

Business Manager

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Making HR People Complete



CSR

Back to Boardroom



HR without Prejudice

Saving Human Energy for Business

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Response

Towards simplicity

Cover story on labour reforms and ideas of contributors are innovative, relevant and path breaking. It is correct as Mr. Diwan has said that laws should be made simple so that easily understood and complied with. He has rightly indicated that political interference in business in the shape of trade unions should be removed. Collaborative approach is the essence while working on reforms. Mr. Dagar's thoughts are pragmatic. His ideas are out of box thinking. Govt. should really think upon why trade union affair and registration should be a business of employees only? Research team work on ID Act and Contract Labour reforms are value addition. Unless ambiguities are removed and laws are reformed in the direction of dispute resolution no meaningful purpose will be served. It is right that new age knowledge workers need to be protected because technology driven organisation cannot be given free hand to the extent that employees are exploited there. There is need to have specific law for this sector where interests of both are taken care of.

-Madhumathi Gupta

Timely

Cover story on Labour reforms is very timely and need of the hour. As rightly pointed out in the editorial, patchwork or tinkering with the existing ones without aiming at changing the mindset of labour authorities will not have the desired effect. In the prevailing scenario, the well researched pack of experts views on this vital subject will go a long way in apprising all the concerned, apart from coming handy to the students of HR. The way BM magazine is shaping up with the passage of time, I feel i am lucky enough to have been associated with this magazine . I am not only sure, nay, confident that in the times to come, with your consistent and focused efforts, it will become the most preferred and sought after reference material for all those associated HR related issues.

-Dr. A Jagan Mohan Reddy

Solution Oriented

I am a very old reader of Business Manager magazine. I thank the team of Business Manager for always bringing the blazing issues with proper solutions. The best part of this magazine is that its consists of both the aspects- HR as well as IR and Compliance, which really help readers to acquire the sound understanding and knowledge. Topics viz. Post PMS effects / Emerging trend of employment / Employees of Gen X & Mindset / Career Path & development / First 90 Days at workplace / Fun at Workplace / increasing disloyalty with respect to retention / Work life balance ways / Significance of female employees at workplace / Talent crunch / Hiring & Firing culture / HR Overselling / Favoritism by HOD etc. may enhance our learning.

-Upendra Chaturvedi

Need specific

Your editorial on labour reforms underlines the need to make labour laws growth and development friendly to generate employment. In fact people feel more secure in an employment friendly environment.

-B Saikumar

Interesting

Dr. Vinayshil Gautam's writing has come out as a interesting read. I hope he will continue to write to give enough food for thought for HR professionals.

-Jagannath Bhardwaj

Skill enhancement

Article on handling emotions at workplace is very practical which helps managers to gain learnings and apply at work and improve their skills.

-Sourav Sharma

Readers are invited to comment on articles published in BM through email at : bmalar@gmail.com



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Business Manager
Making HR People Complete

**Editor's
Note**

No more ad-hocism!

Gone are the days when business houses used to do community service by the side of business through charity with paternalistic approach. Responsibility towards society, known as corporate social responsibility is no more a charity now. It has gone beyond simple donations with less accountability of the person/NGO taking such donations which resulted into a disconnect between the business processes and the CSR activities.

With new company law in force making CSR mandatory for companies in India, probably the first in the world to move in this direction, companies have to become more strategic while undertaking CSR projects. The inclusion of CSR mandate is an attempt to supplement the Govt. efforts of equitably delivering the benefits of growth and to engage the corporate Inc. with the development agenda of the country. That's why now COs need to



make it an integral part of corporate governance because the combination of regulatory as well as societal pressure has meant that companies have to pursue their CSR initiatives more professionally. The companies need to see that CSR initiative should be of impact making in society at large and for that two things are required. Firstly- a strategic approach and secondly- a passionate leadership believing firmly in CSR.

It has to be a Strategic CSR now in place of ad-hoc charity or mere compliance orientation. To make it long lasting, this initiative has to be backed by employees. Dedicated teams of HR have to work on it to ensure that CSR investment should result in to improvement of disadvantaged and marginalized segment of society as well as stakeholders relations. The key to maximizing returns for all stakeholders is to emphasize on developing effective and need based CSR strategies so that investment can yield intended results. No doubt, employees are an important stakeholder in the business. Their perspective towards CSR can not be ignored because they can act as social change agent when they push the company to adopt socially responsible behavior. HR has to ensure that their CSR teams design activities in a sustainable, cabale manner and result oriented.

The cover story encompasses an understanding of the concept of CSR, the intent and requirements of new law and its implications with good CSR initiatives taken up by some business houses.

If you like it let us know. If not, well, let us know that too.

Happy Reading!

Anil Kaushik

Anil Kaushik

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October 2014

CSR : Philosophy and challenges



Archana Balasubramanian

Agama Law Associates, Mumbai

India is the first country in the world to legislate corporate social spending, however, this has its own set of challenges. Keeping aside the philosophical limitations of CSR regime, adopting a hermetic attitude towards the areas of CSR spend is not a step in the right direction.

Cover Feature

India appears to be the first country in the world to legislate corporate social spending. Interestingly, two of the world's most developed countries, i.e., the United Kingdom and the United States of America do not have any legislation for CSR. In the UK, CSR is generally considered to be a part of good corporate governance. Directors of companies have duties to all stakeholders¹ and therefore CSR becomes an integral part of the company's governance and policies. In the US, CSR is seen as a requirement to retain business as clients are becoming increasingly aware of environmental and social implications and want to be seen as ethical in doing business.

In India, corporate social responsibility (CSR) activities is governed by Section 135 of the Companies Act, 2013 and provides that certain companies that meet thresholds prescribed therein shall formulate a CSR Policy through a CSR committee constituted by the Board. The Board shall ensure that the qualifying Company spends 2 per cent of the average net profits of the Company in the three immediately preceding years every financial year towards CSR activities.

Large and small

Large multinationals such as Nestle, IBM and others were already contributing to CSR activities, whether in India or other jurisdictions, prior to the notification of the new Companies Act. The new Companies Act, now envelops numerous smaller enterprises as well, i.e., corporates that may have just crossed the threshold of INR 5 crore net profit. Private, public, listed and unlisted companies are required to gear up to ensure that a committee is constituted and policies framed.

The recommendation for small companies has been to pool resources instead of setting up trusts on their own. Pooling the 2 per cent value from other corporates would lead to the creation of a much larger product than what one small corporation could achieve by itself. CSR activities may also be conducted jointly with other companies. However, the activities should be conducted in such a manner that reporting separately by each collaborating company is possible.

However contribution to corpus of a trust or society or Section 8 company would qualify as CSR expenditure only where (a) the Trust/ Society/ Section 8 companies, etc., is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose *directly* relatable to a subject covered in Schedule VII of the Act.

Scope of CSR activities

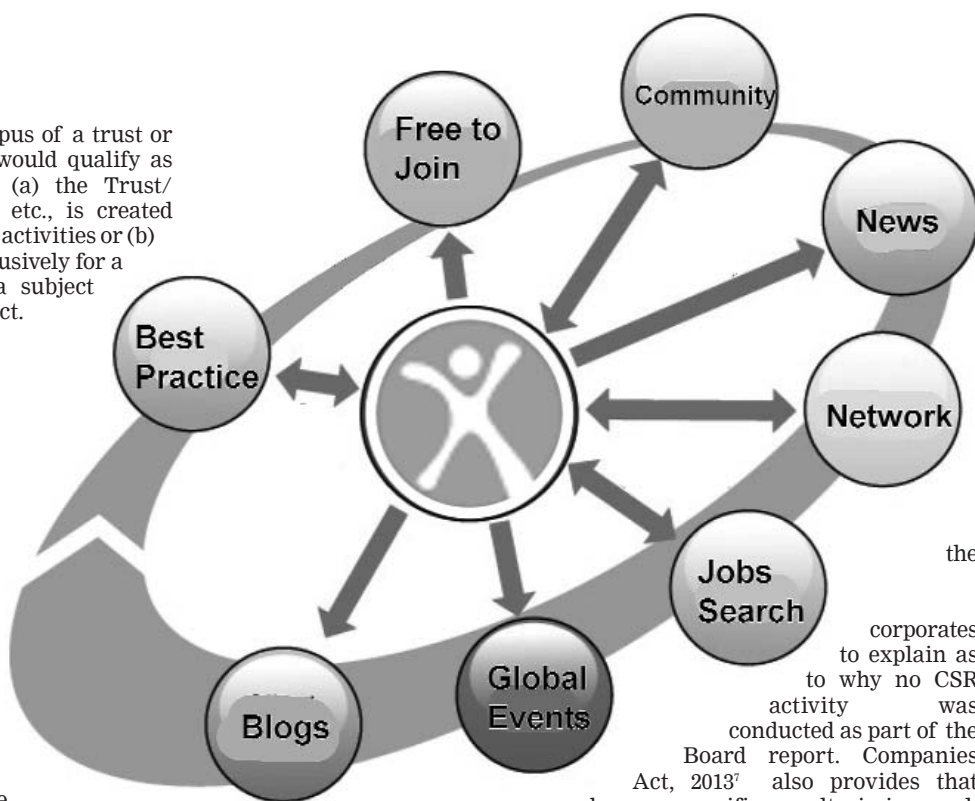
CSR activities undertaken by companies shall be projects or programs as per its CSR policy excluding activities undertaken in pursuance of its normal course of business². It is interesting that a closed list has been adopted³ which leaves out many universally recognized principles, such as the 10 principles of the UN Global Compact. Strangely in India, areas such as, collective bargaining, forced labour, and child labour have been completely ignored from the closed list. Most surprising is the absence of anti-corruption at a time when that issue has politically charged the entire nation, bringing people to the streets. The law further mandates that organizations should give preferential treatment to their own locality. This stipulation operates to limit the scope of conducting CSR activities. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programs, etc., would not be qualified as part of CSR expenditure⁴.

Clarifications by the government

In a recent case before the Delhi High Court⁵, it was held that an activity carried out by a company covered under Schedule VII, which is a part of its core business, if not done with a profit motive, amounts to a CSR Activity. The Delhi High Court had taken on record and accepted a letter and affidavit of the Ministry of Corporate Affairs, by which the Government of India was held to be bound. This provides some respite to companies. However, this is not in conformity with the legislation governing CSR. In June this year, the MCA brought out a clarification⁶ that the entries in Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated therein. Illustrations were also provided in an Annexure. However, a lot of confusion may be caused because the liberality of interpretation by corporates is subject to the acceptance of such interpretation by the government.

Delinquency

Non-compliance with CSR provisions requires



the corporates to explain as to why no CSR activity was conducted as part of the Board report. Companies Act, 2013⁷ also provides that where no specific penalty is imposed, every officer or other person of a company may be fined / penalised for each day for which the offence continues.

While many argue that the provision that require corporates to merely provide an explanation for not making CSR expenditure, nothing precludes the Government from commencing an action for non-compliance.

Additional Responsibility for HR

Companies are permitted to build CSR capacities of their own personnel as well as those of their implementing agencies through institutions with established track records of at least three financial years but such expenditure shall not exceed 5 per cent of the total CSR expenditure of the company in one financial year. Therefore an additional burden is cast on the HR to use the existing resources to undertake CSR activities / co-ordination in addition to the existing functions of such personnel. There is also a dearth in this country of truly professional and well-managed institutions that may assist large companies in undertaking such CSR obligations.

Distinctiveness of the Indian CSR concept

The World Business Council for Sustainable Development (WBCSD) defines CSR as the continuing commitment by business to contribute to economic development while improving the *quality of life of the workforce and their families* as well as of the community and

society at large.⁸ In India, any activity directed only towards the company's employees or their families does not qualify as CSR spend⁹. CSR should ideally impact every area of operations of an organization. For instance, governance and ethics; employee hiring, providing opportunity; stakeholders benefit sharing and energy usage and environment protection.

The world over, the focus is on social accountability of corporates which *inter alia* includes making of informed investment decisions, sourcing goods ethically and using ethical labour practises.

In India, this concept has been stretched to include compulsory spending by qualifying corporates. In fact the Finance Bill of 2014, adds that '*any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession*'. The Finance Minister states that CSR spending is an application of income and not any expenditure toward business as an explanation to the above amendment.

Taxing effects

There are no tax benefits for incurring any expenditure towards CSR activities.

Corporate India has not quite welcomed the new corporate social responsibility (CSR) provision with open arms. In fact, it has likened it to a tax, as the expenditure on CSR is not tax deductible, that too a tax imposed via a company law that many lawyers say is sufficient grounds for challenge.

It is too early to assess the success of CSR in the Indian context, particularly that of Companies Act, 2013 or to analyse the effect of such compulsive social contribution. India has seen many widely perceived as philanthropists entrepreneurs such as Azim Premji, who run well known trusts for charity out of personal wealth amassed through 'for profit' business. Corporate India now needs to fast-track internal mechanisms to do this right. Appointment of independent or other directors who have the capacity to oversee the activities, staff for monitoring the investments made and liaisons with NGOs and other trusts in whom corporates have invested as part of their CSR spend. The good news is the expenditure incurred in conducting and monitoring CSR spends, i.e., salary of employees is permitted to be included as CSR spend.

Gaps that require urgent attention

There is today no mechanism in place to check, the effective channelization of this 2 per cent from numerous corporates. The entire exercise of imposing social responsibility on corporates through proactive investment / expenditure for certain specified objectives will be lost as there is no real impact assessment.

Larger corporates will make investments themselves and hire additional talent to ensure that CSR spend is in compliance with their policy. Smaller companies would not have the wherewithal to monitor and assess whether the institution / collaborative trust are implementing the selected CSR activity and whether such activity actually has the desired effect.

There is room for abuse by implementing agencies and other institutions owing to greater resources at their disposal. This is further funnelled by the fact that CSR spend can include overheads as stated above.

It is difficult to opine whether such a check in the system is possible or whether at all desirable.

The final word

In a scenario where India ranks amongst the worst places to do business¹⁰, given the difficult-to-understand and comply-with tax and foreign exchange laws, this new regime on mandatory social spending in addition to all the rigours of labour compliances, is taking India further away from being a global business destination.

Even if corporates were to be forced to "apply their incomes" they should be provided the freedom to do so in their own homes and start with their employees. It will be a challenge for the human resources team of corporations that were earlier making significant investments towards employees' welfare to keep such schemes on when they are additionally burdened with such compulsory CSR spending.

Keeping aside the philosophical limitations of CSR regime, adopting a hermetic attitude towards the areas of CSR spend is not a step in the right direction. It is also unclear why India thought it fit to apply a mandatory regime, which has no precedent, in an environment where investor sentiment has suffered serious setback in recent years. Only time will tell how this policy is implemented and whether the investors look at it as a harmless addition to the number of compliances or a significant change in the regulatory scheme. **BM**

1. See also Section 166(2) of the Companies Act, 2013 which imposes a similar obligation on the directors.

2. See Rule 4(1) of the Companies (Corporate Social Responsibility) Rules, 2014.

3. See notification GSR 130 (E) dated 27th February 2014, issued by the Ministry of Corporate Affairs.

4. General Circular No. 21, Government of India, Ministry of Corporate Affairs.

5. Government of India, filed an Affidavit in a Writ Petition before the Delhi High Court, decided on 17th April 2014 clarifying to this effect. See Mohd. Ahmed (Minor) v. Union of India & Ors, WP(C) 7279/2013, Delhi High Court.

6. General Circular No. 21, Government of India, Ministry of Corporate Affairs.

7. See Section 450.

8. Corporate Social Responsibility: Meeting changing expectations, p. 3

9. See Rule 4(5) of the Companies (Corporate Social Responsibility) Rules, 2014.

10. <http://www.doingbusiness.org/rankings>