

LEGALFOXES LAW TIMES

CORPORATE SOCIAL RESPONSIBILITIES OF INDIAN LEGAL COMMUNITY

By Prashant Trivedi

Abstract

The corporate social responsibility remains a area of serious concern across the globe, like any other responsibility we like to pass it on to others, we like the fruits of it but always blame others for not doing it or expect them to do it, however making world a better place to live can not be the responsibility of few. This may not be the right time to talk about the 'Citizens social responsibility' but certainly time has come to have a serious discussion on voluntary CSR and enlarging the area of existing CSR policy and its implementation. Since our legal industry is growing day by day with the economy and because of new legal avenues opening up, they should also take care of their social responsibilities as well. Keeping this theme in mind this paper had made an attempt to highlight some of such issues. The chronology is as follows firstly, explaining existing CSR legal regime in India and recent amendments made in January 2021. Secondly, explaining the trends in CSR activities by top Indian law firms as well comparing them to top foreign law firms. Lastly, arriving at a conclusion as to what is the potential of Indian legal community and how they can utilize it. The paper has also suggested the government to take some policy decisions if the present approach is not giving desired results.

The 'doctrinal' research method has been used to collect the online available data, which is analyzed by using 'qualitative method'. The research also has some limitations as well due to non availability of data of these firms publicly, the disclosures made by them on their website and reports of other agencies were relied on. To keep the paper short the sample size of the data has also been kept small.

corporate social responsibilities of Indian legal community

Introduction

The world is shouting about the 'social justice' but the voice is not that loud when it comes to 'social responsibility'. CSR is positively influencing business behaviour across the sectors now a days it is also used as a market strategy to create a distinguish image of a company in the market, in fact they are using it to create a soft image in the minds of the people as people are also started giving preference to these companies over others. If talk about our legal community, Trust is the

base of a client-attorney privileged relationship, these activity certainly helping them to build trust. the companies and individuals are realizing their responsibilities and working on giving back to the society which has made them capable of giving back. CSR is seen as a mean to achieve this end as in a civilized world means should justify end, as in Indian independence movement Gandhi ji said, “ freedom through violence is not acceptable to him” because to him not just the end goal but how it is achieved also mattered. therefore CSR should not be a legal mandate only in a civilized world.. To understand this topic better it is pertinent to know the existing legal scenario first.

[A] What the law says about CSR in India

In India company law is the law of the land in this regard of course subject to Indian constitution, companies are registered and governed by the provisions of the companies Act 2013 and by rules made thereunder.

1. Under the companies Act 2013

Section 135 under chapter IX of the Act deals with the Corporate Social responsibilities of a company, it creates following obligations on a company:

- A company with net worth of 500cr rupees or more / turnover of 1000cr rupees or more / net profit of 5cr rupees or more in the immediately preceding financial year shall constitute a CSR committee.
- it will be the duty of such committee to implement the CSR policy in accordance with the areas specify in schedule VII of the Act.
- The committee shall ensure that the company spends in every financial year at least 2% of the average net profit of the company made during the three immediately preceding financial years.

This provision is drafted in such a manner as to include only large, profit making companies and that too with a very nominal amount liability. However, with the changing market and regulatory regime worldwide Indian government has also come up with the new CSR rules this year.

2. What is new in the companies (corporate social responsibilities policy) Rules 2021:

To meet the challenges created by the COVID 19 pandemic and demands raised by the market the central government has made this Amendment in the companies (corporate social responsibility policy) Rules 2014. Following are the relevant amendment that one must know:

- the CSR definition itself has been modified, it now includes all the activities

defined in section 135 of the Act but it excludes apart from the 2014 Rules:

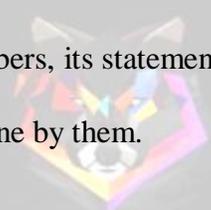
- any activity done in the normal course of business but given exception the the vaccine manufacturing companies for their production or R&D for the period of next three financial years
- any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level
- contribution of any amount directly or indirectly to any political party under section 182 of the Act
- activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019

- “Net profit” means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: –

- a. any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- b. any dividend received from other companies in India, which are recovered under and complying with the provisions of section 135 of the Act:

However, in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of section 381(1)(a), read with section 198 of the Act

- If the committee wants to implement its CSR policy by any other company or entity as provided in the rules it can do so but CSR-1 form will be mandatory for them from **01 April 2021**
- the provision has been made to transfer any surplus amount allocated for a CSR project to any fund as provided by the schedule VII of the Act
- In cases where a company spends a higher amount from what is mandated by the Act on CSR activity, now it can be set off in the next years expenditure.
- The rules again pressed on the requirement of the impact assessment and of the display on the official website of the company the composition of the CSR committee board members, its statement of policy, the projects approved by the board and the work done by them.



[B] Corporate social responsibilities of the Indian corporate industry:

The lawyers were used to be seen as someone who fights for people's life and liberty only or lead a freedom movement, with the first industrial revolution and thereafter as the idea of a company emerged in the 18th and 19th century the ecosystem of the legal system has also evolved. The individual practitioners have started coming together and pooling their material as well as intellectual resources, to cater to the ever increasing demand of the market and gradually new avenues of law like Arbitration & conciliation, corporate law, IPR, capital market etc opened up.

Particularly in the Indian context with the LPG reforms of 1991 major demand for the lawyers with expertise in the Rent dispute, ADR, arbitration, corporate, banking law, insolvency etc started coming by the large corporates and MNCs and so the need of this separate legal market has been fulfilled by these huge law firms. whose size is now increased many fold. earlier it was difficult to imagine that even a law firm can employ as many as 400-500 lawyers and other supporting staff working from high end luxury offices both from India and abroad but today it is the reality.

Therefore, today in the financial terms they are as well situated as any other company in the service sector and exploiting as many resources of the society and making huge profits as any other MNC or a company is making. Now the question comes if that is the case then if a company similarly situated as a law firm fulfilling its CSR mandate be it a legal mandate or voluntary then why not these giant law firms?

[C] The legal loophole:

As explained above in the article the existing legal position of CSR in India, till now it is only a legal mandate of a company registered under the Indian companies Act since most of these law firms are the LLP under limited liability partnership Act 2008 or the partnership firms under the partnership Act 1932 hence provisions of section 135 of the companies Act 2013 can not be made applicable to them. So the option before them is to do voluntary CSR until the legal regime changes.

[D] Jurisprudence of CSR-

The scholars and institutions defined CSR in different ways across the globe, which is largely influenced by the socio-economic conditions prevalent in their respective area of operation. As The World Business Council for Sustainable Development defines the CSR as a “business’ commitment to contribute to sustainable economic development, working with employees, their families, the local community, and society at large to improve their quality of life”

At present we may have different definition of CSR but the essence remains the same, to give back to the society, the spirit to take everyone along, to make world a better place to live for all, to promote the values of humanity, of compassion, of peace and harmony, to have a sustainable development. That is why the novel idea of CSR no more confine to a legal obligation, the famous jurist Carroll, divided it into the four types namely:

- Economic responsibility
- Legal mandate
- Ethical obligation
- Discretionary or philanthropy.

In some part of the world mainly developed countries ethical and discretionary is more popular whereas in developing countries still CSR compliance is a challenging task for the governments.

[E] Responsible Business by Indian Legal giants

The Indian law firms are carving out their space in global legal business chartas they have overseas offices, regional offices in all four to five business cites and with the developing economy growing day by day.

(i) Trends in CSR activity of these giant law firms-

As the law firms in India do not register themselves as a company so their data regarding their net worth, turnover, net profit is not available in the public domain so just for the academic purpose to locate their financial and social standing in our society I compiled this chart in terms of their ranking and number of lawyers. It is to be noted that this chart only shows number of lawyers but in practice they have huge supporting staff, internes, as well, which helps us to make an estimate where they are financially situated.

A London based research and consulting firm **RSG CONSULTING** published its bi annual ranking of top 50 Indian and global law firms, the RSG India report 2019 ranking is used below for ranking and number of lawyers. the data given on these firms website is used to find out activity they do. The report ranked top 50 Indian law firms however for the research purpose I have taken only top 10 out of them.

Ranking 2019* ¹	Name of the firm	Number of lawyers* ²	Responsible Business Activity* ³
1	AZB & Partners	429	Not available
2	Khaitan & Co.	636	Not available
3	Shardul Amarchand Mangaldas	584	Pro BONO, child welfare policies, women legal education, UNICEF, 'PANKH' initiative Etc.
4	Cyril Amarchand Mangaldas	760	Not available

¹As per the RSG India report ranking 2019

²As per the RSG ranking report 2019

³As displayed on their official website

5	Trilegal	382	Not available
6	J. sagar Associates	338	Fixed a target of 60hr per attorney pro bono work
7	L&L Partners	330	Not available
8	S&R Associates	80	Not available
9	Anand & Anand	133	Details of pro bono work done by them given like defending the rights of privacy of phoolan devi in 'Bandit Queen' case
10	Economic Law Practice	177	Not available

Table 1.1

(ii) Observations from the table 1.1:

The data gathered by doctrinal research done for this paper suggest us only 3 out of 10 top Indian law firms has made some discloser of their CSR on their website, others even have not mentioned this word on their website which is a legal mandate if one has a legal obligation of CSR. So we have a long way to go, indeed there are challenges and so lies the opportunities. Even those who are doing some pro bono they have to make sure their resources are reaching to the right person and not to someone who is capable to getting a legal advice or we are only choosing them in a manner that gives us good publicity.

At this point of time it is to be keep in mind resources are not an issue for these firms, some are doing it with their limited resources many small firms or independent lawyers do such

work and they do not need any outside force for it, it comes from within, naturally when we see world around us, when we feel the emotions of our clients, when we put ourselves among the people in true sense but in a real world it is not the case with most of us. Just for the sake of example a not that huge law firm **Vaish associates** is doing lot of CSR work which is displayed on their website. They work in the area of health, women empowerment, poverty upliftment, illiteracy through their vaish associates public welfare trust. Even they have produced short films like [EK PEHAL](#) and [CHETNA KI LEHER](#), on the programs concerning health, education and nutrition of underprivileged children at slums, Sambhav Camp and Rampat Farm of Mehrauli.

[F] Responsible business by global law firms-

The global law firms are indeed much older and better situated to do more good to the world but its more about the intention than of resources as someone said, 'there is a will there is a way'. It is interesting to see that of course while doing doctrinal research by visiting websites of all below mentioned firms, they feel being part of this elite legal community each one of them are in a better position to influence others, to be better equipped to serve others. They just by virtue of being part of this community feels an obligation to give back to the society, to their locality, to their neighbourhood. This sense of responsibility makes them do their business responsibly, I think we the lawyers sitting in other part of the world must also live for the cause of "To Make a difference"

(i) Trends in top global law firms –

To learn from the precedents, nobody knows this art better than our legal profession, in this global village it is important that we imbibe the best practices followed in other parts of the world to better serve the humanity. Therefore I used the report of a London based research and consulting firm **RSG CONSULTING**, its top 50 foreign law firms ranking 2019 it has given ranking on various parameters, for the purpose of this research I used only the rank of these firms and compile the data available on their official website regarding disclosures made by them about their responsible business model.

For the purpose of this research I took only top 10 out of the list of top 50 firms published by RSG and since it is practically not possible to list all their policies or activities so I chose only few of them. These law firms operate in different jurisdiction subject to different laws so as a limitation to this study it is not possible to show that how many of them are required by the law to do so and how many of them are doing it voluntarily.

Ranking 2019* ⁴	Name of the law firm	Responsible business activities as disclosed on the official website (few of them)
1	Clifford Chance	Stakeholders engagement approach, pro bono and community outreach programs, publish their responsible business report, etc.
2	Allen & overy	\$1 million fund for institutionalized care of children, environment policy, pro bono (52% of their lawyers worked on it in 2019) etc.
3	Linklaters	Responsible and sustainable business model, work with UN global compact, aligned with UN SDGs, human rights and modern slavery, environment, social impact policy, etc.
4	Latham & Watkins	pro bono and community service programs, dedicated you tube channel of the firm for this cause, periodic reports on these works, etc
5	Kirkland & Ellis	Pro bono achievement report of the firm, dedicated resources to work on areas like immigration, LGBTQ+ community, veterans etc.
6	Baker Mckenzie	Signatory to UN global compact 2015, publish its communication on progress report periodically, works on gender equality , social impact etc.
7	Herbert smith freehills	Takes care of diversity and inclusion within the firm, pro bono work, citizenship initiative etc.
8	Sloughter and May	Climate action program, pro bono work, social mobility approach to recruit talented but under represented or deprived legal minds, work with UNGC, sponsor‘ exxpediton ’ all women crew drive for R&D projects etc.

⁴ *As per RSG ranking 2019 of top 50 foreign law firms

9	DLA Piper	Global scholarship program for all law students, head start initiative to take care of those under represented groups who face entry barrier in legal profession, \$7.5 million partnership with UNICEF, work with UNGC etc.
10	White & Case	global citizenship report, 1,40,000+hr of global pro bono work, give legal scholarship, fellowship, offer moots, taken green initiative etc.

Table 1.2**[G] The contribution and potential of Indian legal fraternity as a whole:**

The Indian legal fraternity consist of judges, independent lawyers and law firms small or bigger once, if one has to combine them all to see the overall contribution of the legal industry as a whole in social responsibilities, the facts are really harsh as the number is “zero”. Which does not allow us to take pride in being part of this industry of a country where society needs a lot from us. The table gives a lot of food for thought and suggest areas where work can be done or where Indian law firms can engage themselves. In addition to it there are following areas where we can work-

- Development of infra in district and tehsil courts;
- Infra to make them more women and differently abled people friendly;
- Sanitation, drinking water facility in its surroundings;
- After the COVID pandemic these courts and lawyers needs IT facility badly so privet IT centers can be set up to bridge digital divide and make it more equitable
- Legal education is big area which need support, scholarships and fellowships can be given by the firm;
- Higher legal research is one area where not much focus is given in our country, a firm can take of it so that we develop our own jurisprudence rather following others, we all read various schools of thought but not a single Indian school of thought because we have not given research what importance it deserves.

[H] Conclusion:

The research makes two things clear at least one we do not have a law which creates a legal obligation on Indian firms to do CSR, second they are not doing it. So what is the way forward, if the voluntary CSR approach is not working. The government has two approaches always-

(i) Penal approach :

“The voluntary approach to corporate social responsibility has failed in many cases”.

– David Suzuki

since most of them are registered as LLP or partnership firms make an amendment to these Acts and add a section 135 like provision here also of course have a reasonable threshold taking into consideration of the size of the industry.

(ii) Incentive approach : give them some relaxations in terms of tax or compliance if they show they have done these kind of activities.

It is always wise to consider the second one first but either way this needs to be done it is the need of the day, it is high time that we as a community realize for what great values our forefathers had fought for, certainly it can not be for the society as it stands today. If we want to bring back the respect what our legal community deserves, we need to change our manner of working as someone said, ‘ it is not enough to do right things, but should do things in a right way’. In India people use to give our legal community so much respect because they have done great things for the society, now it is up to us if we want to take our community to that level again we should start working on giving back to our society.