

Legislated CSR: A Brief Introduction

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Abstract

According to panwar, nybakk, Hansen, and pinkse (2017) and Vogel (2005), private companies voluntarily participate in socially beneficial initiatives, which is known as corporate social responsibility (CSR). Typically, it is not driven by a desire to make a profit (McWilliams & Siegel, 2001), but rather by a sense of social duty on the part of businesses (Wood, 1991). However, a lengthy line of studies has attempted to prove that companies may gain something from CSR (Orlitzky, Schmidt, & Rynes, 2003; Flammer, 2015), hence CSR is being seen more and more via a profiteering perspective. The so-called "business case for CSR" has played a significant role in increasing the adoption of CSR by private companies in industrialized nations. But in the developing countries, many question the validity of the commercial rationale for CSR, and they also question whether or not private companies would voluntarily engage in social responsibility. Companies in developing nations may be hesitant to engage in CSR initiatives because, according to some, markets and institutions there do not incentivize such actions as they do in industrialized nations. Expecting developing-world corporations to go above and beyond regulatory requirements and embrace CSR may be too optimistic, given that many of these companies already fail to comply with standards. The irony is that developing nations have an even greater need for CSR since their governments, already strapped for cash, depend even more on private sector funding to implement a plethora of social initiatives (Yadav, 2013). In this context, nations such as the Philippines, Indonesia, and India have enacted CSR laws mandating that private companies contribute to the welfare of society. More recently, in June 2017, the UAE Ministry of Economy said that legislation is presently being drafted to oblige significant

corporations in the UAE to report on their CSR programs. In this chapter, we will introduce readers to what we term legislated CSR (LCSR), a new kind of CSR. In particular, the chapter provides a more in-depth analysis of the CSR laws enacted by the Indian government, which went into effect on April 1, 2014. We start by providing an overview of both voluntary and mandated CSR. At the end of the chapter, we provide our thoughts on where legislated CSR may go from here.

Voluntary versus legislated CSR

According to Lepoutre, Dentchev, and Heene (2007), corporate social responsibility (CSR) is often seen as an unsolicited effort by businesses to tackle unregulated social and environmental problems. The notion of corporate social responsibility (CSR) has changed significantly over the last forty years, moving away from its historical oversimplification as charity (Carroll, 1979, Elkington, 1997). An economic worldview that embraces a "win-win" between business and social aims is a basic component of corporate social responsibility (CSR) (Lieberwitz, 2005). One major perk of corporate social responsibility is that it helps businesses stay one step ahead of potentially expensive and annoying rules in the future while simultaneously giving them a chance to do good in the world. Additionally, CSR gives companies the freedom to pick and choose whatever CSR initiatives they feel best support their primary business goals. To keep up with changing society expectations, companies may use CSR to swiftly adjust their social activities (Waagstein, 2011). According to Rodríguez and LeMaster (2007), companies may reduce their CSR expenses by taking advantage of the voluntary aspect of CSR. Conversely, there are social hazards and uncertainties associated with voluntary CSR. Concerns about the general use and effectiveness of corporate social responsibility (CSR) material in addressing societal concerns may arise, for instance, if it fails to sufficiently meet a society's demands.

Voluntary CSR, leaving aside the arguments for and against it, is generally seen as an optional corporate activity in which the state does not intervene (Vallentin & Murillo, 2012). As an example, the European Commission in the EU has used a plethora of strategic

initiatives to encourage CSR among its member states (Dentchev, Haezendonck, & van Balen, 2017). Companies operating inside the borders of Sweden and the Netherlands are required by law to report on corporate social responsibility in a certain way. Going even beyond, both France and Denmark have passed legislation mandating CSR reporting from businesses. Only in China and Australia is CSR reporting for businesses legally required, not in the European Union. And for a while there was even a department of corporate social responsibility in the UK's federal government. Consequently, there are several instances of state action in CSR that is ostensibly voluntary, but the fundamental goal has always been to support CSR while preserving its fundamentally voluntary character. Several nations, on the other hand, have enacted CSR laws that make it mandatory for businesses to address social and environmental concerns, which is a stark contrast to the voluntary approach. Business and society researchers have been slow to catch on to this trend, but it's definitely on the rise. The first nation to formally regulate CSR was Indonesia, and they did it mainly via three types of laws:

- The state-owned enterprises law (2003): Article 88 of this law stipulates Indonesian state-owned firms to assist small and medium enterprises cooperatives, and the people by allocating financial resources for CSR.
- The investment law (2007) that assigns responsibilities to general investors for environmental conservation and employee well-being.
- The limited liability company law (2007) that requires companies in the natural resources (and related) sectors to allocate funds — which they can credit as operational expenses — to engage in environmental responsibility.

Crisis persists in Indonesia's CSR sector despite these rules. According to Osemeke and Adegbite (2016), there is a lack of coherence among these legislative requirements, and the widespread ambiguity around some crucial phrases has resulted in widespread noncompliance. One example is the lack of clarity on the scope of the laws regarding limited liability firms in the natural resources and associated sectors. This leaves the question of which industries are regarded to be linked to natural resources up in the air.

Despite being a legal requirement, the "corporate social responsibility Act of 2011" that the Philippines House of Representatives approved in 2011 had contradictory wording that characterized CSR as an entirely voluntary endeavor. Changes to the law were made in 2013. Despite the fact that the modified Act shares the perspective that CSR is an optional endeavor, it does require the DTI to acknowledge and compensate businesses for their CSR efforts. In addition, the law requires businesses to report on their corporate social responsibility (CSR) initiatives to the SEC, the Department of Trade and Industry (DTI), and the Department of Finance (DOF). The DOF is responsible for keeping tabs on these initiatives. In addition, CSR expenditures are treated as costs for accounting purposes under the Act.

As on April 1, 2014, India followed these two examples of CSR legislation by enacting a clause known as the Companies Act 2013. When compared to similar legislation in Indonesia and the Philippines, this Act goes above and beyond to require CSR expenditure. We begin with a more general overview of the historical setting in which CSR legislation in India developed, and then we go on to describe the specific sections of this Act.

Evolution and enactment of India's Company Act 2013

Even though many Indian companies have a reputation for corporate giving, it became clear that they needed to do more corporate social responsibility (CSR) after India began its economic reforms in the early 1990s, which led to fast economic growth. According to Shrivastava and Kothari (2012), this economic progress has failed to bring about inclusive development. Nearly 20% of Indians are poor, despite the fact that their economy has been among the world's fastest-growing for some years. A sardonic remark that goes something like, "8 to 9 percent of India is growing very-well," captures the exclusive nature of India's economic development in the last few years, which has been about 8 to 9 percent yearly. In 1998, a voluntary code of conduct for listed corporations was issued by India's top chamber of commerce, the Confederation of Indian Industry, in an effort to indicate corporate awareness toward rising social disparities. Companies' listing agreements in India are now

required to adhere to certain provisions of this code by the Securities and Exchange Board of India. Social disapproval of businesses' validity, however, persisted. The prime minister of India at the time, Manmohan Singh, even went so far as to call on business leaders to avoid showing off their wealth and to fight back against excessive compensation in 2007. The federal government's Ministry of Corporate Affairs requested businesses to: in 2009, when it suggested optional CSR guidelines:

- Care for all stakeholders
- Function ethically
- Have respect for workers' rights and their welfare
- Have respect for human rights
- Have respect for environment
- Pursue activities for social and inclusive development

The National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business had a second revision in 2011 under a new name. In order to assist businesses in conforming to society's larger expectations, the following nine principles were put forward:

Principle 1: Businesses should and govern themselves with ethics, transparency and accountability

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

Principle 3: Businesses should promote the wellbeing of all employees

Principle 4: Businesses should respect the interests of, and be responsive towards, all stakeholders, especially those who are disadvantaged, vulnerable and marginalised

Principle 5: Businesses should respect and promote human rights

Principle 6: Business should respect, protect, and make efforts to restore the environment

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

Principle 8: Businesses should support inclusive growth and equitable development

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

Despite ongoing initiatives to promote voluntary CSR, firms' contributions to inclusive development in India were largely lacking, considering the remarkable growth they experienced. To illustrate the point, private sector donating in developed countries like the US and UK amounted to around 2.2% and 1.3% of GDP, respectively, in 2010, whereas in India it stayed between 0.3% and 0.4% of GDP. Aiming to implement governance changes, particularly to institutionalize CSR, the Indian government suggested revising the Companies Act of India in response to private sector reluctance to participate in inclusive and sustainable development. Companies Act of India, 2013 was subsequently approved by the Ministry of Corporate Affairs on February 8, 2011, after the acceptance of a recommendation by the Parliamentary Committee (Pandey & Nawani, 2016).

It should be mentioned before we get into the details of this Act that most Indian companies have long seen corporate social responsibility and corporate philanthropy as one and the same thing (Arora & Puranik, 2004). According to Planken, Nickerson, and Sahu (2013), the majority of Indian enterprises have been unable to successfully engage their internal and external stakeholders and integrate CSR with their core operations due to this strategy. According to previous research (e.g., Hadfield-Hill, 2014; Narwal & Singh, 2013), Indian companies still face a conundrum when it comes to corporate social responsibility (CSR). They firmly believe in a philanthropic definition of CSR, but they are being pressured to embrace a more modern definition that extends beyond charity. Putting that aside, charitable efforts in India have disproportionately benefited powerful elites, rather than the underprivileged and neglected populations who should have reaped the most benefits (Majumdar Saini, 2013). Despite pushback from businesses and trade groups, the Indian

government ultimately chose to codify CSR in the Companies Act, 2013 inside this complicated framework.

According to the Act, businesses that have a net worth of 500 crore Indian rupees (about 7.3 billion USD), a turnover of 1,000 crore rupees (about 14 billion USD), or an annual net profit of 5 crore rupees (about 738,000 USD) must set aside 2% of their net profit for corporate social responsibility (CSR) initiatives that address social and environmental issues. Additionally, these businesses must form a CSR committee, which should include board members and at least one independent member, to monitor these spending. The CSR committee plays a crucial role in carrying out the Act's provisions by developing a comprehensive strategy for CSR initiatives, including CSR budgets, activity types, stakeholder roles and responsibilities, and a system to track progress. Additionally, the CSR committee must guarantee that the community or CSR corpus receives a portion of the company's earnings from CSR initiatives. The company's CSR policy must be approved by the board of directors after considering the recommendations of the CSR committee. The board must disclose the policy's contents in their report and publish the details on the company's official website, if applicable, according to the prescribed procedures. In its report, the board is required to explain why the firm did not spend the specified amount. The CSR committee is charged with the following: -

- 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.

Corporate social responsibility (CSR) initiatives that aim to end extreme poverty and hunger, increase access to education, empower women, improve maternal and child health, build vocational skills for communities, fund social business projects, and contribute to the Prime Minister's National Relief Fund or any other fund established by the Central or State

Governments for socio-economic development and relief, as well as funds for the welfare of historically disenfranchised populations like women, minorities, and members of Scheduled Castes and Scheduled Tribes, are all part of the Act. Approximately 6,000 businesses were regulated by this statute, and their annual CSR spending amounted to almost \$2.8 billion (Prasad, 2014).

The other highlights of the Act include:

1. Any surplus arising out of CSR activities will have to be reinvested into CSR initiatives, and this will be over and above the 2% figure
2. The company can implement its CSR activities through the following methods:
 - Directly on its own
 - Through its own non-profit foundation set- up so as to facilitate this initiative
 - Through independently registered non-profit organizations that have a record of at least three years in similar such related activities
 - Collaborating or pooling their resources with other companies
3. Only CSR activities undertaken in India will be taken into consideration
4. Activities meant exclusively for employees and their families will not qualify

To further guarantee consistency, the Act also specifies a reporting format. Spending broken down by activity, justifications for spending less than 2% of average net earnings over the last three years, and an assertion of responsibility stating that the CSR policy, execution, and monitoring process adheres to the CSR goals are all part of the document. Either the chief executive officer or the managing director of the firm must put their signature on the report.

An examination of India's CSR laws

Since CSR is essentially a voluntary act, the Indian CSR law is both conceptually and pragmatically perplexing; moreover, it is not a rigid rule with consequences for non-

compliance, making it a complex and unusual experiment. The "comply or explain" law is an apt description of the legislation. First, however, we need to have a look at the legal definition of CSR. The Act's basic idea is that

A company engages in corporate social responsibility (CSR) when it considers and changes its interactions with stakeholders for the benefit of everyone, and when it adopts suitable business practices and strategies to show that it is committed to this goal. So, CSR isn't the same as philanthropy or monetary contributions. As a method of doing business, corporate social responsibility (CSR) allows companies to have a visible impact on society. Businesses that care about the community don't only focus on making money; they also look for other ways to contribute. Incorporating social, environmental, and economic goals into the company's development and operations is what corporate social responsibility is all about (Rani, 2014).

Despite the fact that this principle encourages companies to internalize CSR by incorporating social and environmental concerns into their operations, the Act's actual requirements are still focused on philanthropy, including the aforementioned efforts to end hunger and poverty, promote education, etc. Companies are not obligated to alter their operations or business processes per the Act's specifications. Not how businesses should make money, but rather how they are required to spend it is the meat and potatoes of the Act. So, we contend that this well publicized CSR law is really corporate philanthropy law. However, it begs the question: why did India choose to window-dress CSR via this law rather than just establishing a social tax?

To answer this question, Van Zile (2012) provides a convincing argument. She finds solutions in the chronic conflict that exists in India's political climate, between the capitalist ideals of free markets and deregulation of economies and the socialist role that the government continues to play. According to Van Zile, the goal of this law is to satisfy both the public and businesses. The public wants businesses to pay into social welfare, while businesses want a non-tax burden that gives them freedom to do what they want. With a corporate tax rate of

34.61%—much higher than the global average of 24.09%—and years of intense pressure to liberalize its markets and pursue deregulation, India has been struggling to attract international investment and multinational corporations. Any further tax would have further diminished this appeal. This law gave India the tools it needed to meet the challenges of its economic trajectory while also addressing the influence of its long-standing political ideals. Some news outlets even painted it as a way to entice multinational corporations and overseas investors, who would likely be more amenable to CSR laws than social regulations or taxes.

Claims and Results of India's Corporate Social Responsibility Laws

Mandatory procedures to enforce CSR practises have been the subject of criticism in previous research (Goncalves, Weffort, Peleias, & Goncalves, 2007; O'Laughlin, 2008). Though Pandey and Nawani (2016) found a favorable response from the stock market to CSR law, many corporations in India fiercely opposed it, calling it forced philanthropy (Prasad, 2014). The law, according to Bird, Mukherjee, and Duppati (2017), would encourage "tick box" behavior and make corruption worse. The proposal might be seen as a chance for businesses to help fund social projects that governments can't afford to execute on their own. By interacting directly with and making positive contributions to communities, it may help corporations establish credibility and earn confidence. Contributions of this kind may also help lessen the wasteful spending that characterizes most government-run programs. Businesses may benefit from local efforts in training people by adding them to their human resource pool. However, due to the lack of empirical study on the effects of CSR regulation in India, these arguments can only be considered conjectural at this point. Tragically, the results of the research that have been conducted have shown contradictory conclusions. Overall CSR spending is below expectations, and the activities covered are only a few, according to Bird et al. (2017), who also claim that the law has failed to fulfill expectations in terms of coverage. Additionally, they discover that the profitability-CSR link has been negatively impacted by law, meaning that CSR's favorable impact on business performance has diminished in the age after legislation. Moreover, they discover that big

corporations that were already involved in CSR cut their spending to achieve the 2% threshold, whereas smaller corporations who were already involved in CSR but aren't subject to the CSR laws cut their spending even more. According to Subramaniam, Kansal, and Babu (2017), state-owned enterprise managers believe that CSR legislation has increased the responsibility and dedication of senior management and governing boards to CSR. However, they also observe that managers are more focused on allocating their CSR budget rather than measuring the results of this investment. Consulting firms have also researched the results of CSR laws, in addition to these two scholarly articles.

As an example, CSR spending has thus far surpassed forecasts, according to the Prime Database (2017). According to a study conducted by KPMG in 2016 (KPMG, 2017), the top 100 firms in India have made outstanding strides in meeting their CSR goals and have even gone above and above what is required. Approximately 64% of businesses that are required to comply with the CSR legislation reportedly have more than the minimum required by law, which is three members on the CSR committee. From a governance standpoint, it is encouraging to see that 47% of corporations have more than one independent CSR committee member on their board. On its CSR committee, women made up 55% of the participants. "During the year, 82% of the companies had two or more meetings with their CSR committees" (p. 7). Another positive trend since 2015 is that 90% of overall CSR spending objectives are reached. Companies that report their direct and overhead costs independently also make it easier to track their finances. Health, sanitation, and education programs were the most often chosen by firms among the required CSR initiatives, with environmental protection and rural development coming in a distant second and third. Forty-eight percent of businesses submitted reasons for noncompliance because they did not spend their mandatory CSR spending. Scaling up operations, multi-year and long-term projects, trouble identifying suitable partners, exploring new opportunities and areas of intervention, and delay in planned expenditures were among the most frequently cited reasons for failing to spend 2% of net profits (KPMG, 2017). Karnani (2016) provides a critical analysis of the progress that Indian companies have achieved in complying with the CSR legislation. He claims that corporate social responsibility (CSR) funds are not going

toward solving India's most critical social problems. Child mortality, for instance, got zero dollars in corporate social responsibility financing, although severe hunger and poverty earned six percent. Karnani wonders whether corporate social responsibility (CSR) funds are really helping to alleviate the most pressing societal problems in India, such as the widespread poverty and severe childhood malnutrition. In addition, he finds that there is a significant regional imbalance in the allocation of CSR funds, with some regions receiving disproportionately large sums of money and others receiving very little amounts. "Inequality in India, which was already high, has increased even more," sums up Karnani's scathing criticism of the CSR Act. To alleviate poverty and reduce inequality, the CSR legislation falls short. It is doubtful that the legislation will lead to substantial compliance and actual efficacy in the absence of a mechanism for forceful enforcement. So, "required" CSR will continue to be mostly optional, but it will make it seem like things are getting better. On a national level, this is "greenwashing"! ("Karnani, 2016)

Conclusion

The basic voluntary concept of CSR is at odds with state-driven CSR. That being said, governmental involvement in CSR is on the rise worldwide. At its most gentle, this intervention seeks to promote CSR by means of reporting standards; at its most stringent, it may rival India's CSR laws, albeit the latter still lack a punishment provision for non-compliance and are instead known as "comply or explain" laws. However, raising consumer awareness and eliciting a reaction from civil society are necessary steps before corporations may risk damage to their legitimacy and brand as a result of non-compliance. Legislated CSR has the potential to undercut the real potential of underlying (voluntary) CSR, and it is unclear whether this will encourage real business sector engagement in solving social issues. Our biggest concern is that corporations will only spend their CSR funds as is required by law, rather than exploring new avenues for producing shared value via ground-breaking processes, goods, and business models. And in a nation like India, where corruption in the private sector is widespread, yet another rule might only add to the long number of ones that businesses already manage to circumvent. There is a fundamental difference between

the morally grounded idea of corporate social responsibility and the legislatively mandated form of CSR. We are worried that this law can have a chilling effect on the gradually growing consciousness of CSR in India. However, with social and environmental issues only becoming worse, CSR that is mandated by law might signal a shift toward increased oversight of business practices. If there is a clash between social and business objectives, further regulation is certain to follow, as this law serves as a reminder. So, academics in the field of Business and Society should feel compelled to keep looking for better methods for corporations to proactively address social challenges, even in situations when doing so may not seem lucrative at first glance, thanks to this law.

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