
The Pre and Post legislative development of CSR in India: A case illustration of Mahindra and Mahindra

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ABSTRACT

The case study is a detailed illustration of legislative implications of Corporate Social Responsibility Law in India. The study details out the traditional structure of CSR in India and the latest legal framework which has created a positive stir in India Inc. Mahindra and Mahindra is one the organization which has worked a lot on societal development under the umbrella of CSR. The study indicates the pre and post legislative implications of CSR on Mahindra's policy framework.

Keywords: Corporate Social Responsibility, Legal Framework, Implications.

1. Introduction

The notion of Corporate Social Responsibility is an age old concept which has gained importance in the 21st century corporate culture. It has evolved from primarily a philanthropic activity; CSR at present reaches out to the societies/communities, addresses bigger environmental concerns and provide justice with regard to living standards of internal and external stakeholders. Today, corporate social responsibility is a core focus area for an increasing number of organizations, which are looking at new and innovative ways to contribute to the communities they operate in.

2. The bygone lanes of corporate social responsibility in India

India has the world's richest tradition of Corporate Social Responsibility. It has a comprehensive and prosperous history of close business association in social causes for national development. CSR in India is known from ancient time as a social duty or charity, which through different ages is changing its character (Gupta, 2007). Philosophers like Kautilya from India and pre-Christian era philosophers in the West preached and promoted ethical principles while doing business. The concept of helping the poor and disadvantaged was cited in much of the ancient literature. The idea was also supported by several religions, where it has been intertwined with religious laws. "Zakaat", followed by Muslims, is donation from one's earnings which is specifically given to the poor and disadvantaged. Similarly Hindus follow the principle of "Dhramada" and Sikhs the "Daashaant" (KPMG white paper, 2008).

India has been following tradition of corporate philanthropy and industrial welfare since late 1800s. Historically, the philanthropy of businesses in India resembled western philanthropy.

In the pre-independence era, the businesses which pioneered industrialization along with fighting for independence set up charitable foundations, educational and healthcare institutions and trusts for community development. The donations either monetary or otherwise were periodic activities of charity. The philanthropy that was taken out of personal savings did not belong to the shareholders nor did it constitute an integral part of business. In the late 1900s, socially responsible business practices took diverse forms: philanthropic donations to charity, service to the community, enhancing employee welfare and promoting religious conduct. Corporations started funding charitable or educational institutions.

The term CSR itself came into common use in the early 1970s, although it was rarely abbreviated. By late 1990s, the notion was fully recognized. People and institutions across all sections of society started sustaining it. This can be corroborated by the fact that while in 1977, less than half of the Fortune 500 firms even mentioned CSR in their annual reports. By the end of 1990, approximately 90 percent Fortune 500 firms embraced CSR as an essential element in their organisational goals, and actively promoted their CSR activities in annual reports. To comprehend the existing status of Indian CSR, India's long tradition must be taken into account. Its CSR approach is closely linked to its political and economic history, in which four phases can be distinguished. The phases are described in table 1

Table 1: Different development phases of CSR in India

Phase	Year	Particulars
First Phase	(1850-1914)	CSR activities were mainly undertaken outside companies and included donations to temples and various social welfare causes
Second Phase	(1914-1960)	Influenced by Mahatma Gandhi's theory of trusteeship, the aim of which was to consolidate and amplify social development. The reform programmes included activities geared particularly to abolishing untouchability, empowering women and developing rural areas.
Third Phase	(1960-1980)	Dominated by the paradigm of the "mixed economy, CSR largely took the form of the legal regulation of business activities and/or the promotion of public-sector undertakings (PSUs)
Fourth Phase	(1980 until the present)	Characterized partly by traditional philanthropic engagement and partly by steps taken to integrate CSR into a sustainable business strategy.

Source: Chahoud, T. et al (2009)

The CSR agenda in India is changing. Though, traditional philanthropic approaches are still prevalent, CSR activities in India are undergoing transformation processes in line with worldwide trends. The concept is now integrated into core business processes and assigned to corporate departments and formulation of law has given a different stand to CSR in Indian business scenario. However, this transformation process is slow and will take time; the journey has begun with the instigation of regulatory framework.

3. The legal route of CSR in India

The CSR is on expedition in India but companies have yet to realise its complete potential. “Individual and collaborative initiatives continue to be dominated by self-assertion rather than accountability” (Dasgupta A. 2007). There is indeed no dearth of innovative CSR activities and projects, but what is absent are distinct goals embedding of a CSR culture and practice and metrics for evaluating their social impact in improving the plight of many (Kapur and Sengupta, 2010). This dearth has also been evident due to lack of government rules and regulations. In India there are numerous companies practicing Corporate Social Responsibility since their initiation, to recognize few are- Birla, Tata, HCL, Indian Oil Corporation Ltd., Reliance Industries, State Bank of India etc. In India CSR approach and practices adopted by Indian business industry mainly utilized its own features and fundamentals of the global CSR being only slightly incorporated. The philanthropic approach is still widespread among Indian companies, though the Indian understanding of CSR has shifted from traditional philanthropy to sustainable business. The community development activities, particularly in the areas of health and education continue to be dominated in Indian CSR scenario. Most of the Indian companies view their community development projects as important contributions to the existing development challenges in their region of operation. Accountability of businesses is also expanding beyond its former boundaries. Accountability today is also about ensuring the right leadership roles, meeting stakeholder expectations both proactively and reactively. The contemporary Indian companies are also focusing on documentation of CSR policy and voluntary disclosures are given importance, as it renders authenticity to companies CSR agenda.

On one hand we have companies which have practiced and published an altruistic approach, towards the society and community in which they operate and on the other there are companies which don't report their CSR spends or even proclaim the social causes they support. The reason being, that there has been no legal cap on these organizations. Formerly, it was difficult to evaluate the spending on CSR done by companies as at government level no legal provisions were described. It has always been felt that there should be a regulatory framework which provide companies a platform to start thinking strategically about CSR and aligning its efforts to addressing stakeholder/community needs. It allows companies to implement its practices effectively by ensuring adequate allocation of funds and setting up measurable targets. Indian companies have been following international codes and a standard for CSR, thus from Indian CSR scenario, legislation has been missing. Lately, government of India has felt the need of legislating CSR in India. In 2009, Ministry of Corporate Affairs issued National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business and the Companies Bill, 2012 incorporates a provision of CSR to streamline the approach of CSR in India.

3.1 CSR law- The legal framework of social responsibility

The Companies Bill, 2012 incorporates a provision of CSR under Clause 135 which states that every company having net worth Rs. 500 crore or more, or a turnover of Rs. 1000 crore or more or a net profit of rupees five crore or more during any financial year, shall constitute a CSR Committee of the Board consisting of three or more Directors, including at least one Independent Director, to recommend activities for discharging corporate social responsibilities in such a manner that the company would spend at least 2 per cent of its average net profits of the previous three years on specified CSR activities. According to

Schedule-VII of Companies Bill, 2012 the following activities can be included by companies in their CSR Policies:-

1. Eradicating extreme hunger and poverty;
2. Promotion of education;
3. Promoting gender equality and empowering women;
4. Reducing child mortality and improving maternal health;
5. Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
6. Ensuring environmental sustainability;
7. Employment enhancing vocational skills;
8. Social business projects;
9. Contribution to the Prime Ministers National Relief Fund or any other fund set by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Caste, the Scheduled Tribes, other backward classes, minorities and women; and

The Companies Bill, 2012, Clause 135 also provides for constitution of a CSR Committee of the Board. The CSR Committee is required to;

1. Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
2. Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
3. Monitor the Corporate Social Responsibility Policy of the company from time to time.
4. The format for disclosure of CSR policy and the activities there as part of Board's report will be prescribed in the rules once the Bill is enacted.

3.2 Implications of CSR Law

The law has undoubtedly given a platform to companies to strategically align their CSR policy but there is also an apprehension regarding the implications of CSR law on Indian business inc. A debate has started following amid the companies, stakeholders and Ngo's regarding the implications of such law. Business leaders have also expressed concerns from the corporate perspective. Ratan Tata, the former chairman of Tata Sons, has said that "We have a phenomenon which is meant to be good but is going to be somewhat chaotic. We don't as yet know what kind of monitoring there'll be in terms of how well this money is used". Concerns about the motives and implementation of this new mandate have also been voiced by Azim Premji, the philanthropist and head of the £3.4bn IT services firm Wipro, he said

that “My worry is the stipulation should not become a tax at a later stage. Spending 2% on CSR is a lot, especially for companies that are trying to scale up in these difficult times. It must not be imposed”. Thus, in order to comprehend the far reaching implications of CSR legislation, an illustrative case study on Mahindra and Mahindra has been developed examining and understanding the route Mahindra and Mahindra is going to follow before and after the law.

4. CSR at MAHINDRA and MAHINDRA limited

4.1 Mahindra’s CSR Approach Prior to CSR Law

Mahindra and Mahindra since its inception has been a socially committed organization and has been effectively framing and implementing Corporate Social Responsibility policy within its precincts. The Mahindra’s have been functioning beyond statutory and legal requirements to fulfil their social obligations. Apart from Nanhi Kali, there are numerous CSR policy initiatives akin to Scholarships and grants, Project Haryali, Disaster relief and rehabilitation, ESOP’s, Lifeline express etc. The Mahindra Group has always been conscious of its Corporate Social Responsibility. The Group-wide belief is that “CSR encompasses making socially responsible products, engaging in socially responsible employee relations and making a commitment to the community around us.” In the 60th Anniversary year, the Mahindra Group planned to give a further thrust to CSR and committed to dedicate 1% of its PAT (Profit after tax) towards CSR. During 2011-12, the organisation made an investment of Rs 720 million on CSR initiatives which is an increase of 42 per cent over the last fiscal.

The Mahindra Group believes that CSR is an opportunity and a privilege and goes far beyond managing corporate image. In order to ensure maximum impact, Mahindra’s CSR initiatives focus mainly on education, health and Environment. A unique kind of ESOPs - Employee Social Options was launched to enable Mahindra employees to involve themselves in socially responsible activities of their choice. “ESOPs” enables Mahindra workforce to collectively donate thousands of human hours for various social projects in the three focused areas of education, health and environment, making social work an integral part of their lives. The details of Mahindra’s CSR initiatives are as follows

4.1.1 Education

Mahindra has established many schools and colleges under its flagship to impart quality education to the needy and poor as well as to children of its employees. At present, the Group has three schools that impart high standards of education. The establishment of these schools has not just benefited their employees but also the community around these schools best example of same is Mahindra United World College of India.

Nanhi Kali is a national girl child sponsorship programme and a special project jointly managed by the K. C. Mahindra Education Trust (KCMET) and the Naandi Foundation and is aimed at providing education to the underprivileged girl child in India. The Mahindra Group independently supports the education of 29,100 of the 75,000 underprivileged girls who participate in Project Nanhi Kali. Till March 2013, Nanhi Kali provided educational support to 100,000 girls from poor urban, remote rural and conflict-afflicted tribal communities across nine states.

4.1.2 Health

The Mahindra Foundation has been set up with a specific objective to provide medical relief to the poor and needy sections of society. The foundation has helped patients suffering from cancer, heart ailments as well as burn victims. ESOP in health include a host of initiatives such as organizing blood donation camps; health checkups for marginalized groups, porters, villagers, labor community, slum dwellers., HIV/AIDS awareness, hygiene awareness, dental care etc. , mobile dispensaries, free surgical camps, conduct socio-eco survey for cochlear implants, eye camps, eye donation awareness, eye testing and cataract operations, toilet construction for school children, typhoid vaccinations, pulse polio awareness drive, medical mobile dispensary etc.

4.1.3 Art and culture

The Mahindra Excellence in Theatre Awards (META) is the latest in the Mahindra Group's efforts to encourage national theatre in two broad categories - Emerging theatre and Established theatre. The annual awards are in tune with the Group's Corporate Social Responsibility programmes, which have already received a fillip in the Conglomerate's 60th anniversary year. The awards will initially cover English and Hindi theatre and include other language productions at a later stage. Mahindra Group also plans to set up a Mahindra Academy for Excellence in Theatre.

4.1.4 Environment

Environment protection is a part of everyday being at the Mahindra Group which compiles way beyond necessary environmental regulations by setting new standards in natural resource conservation, efficient water management and with the most recent Green IT. Mahindra shows that it cares of planet earth proactively. The various initiatives taken by Mahindra for environment conservation are: Energy Management Manual / Energy Policy, Reducing CO2 Emissions from manufacturing plants (Bijlee is an innovative, home grown, first of its kind electric three-wheeler. India's tried and tested battery operated vehicle), Bio-Diesel Initiatives.

4.1.5 Disaster relief

The Foundation has also been very active during any national calamity or disaster and helped contribute and mobilize resources from civil society. Table 2 provides a snapshot of CSR activities which Mahindra has been practicing.

Table 2: CSR initiatives taken by MAHINDRA

Area/ Implementing Agency	Initiatives
	Project Nanhi Kali –provide 10 years of quality education to the underprivileged girl child in India.
	Supporting Government Schools
	Grants And Scholarships K. C. Mahindra Scholarships for Post-Graduate Studies
	Mahindra Search for Talent Scholarship- Mahindra United World College Scholarship

<p>Education</p> <p>(K. C. Mahindra Education Trust)</p>	<p>Mahindra All India Talent Scholarship</p> <hr/> <p>Establishment of Schools</p> <p>Mahindra Pride Schools</p> <p>Mahindra United World College</p> <hr/> <p>Providing infrastructural support for local schools</p> <p>Career counseling;</p> <p>Organizing extracurricular activities for schools;</p> <p>facilitating computer education;</p>
	<p>Encouraging Students -</p> <p>K. C. Mahindra Scholarships for Post-Graduate Studies Abroad, Interest-free loan, scholarships for post-graduate studies to deserving students interested in pursuing advanced studies overseas.</p> <p>Mahindra Search for Talent Scholarship</p> <p>K. C. Mahindra United World College Scholarship</p>
	<p>Encouraging Teachers</p> <p>K. C. Mahindra Chair for Nuclear Chemistry at the Institute of Science, Mumbai.</p> <p>Dhandevi Mahindra Scholarship Award at Sophia College, Mumbai</p> <p>The Trust has also established several awards and scholarships for the academia.</p>
<p>Health</p> <p>(Esops and Mahindra Foundation)</p>	<p>Help patients suffering from cancer, heart ailments as well as burn victims.</p> <p>Organizing blood donation camps;</p> <p>Health Check Ups for marginalized groups Porters, villages, labor community, slum dwellers etc., HIV/AIDS Awareness,</p> <p>Hygiene ,awareness,</p> <p>Dental Care</p> <p>Mobile dispensaries,</p> <p>Free Surgical Camps,</p> <p>Conduct socio-eco survey for Cochlear Implants</p>
<p>Art and Culture</p> <p>(Mahindra Group)</p>	<p>Encourage national theatre;</p> <p>Annual awards;</p> <p>Plans to set up a Mahindra Academy for Excellence in Theatre;</p>

Environmental Management	Energy Management Manual Reducing CO2 emissions Zero Emissions vehicle: designed meeting International standards of Safety and emission, Bio Diesel initiatives Environmental Performance of Manufacturing plant Efficient water management Green IT;
	Mahindra Hariyali Model: Ensures plantation and nurturing of these trees in the society at large. Green Bombay Movement: Developing and maintaining municipal gardens.
Disaster Relief	Charity Providing volunteers and vehicles in the disaster affected areas
Sports	Mahindra United Football Mahindra United Under - 19 years Mahindra United Under - 15 years

Source: (Compiled by Researcher)

4.2 CSR law Implications on Mahindra

Though Mahindra and Mahindra is considered as finest company which have generated significant success in integrating social responsibility and sustainability principles into its businesses. But, after its execution state of affairs is indisputably going to be different. It was observed that Mahindra and Mahindra too had to revisit the contributions made to CSR activities. Forbes India together with csridentity.com compiled a data pack, which showcased the 2% spending of Indian listed companies. The table 1.2 list out 20 Indian companies and their spending of 2% of profit after tax. The table shows that actual spend of companies on CSR activities has been far below the minimum requirement, Mahindra and Mahindra being one of them.

Table 3: Indian companies' actual spend on CSR

Sl. no.	Company	Revenue	AVG PAT	Actual spend	2% OF PAT
1	Indian oil corporation	442,459	7,783	83	156
2	Reliance industries	368,571	21,138	288	423
3	Bharat petroleum corporation	223,315	1,438	8	29
4	Hindustan petroleum corporation	195,891	1	27	22
5	Tata motors	170,678	8	15	169
6	Oil and natural gas	151,121	24	121	473

	corporation				
7	State bank of india	147,197	13	71	261
8	Tata steel	135,976	4	146	78
9	PNB gilts	104,628	29	NA	1
10	HINDALCO industries	82,549	3,597	28	72
11	Coal india	78,410	11,759	119	235
12	Bharti airtel	71,506	6,511	33	130
13	MMTC	67,023	129	3	3
14	NTPC	66,366	9,334	49	187
15	Larsen and toubro	64,960	4,818	70	96
16	Essar oil	63,428	-201	NA	NA
17	Mahindra and mahindra	63,030	2,948	22	59
18	Mangalore refinery and petrochemicals	57,214	1,066	NA	21
19	Tata consultancy services	48,894	8,935	51	179
20	Bharat heavy electricals	50,654	5,823	37	116

Source: Jayashankar, Paul, Bhat, Forbes India, 22 March, 2013)

Note:

1. These 20 companies are ranked 1-35 based on Net Sales for the Financial Year 2012.
2. All figures are in Rs Crore and have been rounded off to the nearest decimal point.
3. Avg PAT refers to the average of profit after tax recorded by a company in the last three financial years (FY10, FY11 and FY12).
4. Revenue figures are indicative of the company's financial performance in financial year 2011-12 (FY12) only.
5. 2% of PAT refers to the amount that a company needs to spend in CSR activities as per the government mandate.

From the above data it can be observed that, the average PAT of mandm is 2,948 crores and 2% of it is Rs. 59 crores. But Mahindra is actually spending only 22 crores on its CSR activities, the difference is of about 37 crores, which means Mahindra is spending far less in comparison to what it is required to do.

4.3 The road ahead

Mahindra and Mahindra have already started reworking on its policy and have specified certain points. These are:

The company has to spend as per the new clause and has to spend 2% of PAT on its CSR policy. The company will also have to think beyond restrictive scope and nature of activities listed under "Schedule VII" as recommended CSR activities. The company apart from its thrust areas is going to focus on girls, youth and farmers of its constituencies. The CSR policy of Mahindra and Mahindra has clearly stated that it shall be applicable to all sectors and its employees. But, accordingly any activity done for employees will not be considered as CSR as per the new law. Thus, money shelved out on welfare and benefit of employees would be company's expense and not part of CSR budget. Hence employees will be opted out from the scope and applicability of Mahindra's CSR Policy.

As stated by the law the company shall constitute a Corporate Social Responsibility committee of the Board, the committee would comprise of three or more directors, out of which at least one director shall be an independent director. The Mahindra's have already started functioning on the lines and are setting up a CSR council chaired by the President Group HR, Corporate services and After Market, and the member of Group Executive Board and comprises of senior management executives and a CSR advisor who are responsible for the implementation of the CSR activities which have been approved by the CSR Committee at the board level.

The most significant problem recognized in Indian CSR scenario is lack of measurability. Companies claim that initiatives are being taken at ground level in the association of NGOs and local bodies. But actually beneficiaries deny the same. Hence there is no methodology being adopted by companies to measure the level of applicability. In Mahindra's the challenge has always been to monitor the process of CSR activities. But, company know coming under the ambit of CSR law would require to monitor its CSR functioning and policies. As per directives issued by the company the CSR council will convene quarterly to review the progress of varied CSR projects in terms of both outcome assessment and financial monitoring. The council will review the strategy from time to time and may choose new focus areas and projects as and when required.

5. Conclusion

To sum up, it is proven that Mahindra and Mahindra is a consistent champion in CSR. It is considered as finest company and has generated significant success in integrating social responsibility and sustainability principles into their businesses. Though the new law has created a lot of buzz and would surely streamline the process of CSR in India. The company's likes of Mahindra would be subject to certain changes in their CSR policy abreast to Law. The companies have to give preference to the local area and areas around it where it operates for spending the CSR resources which will help them to build a stronger community-business relationship. The 2013 Act has provided an opportunity to catch up and make our corporate regulations more up to date, and also showcased our corporate regulatory structure as a model to follow for other economies with analogous characteristics.

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