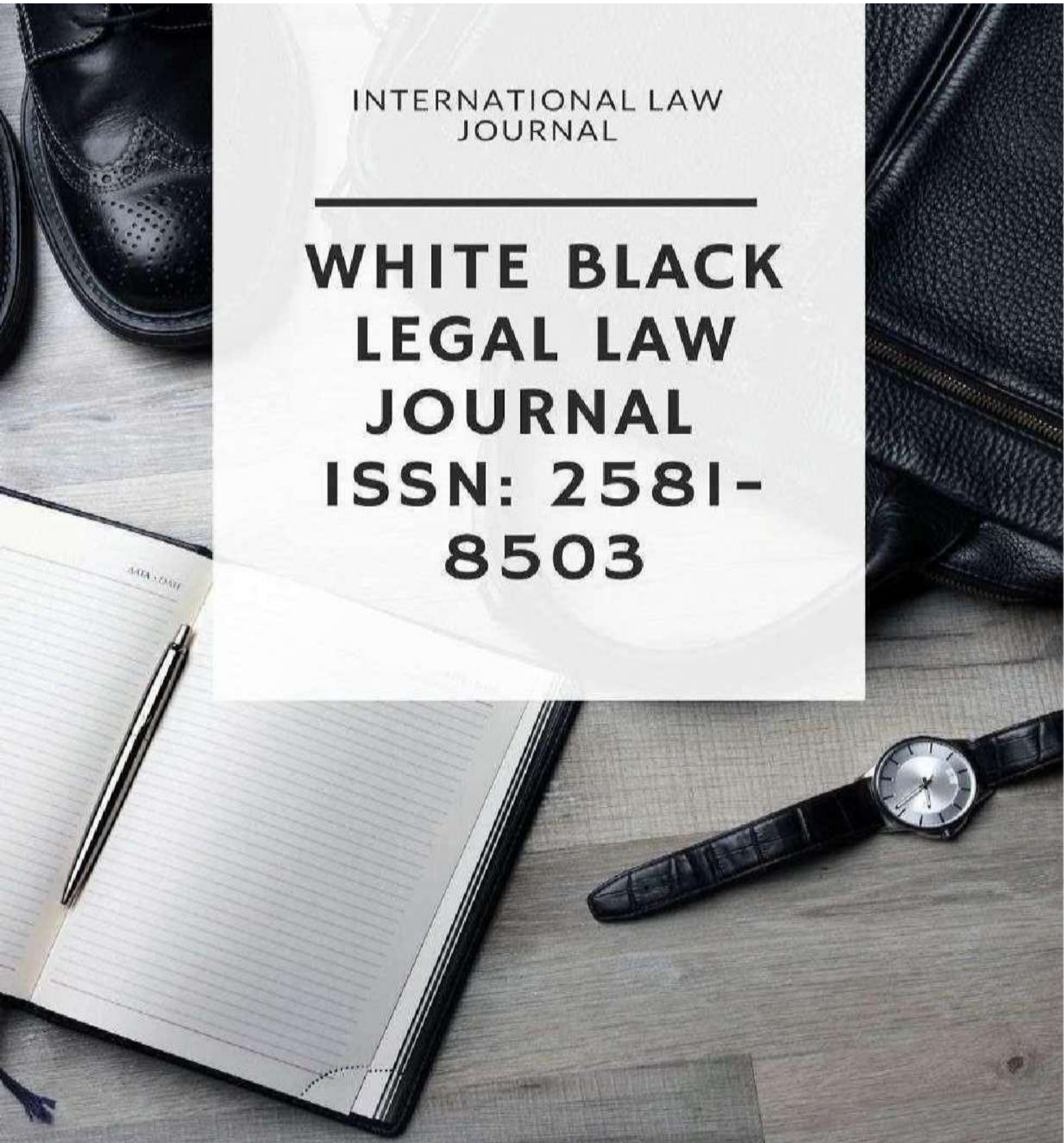

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CRITICALLY EVALUATING THE RELATIONSHIP BETWEEN STAKEHOLDERS AND CORPORATE SOCIAL RESPONSIBILITY

AUTHORED BY - ARGHA MAITRA

Abstract

Stakeholders would be an individual or a group of people who is having a stake in the business and have potential influence on its performance and operations. Stakeholders includes everyone who would be included in the operations of the company, which includes the shareholders, vendors, employees, customers, government and the society as a whole. Corporations which are becoming more and more important for the human society, should work for the benefit of all the stakeholders, which includes the society as a whole. As a result, it becomes very important for the corporations to do corporate social responsibility, which reinforces the idea, that the corporates have other duties besides making profit. This paper discusses the various theories propounded in relation to CSR, would critically analyse the motive behind making CSR mandatory in India, and the issues and challenges that are being faced in its implementation. By making CSR mandatory in India, it would ensure the development of not only the shareholders of the company but all the stakeholders, which include customers, vendors, and the society at large.

Keywords: Corporate Social Responsibility, Corporation, Stakeholder

INTRODUCTION

In addition to demanding more profits, stakeholders and shareholders these days also want firms to help address some of the most challenging national concerns, such economic and environmental development. Divergent views exist regarding the proper allocation of accountability between public and private domains; however, companies facing pressure to recognise a broader scope of accountability in addressing these issues comes from corporate stakeholders, which typically comprise shareholders, employees, customers, suppliers, communities, governments, and regulators. Companies are increasingly collaborating with stakeholders to learn about their perspectives on a range of environmental, social, corporate governance, and economic issues (commonly referred to as "corporate social responsibility" or "CSR") in order to integrate and address stakeholder views and concerns into the company's strategic decision-making.

A company's stakeholder engagement approach may benefit greatly by the inclusion of the CSR report due to its customary variety of information that is most relevant to stakeholders' interests. The CSR report, for instance, may be used to inform stakeholders about a company's efforts to address or resolve its CSR concerns and integrate them into the company's strategic decision-making processes.

STAKEHOLDER THEORY

Stakeholder theory of corporate governance was initially restricted to some jurisdictions like Germany, Japan and some other civil law countries, however, in the recent years it has become accepted throughout the globe. Generally speaking, it's seen as an improvement over the narrower idea that commercial entities are only means to an end—promoting the financial interests of their owners. Corporate law has long included the concept of stakeholders. This is demonstrated by its creditor protection programme, which is one of the guiding concepts. On the other hand, the contemporary stakeholder vision is more aggressive and expansive. It encompasses a wide range of non-shareholder groups, including as communities, suppliers, and workers, and aims to encourage proactive corporate involvement in advancing the welfare and defending these group's interests.

The notion of shareholder primacy theory of corporate governance is the foundations of the stakeholder principle.[1] The dominant role that shareholders are often given is where the stakeholder dispute started. Common-law nations have always regarded their shareholders as the firm's owners. Even in India, primacy was given only upon the shareholders, however, it is only in the recent times where they are given more importance.

Corporate executives need to understand that they are more than simply shareholders and that, in legalese, the word "corporate governance" has broader meanings. As previously said, instead, business leaders ought to serve as a "mediating hierarchy," distributing the surplus produced by the

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[1] Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 439 (2001), https://openyls.law.yale.edu/bitstream/handle/20.500.13051/4602/89GeoLJ439.pdf?sequence=2&isAllowed=y.

company to all of the stakeholders. These supporters have gone so far as to say that managers may use their discretion to forfeit advantages in the public good.[2]

More property rights are not the only benefit of corporate governance for shareholders. It is predicated on the notion of contracts and the actuality of the current corporate legal framework. Rather, it should be understood that in order to pursue their residual interests, society and employees spend time and money in the organisation.

This principle is very much developed in Germany, where there exists a two- tiered board system. People from inner management of the company forms the management board, while the workers form the supervisory board. The supervisory appoints as well as monitors the working of the Management Board. The election of members for the supervisory board is also very democratic in nature as both shareholders and employees have an equal say.

The Japanese model where the banking and financial institutions have a greater say also balance the interest of all the stakeholders, which includes the creditors, employees, managers and the government. Even employees are made members of the board as a reward to long-service and commitment.

However, in India most corporations are family run. One family dominates the proceedings of the company. Board members are not totally independent. Even though the system of independent directors has been introduced, it has failed to achieve the desired. In such a situation, implementing the stakeholder theory is a big challenge.

STAKEHOLDER RELATIONS UNDERTAKEN UNDER THE COMPANIES ACT, 2013

Every company having more than 1000 stakeholders have to mandatorily maintain a stakeholder relationship committee. Such committee have to address the grievance of shareholders, debenture-holders, deposit holders, and any other security holders.

[2] B. Roxana-Ioana and S. Petru, *Integrated Reporting for a Good Corporate Governance*, 1 Ovidius Univ. Ann. Econ. Sci. Ser. 424, 424 (2017), https://stec.univ-ovidius.ro/html/anale/ENG/2017/Section-V/6.pdf.

Under s. 135 of the Companies Act, every company have to perform Corporate Social Responsibility, if they fulfil either of the requirements which include:

i. Net worth of 500cr or more.
ii. Turnover of 1000cr or more.
iii. Net profit of 5cr or more.

They would have to form a Corporate Social Responsibility Committee of the Board that consists of three or more directors, at least one of whom must be an independent director.

The CSR committee would have the following tasks:

1. Formulate CSR policy, which would indicate the various activities to be undertaken by the company.
2. Recommend the amount to be spent for CSR.
3. Review and monitor the CSR policy of the Company from time-to-time.

The company would have to spend minimum two percent of the total profit for CSR.

Schedule 7 of the Companies Act mentions the various activities which can be conducted under the CSR policy of the company.

Besides, the companies would have to follow the FATR (Fairness, Accountability, Transparency and Responsibility) principles in relation to its stakeholders. Equal class of employees should get equal remuneration and in relation to the same remuneration committee should be created by the company. The company must be transparent to disclose all the information on time and make it know to all the stakeholders. If they fail to do, then they would be held liable under s.34 and 35. They also would have to make financial and other disclosures on time in line with the SEBI-LODR regulations. The company is accountable not only to the shareholders but to the society as a whole. The biggest responsibility of the company is to conduct corporate social responsibility.

THEORIES IN RELATION TO CSR

There is no single commonly accepted definition of CSR. United Nations Industrial Development Organization (UNIDO) defines CSR as “Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the 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."[3]

Harvard's Kennedy School of Business defines CSR as, "CSR encompasses not only what companies do with their profits, but also how they make them. It goes beyond philanthropy and compliance and addresses how companies manage their economic, social, and environmental impacts, as well as their relationships in all key spheres of influence: the workplace, the marketplace, the supply chain, the community, and the public policy realm."[4]

CAROLL'S PYRAMID

The definition given by Archie Caroll is important, since one of the most important model of CSR has been given by him. He has defined it as "CSR as a multilayered concept that can be differentiated into four interrelated aspects – economic, legal, ethical and philanthropic responsibilities."[5]

Profitability and legal compliance are the most important preconditions for discussing corporate social responsibility, ethics, and the degree to which a business donates money, labour, and expertise to the community in which it operates.

In 1991, Caroll expanded on this concept using a pyramid. The pyramid was intended to demonstrate the building-block character of the four-part structure. It was placed at the base of the pyramid since financial accountability is a must for running a firm. Just as a building's foundation supports the whole structure, sustained profitability helps an organisation satisfy the expectations of stakeholders, shareholders, and the general public.

Even almost 30 years of its inception, Caroll's pyramid remains the most important model for understanding CSR.

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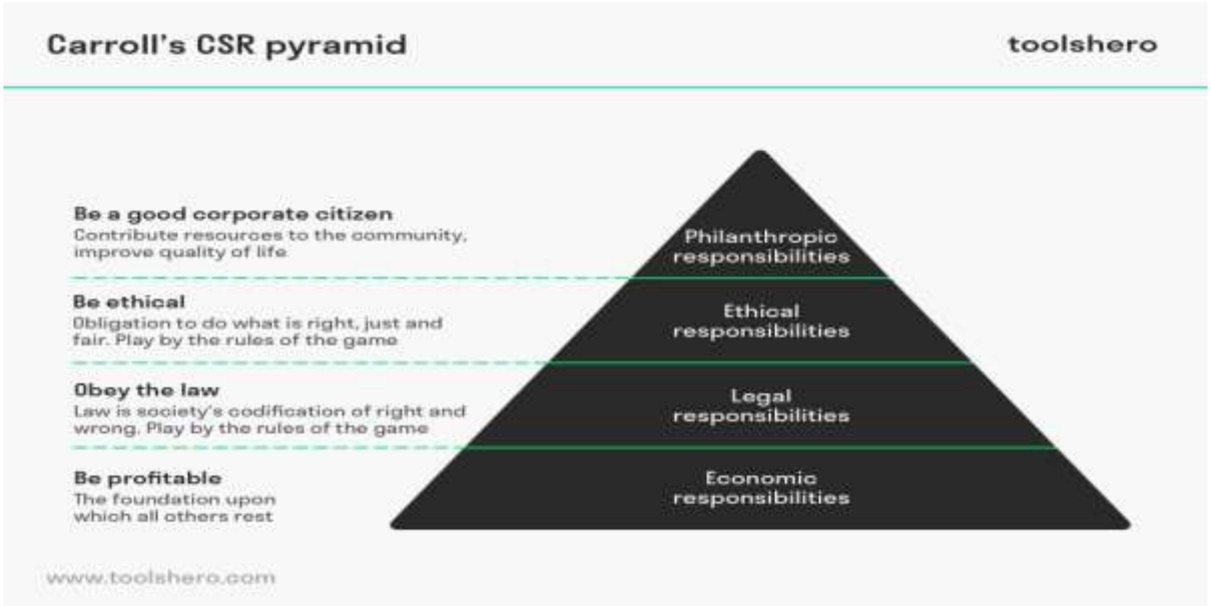
[3] *What is CSR?*, UNIDO, (Mar. 22, 2024, 10.30PM), https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr.

[4] Tim Stobierski, *What is Corporate Social Responsibility? 4 types*, HARVARD BUSINESS SCHOOL ONLINE (April 8, 2021) https://online.hbs.edu/blog/post/types-of-corporate-social-responsibility.

[5] Denise Badden, *A reconstruction of Carroll's pyramid of corporate social responsibility for the 21st century*, Int J Corporate Soc Responsibility 1, 8 (2016). https://doi.org/10.1186/s40991-016-0008-2.



Economic Responsibility

It is by far the most significant duty the business has. They must generate items that serve society and turn a profit while doing so. Customers desire premium products at affordable prices; employees want a secure and equitable workplace; and shareholders want a respectable return on their investment. That base of the pyramid supports all the other layers. A business cannot thrive in society without revenue.

Legal Responsibility

Corporations are legally required to abide by the minimal laws in place. For an organisation to operate, certain rules must be followed. The rules are the foundational statutes and guidelines that represent society's idea of regulated ethics.

Ethical Responsibility

Companies have an ethical obligation that goes beyond societal norms, including legal and regulatory requirements. Furthermore, society expects organisations to do business and govern themselves ethically. While not necessarily formalised, expected norms, practices, and behaviours are adopted by organisations that promote ethical responsibility.

Such responsibilities include:

- Performing work in a way the society expects and such expectations changes from time to time.
- Exhibiting appropriate corporate citizenship by abiding by moral or ethical standards.

Philanthropic Responsibilities

The voluntary or discretionary actions and practices of corporations are included in their charitable duty. Although businesses aren't legally required to practise philanthropy, society does expect them to do so these days. Companies are motivated to engage in social activities that are often not demanded of them in an ethical sense, which drives the amount and type of these voluntary activities. Establishing discretionary or philanthropic endeavours gives the audience the idea that the business wants to give back to the community. It makes a corporation a good corporate citizen. India is the only country around the world where CSR is mandatory.

TRIPLE BOTTOM LINE

According to the triple bottom line (TBL), which is a concept in economics, businesses should pledge to prioritise social and environmental issues just as much as financial gains. The Triple Bottom Line (TBL) hypothesis suggests that there should be three bottom lines: Profit, People, and the Planet.

This termed was coined by famous British Management Consultant- John Elkington. The concept was that businesses might be run in a way that enhanced human welfare and environmental sustainability in addition to generating profits.

The triple bottom line consists of 3Ps. This includes:

1. Profit- Without profit no company can survive. This can be quantified from the various returns and the financial statement submitted by the company along with its board report.
2. People- This is extension of the stakeholder theory, where the company should work for the welfare of the shareholder, employees, customers, vendors and the society as a whole. This

can be quantified through the average remuneration and benefit of the employees; employment demographics, etc.

3. Planet- Environment responsibility of a company, cause without the planet, the other three process can't be carried out. This can be quantified through the amount of waste generated, amount recycled, fuel consumption, etc.

The primary benefit of this approach is that each element can be measured. Instead of focusing only on paper profit, businesses may use quantitative methods to figure out how their company is benefiting society and the individuals it works with.

Some things, meanwhile, are difficult to put a number on. For instance, it may be exceedingly challenging to calculate the social and environmental costs of an environmental harm. It might be challenging for certain companies to balance supporting each of the three bottom lines equally with respect to money and other resources, such human capital.

In relation to the above referred principles, India has come out with a guideline in order to help the companies to comply with its mandatory CSR.

RESPONSIBLE BUSINESS CONDUCT (RBC)

National Guidelines on Responsible Business Conduct are a way to encourage companies to prioritise their profits above broader development objectives. It was introduced in the year 2018 by the Ministry of Corporate Affairs. RBC is the widely accepted idea that companies can operate more effectively if they actively engage in revitalising the society that supplies them with resources. The core principles of the RBC include:

1. Promoting worker's rights and safe working conditions; preventing human trafficking;
2. Conducting and governing themselves with integrity and "spirit of the law"[6];
3. Providing goods and services in a sustainable and safe manner;
4. Promoting inclusive business environment;
5. Respecting and promoting the well-being of all employees;

[6] National Guidelines on Responsible Business Conduct, Ministry of Corporate Affairs, Government of India, p. 16, https://www.mca.gov.in/Ministry/pdf/NationalGuildeline_15032019.pdf.

6. Respecting the interests of all stakeholders;
7. Respecting and promoting human rights; and
8. Protecting and restoring the environment.
9. Transparent communication and enabling access to information.

This principle is in line with the UN Guiding Principles for Business and Human Rights (UNGPs) which acknowledging:

a) the State's ongoing duties to uphold, defend, and fulfil fundamental freedoms and human rights;
b) businesses must uphold these obligations; and
c) people who are harmed by business-related violations or adverse effects on human rights must have access to a meaningful remedy.[7]

This principle is also in line with the Paris Agreement, in which the countries have to comply Nationally Determined Contributions (NDCs), and Core Conventions 138 and 182 on Child Labour by the International Labour Organization (ILO). Such practices are in consonance with Sustainable Development Goals (SDGs) of the United Nations. The United Nations General Assembly adopted the 2030 Agenda for Sustainable Development in September 2015. This agenda set seventeen Sustainable Development Goals (SDGs) along with mechanisms for monitoring and review. Notably, the SDGs acknowledge business as a key driver of infrastructure and economic growth and explicitly encourage businesses to act in line with the UNGPs.

To integrate these principles four key enablers have been laid down. This includes:

1. Commitment of the leadership.
2. Engagement with the employee.
3. Engagement with the stakeholder.
4. Disclosure and reporting should be made on time.

[7] National Guidelines on Responsible Business Conduct, Ministry of Corporate Affairs, Government of India, p. 13, https://www.mca.gov.in/Ministry/pdf/NationalGuildeline_15032019.pdf.

CRITICALLY ANALYSING THE MOTIVE BEHIND MAKING CSR MANDATORY IN INDIA AND THE ISSUES THAT BEING FACED IN ITS IMPLEMENTATION.

To incentivize businesses to support the development of the nation and the well-being of its underprivileged populations, the Indian government inserted corporate social responsibility (CSR) requirements into the Companies Act 2013. Promoting more participation by entities in the development of society is the government's objective.

Unethical works done by various corporations

Corporations, with time are becoming more important to the society. So, it was a long-standing demand that they should have social responsibilities. There were various instances where many people have suffered damages due to unethical working of the company. The biggest example of the same is the Bhopal Gas tragedy, where about 45 tonnes of the hazardous chemical methyl isocyanate broke out from an insecticide facility controlled by the Union Carbide Corporation's Indian division on December 3, 1984. Tens of thousands of people tried to escape Bhopal as the gas spread over the heavily populated districts surrounding the factory, instantly killing thousands of people. It was believed that between 15,000 and 20,000 people died in all. Due to exposure to the hazardous gas, some 500,000 survivors experienced respiratory issues, eye irritation or blindness, and other illnesses. Subsequent investigations revealed that inadequate operating and safety protocols at the factory with insufficient workers were the cause of the accident.[8]

Vellore Citizen Forum case v Union of India[9], was a landmark case in which a PIL was under Art. 32 of the Indian Constitution, citing widespread pollution of water and environmental degradation as a result of unregulated untreated effluent discharge into the Palar River by tanneries and other industries in Tamil Nadu.

For individuals who lived close to the tanneries, the Palar River provided an essential supply of clean water. Additionally, the contaminants were carelessly deposited next to roadsides, open spaces, streams, and agricultural regions.

[8] *Bhopal Disaster*, BRITANNICA (Mar. 23, 2024, 9.30PM), https://www.britannica.com/event/Bhopal-disaster.
[9] Vellore Citizen Forum case v Union of India, AIR 1996 SC 2715.

The Tamil Nadu Agricultural University Research Centre, Vellore, later discovered that over 35,000 hectares of farmland had completely or partially lost all of its fertility and were no longer fit for agriculture.

The Supreme Court's 2016 decision in this case is a historic ruling. The Supreme Court thoroughly studied the connection between industrial expansion and the environment in this case, therefore solidifying the idea of proactive methods in environmental protection. This case is a major example of unethical practices which various corporations undertake, and such activities were happening even after CSR was made mandatory in 2013. Thus, by making CSR mandatory the government has put a duty upon the corporations to something back to the society. Through this measure the government has mandated to spend some amount of total economic profit for social development.

Activities which can be undertaken as CSR

The activities which they can undertake under Schedule VII includes:

1. Improving health care, sanitation.
2. Eliminating hunger, poverty, and malnutrition.
3. Promoting education.
4. Promoting women empowerment and gender equality.
5. Protecting the environment.
6. Protecting the national heritages.
7. Welfare of the Veterans and armed forces.
8. Promoting sports activities.
9. Rural and slum development projects.
10. Disaster management.

Challenges to the implementation of CSR

The main motive behind this measure was to increase development of the local areas in which they are operating, however, it has some flaws. This includes:

1. Compliance may be hesitant, particularly in the case of unprofitable businesses that are nevertheless included in the group because of their triggering net value.

2. The main aim for this measure is social development and by depositing the entire amount the PM Relief Fund would jeopardise the main motive. So, a cap should be kept on the amount of fund which can be given in such funds.
3. The CSR works of various companies are not being regulated and as a result, it is hard to determine whether it is really promoting social welfare or is a business advertisement stunt.
4. India should not move ahead with very strict implementation of CSR obligations as they may loose upon FDI and since it is a new thing in corporate governance, companies should be allowed some time to adopt.

Thus, by mandating CSR India has bought in a new-dynamics to the corporate governance system, an angle which has not been explored by any other country around the world.

CONCLUSIONS

CSR and philanthropy are not novel ideas to Indian businesses. These practices have been carried out by old corporations of India like Tata group, Birla group for a very long time. But the Companies Act of 2013's introduction of a new CSR requirement has put pressure on the legal and social structures to force many businesses to engage in CSR more formally than before. A pitfall of s. 135 is if a company has enough net worth or turnover according to the law, however, it is running in losses, it would be forced to do CSR. Such requirements should be removed since forcing a company to do social work, when it itself is at losses, would be violating the principles of CSR like the Carroll's Pyramid, where it is stated that the main aim of any corporation is to make profit.

As Plato said, "Good people do not need laws to tell them to act responsibly, while bad people find a way around the laws."[10] Many companies have been doing CSR for a very long time, much before it was made mandatory. More government supervision in necessary for better implementation. India's social development will accelerate if the successful collaboration between the government, corporations, and non-governmental organisations is carried out in a sincere manner. This would ensure development of not only the shareholders of the company but all the stakeholders, which include customers, vendors, and the society at large.

[10] Pinchas Shir, *"Good people do not need laws..." Plato*, PSHIR.COM (Mar. 23, 2024, 11.30PM) https://www.pshir.com/good-people-do-not-need-laws/.