper IV)

Static dimensions: What is CSR?

CSR in India

Current dimensions:

- Companies Act, 2013
- Companies act amendment bill, 2019
- Issues with penal provisions

Content: Corporate Social Responsibility (CSR)

- CSR is a **management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.**
- It is a 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.

- There is 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.
- Promoting the uptake of CSR amongst SMEs requires approaches that fit the respective needs and capacities of these businesses, and do not adversely affect their economic viability.
- The perspective is that for an organization to be sustainable, it must be financially secure, minimize (or ideally eliminate) its negative environmental impacts and act in conformity with societal expectations.

Key CSR issues: environmental management, eco-efficiency, responsible sourcing, stakeholder engagement, labour standards and working conditions, employee and community relations, social equity, gender balance, human rights, good governance, and anti-corruption measures.

A properly implemented CSR concept can bring along a variety of competitive advantages, such as enhanced access to capital and markets, increased sales and profits, operational cost savings, improved productivity and quality, efficient human resource base, improved brand image and reputation, enhanced customer loyalty, better decision making and risk management processes.

CSR in India:

Enactment of the Companies Act, 2013 by the Ministry of Corporate Affairs, is one of the world's largest experiments of introducing the CSR as a mandatory provision by imposing statutory obligation on Companies to take up CSR projects towards social welfare activities. This has made India the only country which has regulated and mandated CSR for some select categories of companies registered under the Act

India is the first country to have brought about a legislation to implement CSR activities, followed by the United Kingdom. CSR motivates companies to be ethically right by contributing socially, economically and environmentally by engaging in acts like

- Engaging members of local community.
- By using "Socially Responsible Investment" (SRI).
- Develop an amicable relationship with employees and consumers.
- Engage in actions which are protecting and sustaining the environment.

CSR is responsible for generating a lot of goodwill to companies either directly or indirectly which include:

- Making employees more loyal and help companies retain them in the long run.
- Make companies more legitimate and help them in accessing a greater market share.
- Since companies act ethically, they face fewer legal hurdles.
- Bolster the goodwill of companies amongst the general public and help in strengthening their "brand value".
- Help in the stabilization of stock markets in both the short and long run
- Help in limiting state's involvement in corporate affairs as companies self-regulate and act as most ethical.
- CSR helps companies and their components like their

shareholders to help in the development of a country's economy on a macro-level.
- They motivate companies to cooperate and communicate with each other, their customers and the administrative machinery

According to **section 135 of the Companies Act, 2013,** CSR is compulsory for all companies- government or private or otherwise, provided they meet any one or more of the **following fiscal criterion:**

- The net worth of the company should be Rupees 500 crores or more.
- The annual turnover of the company should be Rupees 1000 crores or more.
- Annual net profits of the company should be at least Rupees 5 crores.

If the company meets any one of the three fiscal conditions as stated above, they are required to create a committee to enforce its CSR mandate, with at least 3 directors, whose responsibility is creation of an elaborate policy to implement its legally mandated CSR activities. CSR acts should conform to **Schedule VII of the Companies Act, 2013.**

KPMG's 2018-19 report which analysed the CSR work of 100 companies stated that Corporate India increased its prescribed amount for CSR expenditure in 2017-18 when compared to 2014-15 spending. It found that companies were spending more than what was prescribed. But the country's most backward districts that require maximum CSR support, remain deprived.

According to the Ministry of Rural Development, 115 of the 718 districts in India are backward. **NITI Aayog** stipulates that corporate hand holding can ensure the development of these districts. Jharkhand, Bihar, Chhattisgarh, Madhya Pradesh and Odisha have more such districts but only one per cent of all CSR programmes have been implemented in Jharkhand and

Chhattisgarh. Bihar has received just 2 per cent, Madhya Pradesh 3 per cent and Odisha 11 per cent.

Maharashtra, Rajasthan, Gujarat, Karnataka and Andhra Pradesh, which account for only 15 percent of the aspirational districts, have received 60 percent of the CSR money. Twelve per cent of the districts in the Northeast require CSR attention, but just 4 percent was received in 2017-18.

NITI Aayog has asked the Central Public Sector Enterprises (CPSEs) to hike the expenditure cap by 60 % and redirect more funds for the development of 117 districts from across 28 states. It has stated that CPSEs should think of removing 60% CSR expenditure cap for the aspirational districts and come up with increased funds. These funds are needed to reform 117 districts identified under the **Aspirational Districts Programme (ADP).**

Launched by Prime Minister Narendra Modi on Jan 2018, the programme aims to impart all-round development to underdeveloped districts of the country. ADP works on the convergence of central and state schemes, collaboration among citizens and functionaries of Central and state governments and competition among regions.

Companies Act, 2013:

he Companies Act, 2013 consolidates and amends the law relating to companies.

It replaced the Companies Act,1956 by revising the law as per the requirements of the international best practices as well in keeping with the needs of the current economic environment in the country..

Key features are:

- The concept of “**dormant companies”** introduced (companies not engaged in business for two consecutive years can be declared as dormant).

- **National Company Law Tribunal** introduced.
- Provision of **self regulation with disclosures/transparency** instead of government approval based regime.
- Companies are required to go for maintenance of **documents in electronic form.**
- Faster merger and acquisitions including **short mergers and cross border mergers.**
- For companies which have net assets of 1 cr. or less, then official liquidators are empowered with adjudicatory powers.
- Concept of "**One Person Company**" introduced.
- Concept of **independent directors** included as a statutory requirement.
- **Women director** for prescribed class of companies.
- Compulsory provision for constitution of **Corporate Social Responsibility (CSR)** committee and formulation of CSR policy, with mandatory disclosure for specified class of companies.
- The term "**Key Managerial Personnel" and "Promoter"** has been defined to affix the responsibility on main functionaries of the company.
- Duties of director to shareholders, employees, the community and the environment defined.
- Listed companies are required to have one director representing small shareholders.
- Companies Act, 2013 has put a **cap on the number of directorships up to 20 companies** of which 10 can be public companies.
- Search and seizure of documents, during investigation, without an order from a magistrate.
- Freezing assets or disgorgement of illegal gains of company under investigation.
- Stringent norms made for accepting deposits from the public.
- **Internal audit for bigger companies** and auditor is not

authorized to perform specified non audit services.

- Substantial civil and criminal liability for an auditor in case of non compliance.
- **National Financial Reporting Authority (NFRA)** to be constituted.

The Ministry of Corporate Affairs has constituted special courts for the purpose of trial of offences punishable under the Companies Act, 2013.

Companies act amendment bill, 2019:

The Companies (Amendment) Bill, 2019 passed by the parliament seeks to amend the Companies Act, 2013.

-> Under the Act, certain classes of public companies are required to issue shares in dematerialised form only. The Bill states this may be prescribed for other classes of unlisted companies as well.

-> The Bill re-categorizes 16 of the 81 compoundable offences under the Act as civil defaults, where adjudicating officers (appointed by the central government) may now levy penalties instead of fine/imprisonment.

-> Allows companies to transfer their unspent CSR funds to a separate account and the same has to be spent within three financial years. In case, the money remains unspent, then it should be transferred to any fund specified in Schedule VII of the Act.

-> The Bill changes the deadline for companies to register charges on their property (from 30 days) to 60 days (extendable by 60 days (from present 300 days)).

-> Proposes to transfer some functions from NCLT to the Central government such as dealing with applications for change of financial year and conversion from public to private companies.

-> Under the Act, a regional director can compound (settle) offences with a penalty of up to five lakh rupees. The Bill increases this ceiling to Rs 25 lakh.

-> In order to curb the menace of shell companies, the Bill proposes making non-maintenance of registered office and non-reporting of commencement of business **grounds for striking off** the name of the company from the register of companies.

-> The Bill requires every company to take steps to identify an individual who is a significant beneficial owner (if a person holds beneficial interest of at least 25% shares in a company or exercises significant influence or control over the company) and require their compliance under the Act.

Issues with penal provisions:

- Corporate Affairs Ministry (MCA) has refrained from putting into effect the controversial CSR amendments in the recently enacted Companies (amendment) Act 2019 while going ahead with implementation of all other provisions in the amendment law.
- By keeping the implementation of **Section 21** (amendments to the CSR provisions in Companies Act 2013) in abeyance, the government has restored the status quo ante as regards CSR provisions.
- This would mean that **CSR for now would only be voluntary for corporate India and not spending the 2 per cent on CSR would not be treated as a criminal offence, attracting jail term for company officials**.
- The committee chaired by Injeti Srinivas, Secretary, Corporate affairs ministry, has recommended that **violation of CSR compliance may be made a civil offence** and shifted to the penalty regime.
- This is a departure from the recent policy change which had provided for a three-year jail term for violating CSR norms.