INSTITUTIONALIZING CORPORATE SOCIAL RESPONSIBILITY: A STUDY OF PROVISIONS AND IMPLICATIONS OF INDIAN COMPANIES ACT 2013

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ABSTRACT

The spotlight of this chapter is to understand the connection between public policy and corporate social responsibility (CSR); in other words — the institutionalization of CSR. What is the role of the government for setting standards and mandating for ensuring responsibility? The emerging accepted wisdom in policy and academic circles is that many sustainability solutions are likely to result from institutional (i.e., governance) reform. A perceptive on CSR evolving as an institution of broader societal governance appears as a promising opportunity to delve into at a point in time when conventional rules, actors, and markets that steered the global economy demonstrate to be undergoing credibility crisis. CSR therefore must be considered within the wider field of institutions for governing the corporation and the economy. This chapter is exploratory as it dwells into theoretical underpinning of emerging mandatory CSR as well as provides empirical mapping of corporate responses to the new enacted legislation. The CSR analysis presented is based on a content analysis of the information contained in the annual
ARCHETYPICAL DEBATE

Regulatory gaps in finance were not accidental or exogenous, but endogenous to the political process. Powerful firms, industries, and sectors lobbied to keep their activities as free of regulation as possible. (New York Times, 2009)

Therefore, the fundamental debate in governance paradigm is that markets need to be embedded in a range of non-market institutions in order to work well. Institutions are sense-making frames that: (1) constitute actors as such and (2) guide their action in appropriate and effective ways toward legitimate and meaningful ends. Institutions refract motives and behavior, goals and means, into meaningful action. Laws and other “rules of the game” are highly formalized institutions, imposed by legitimate actors (the state) or powerful organizations. Institutions, however, also include taken-for-granted assumptions, developed through habit and rooted in collective understandings (Scott, 1995, p. 33). To achieve responsible capitalism, an acceptable moral ecology is needed underpinning the attitudes, motives, and behavior of its individuals and institutions. This ecology needs a continual reappraisal and careful nurturing by the appropriate incentives and enforcement mechanism (Oberoi, 2013).

There is widespread perceptive that organizations evolve within the limits defined by the institutional context. Institutions make available a set of regulations, norms, and cultural cognitions that limit actors’ inventory to respond to CSR calls. (DiMaggio & Powell, 1983)

The narrative of CSR in the 21st century is, therefore, a story of progressive business sensitization to structure and dynamics of governance beyond government, regulation beyond law, and responsiveness beyond responsibility. The impetus behind corporate philanthropy is dual: ethical and enlightened self-interest. (Holme & Watts, 2000)

Within an increasingly integrated world, the quest for global justice is turning into the single most complex and at the same time most serious and imperative challenge of the twenty-first century. Corporate social responsibility (CSR) discourse has become ubiquitous and has been instrumental in raising awareness that firms have responsibilities other than to their owners and “the bottom line.” Together, these interactions have entwined these strands of the “double helix” of practice and ideas, reality, and theory, and shaped a social conception of what we now consider to be “responsible corporate behavior”
Corporate Responsibility has also become a significant means of addressing and (correcting) the elemental problem with contemporary globalization—a system of global governance without global government” (Blowfield & Murray, 2011). “The state, it is believed, has a liability to assume policies that help companies grow but also ensure that the growth is shared more equitably” (Stiglitz, 2002). Within the current context of globalization crisis triggered by 2008 corporate malfeasance, there is a questioning of the institutional arrangement within which “conscientious or unethical” business behavior is acted out and endorsed. “The theological question—should there be CSR?—is so irrelevant today,” says Ruggie “Companies are doing it. It’s one of the social pressures they’ve absorbed” (The Economist, 2008).

The government’s task is to make certain that the course of global and economic and social change is managed appropriately and fairly. The “explicit CSR” promoted in the “form of voluntarism” is the mode of governance but its usefulness depends on its link to other “institutionalized forms of governance.” Corporate responsibility has emerged as an influential treatise on the commitments of corporations to serve the society that contract them (Oberoi, 2013). Several national and international guidelines have been drafted to serve as framework for CSR. The European Commission altered its 2006 definition in 2011 adding that “CSR should have in place a process to integrate social, environmental, ethical and human rights concerns into their business operations and core strategy in close collaboration with their stakeholders.” This wording replaces the original voluntary approach with a weak requirement, depicted in the word “should.” It endorses that CSR should be aligned and embedded in other international programs, including the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, ILO, and ISO 26000 standards. In view of the sharpness and approach by the Commission, it becomes apparent that CSR is a crucial issue and that attempts will be taken to make CSR more verifiable, recognized, and more pervasive.

There is also a growing body of legislation addressing environmental, societal, and governance norms issued by national governments and international organizations.

Professional associations are pressing businesses to adopt CSR-related certifications. Mainstream audit and consultancy firms, such as the Boston Consulting Group, KPMG or McKinsey, have developed sub-units dedicated to CSR business. Corporations have created CSR or sustainability departments to manage social and environmental issues. (Economist, 2005)

A new community of practice (Brown & Duguid, 1991) around CSR has emerged: CSR practitioners, who regard themselves as “CSR professionals” support the development and diffusion of CSR practices within and across organizational boundaries, and have played a crucial role in the institutionalization of CSR (Shamir, 2005, 2008). These standards offer assurance that when enterprises do business, they will uphold a minimum level of societal and
environmental standards in the work places and communities in which they are doing business (Doh & Guay, 2004). These mutual developments and the dissemination of CSR-related practices indicate that CSR is becoming institutionalized, in the sense that CSR-related “social processes, obligations, or actualities come to take on a rule-like status in social thought and action” (Meyer & Rowan, 1997, p. 341). As any other institutional logic, the institutional logic of CSR comprises a set of rules and norms (or principles) that guide the behavior of individuals and organizations. This is also indicative of a measured paradigm shift occurring within corporate responsibility and sustainable development discourses as CSR slips away from the zone of voluntariness and gets gripped by debate on accountability and benchmarking.

CSR as a policy approach to deal with a range of governance challenges in the global economy has gained appeal in the wake of current financial crises, rising consumer and employee safety concerns and natural disasters publicly linked to corporations.

The deep disenchantment towards corporate callous practices in developing countries gets reflected in the case where after thirty years of the Bhopal Gas Tragedy in India, the subject of the responsibility of the corporate, in ensuring the safety of the people remains unreciprocated. (Correspondent, The Hindu, 2010)

Human Development Report 2011 states that “sustainability is inextricably linked to the basic questions of equity — that is of fairness of social justice and of greater access to a better quality of life” (Klugman, 2011).

Undeniably, the “voluntary-mandatory” dichotomy that is evident in many contests on CSR is giving way to acknowledgment that law and law-based regulatory modalities are equally imperative and germane for CSR. This is accepted not only in the writing (Blowfield & Frynas, 2005; Mares, 2012; Zerk, 2006) but gets reflected unmistakably in the EU Commission’s latest amendment (EU Commission, 2011) of its 2002 characterization of CSR (EU Commission, 2002) that had marked much European debate on CSR for a decade. Research by Hess (2008), Deakin and Hobbs (2007), Barnard, Deakin, and Richard Hobbs (2004), and Buhmann (2011) have exposed that law-based regulatory approach are being applied to standardize CSR by public authorities, primarily through responsive and reflexive law approach. Because much of this regulation is oblique, functioning through informal forums recognized by intergovernmental or national authorities and based on a “nudging” strategy through which authorities persuade corporation to self-regulate, the practice and outcomes may come into view voluntary. Nonetheless, reflexive (self-) regulation often takes place under the shadow of the law or implicit possibilities for authorities to resort to hard regulation, instituting specific obligations of conduct for firms. From this perspective, firms’ self-regulation may be grounded in pre-emption of hard regulation (Schwartz & Carroll, 2003) rather than social responsibility emanating directly from within the company’s own values.
Conversely, the deliberation of association involving CSR, i.e.:

the responsibility of business to society, and government policies might seem counter-intuitive and adversative to some since early characterization of CSR barred business social responsibility from the domain of regulation or public policies. (McWilliams & Siegel, 2001)

The foremost concern was to differentiate voluntary behavior with that which was mandated and authorized. However, this understanding has come under appraisal both conceptually and empirically (Matten & Moon, 2008; Moon & Orlitzky, 2010). Matten and Moon’s (2005) “implicit-explicit CSR recognizes that company conduct is inextricably influenced by governmental objectives and policies. This is illustrated by the increasing number of cross-sectoral partnerships in which firms and business coalitions engage. It is also explained with reference to the ‘hollowing out’ of government especially post liberalization and globalizations”. This is indeed a provocative argument, but one which is beginning to gain currency with policy makers. At the global level, CSR is anticipated as a competent approach to tackle with the “regulatory void or governance gap” in the global economy. (More recently the Ruggie Principles require corporations to undertake due diligence in relation to their impacts (Ruggie, 2007).)

In fact, Milton Friedman inveighed against the very idea of CSR as being fundamentally subversive of capitalist system reveals in a more careful (re)reading of his work that he was supportive of CSR as an “Instrumental Value.” The following account of Milton Friedman explicated the point: “… it may well be in the long-run interest of a corporation that is major employer in a small community to devote resources to provide amenities to that community or to improving its governance” indicates at this position. This statement makes us revisit the whole debate about the responsibility of corporates toward society. On the other hand, given that companies have minimal profit incentives to engage in CSR, some scholars continue to speculate that CSR is merely a tool to ward off more rigid regulation and mask for corporate self-interest.

These interpretations call for a rethinking of the private/public margins within economic institutions. With liberalization, privatization, and globalization we are witnessing the increasing role of private actors, particularly multinational corporate, within the public domain. Self-regulatory initiatives become an increasingly important instrument within corporate governance in different countries after the retreat of the State and the private actors walked in to plug in a regulatory space by blurring the line between the law and the market. Milton Moskowitz observed:

looking over the history of CSR, I can see it as consisting of [ninety-five] percent rhetoric and five percent action. Companies are adept at drawing up high-sounding mission statements. Changing the way they do business? That’s something else.

Many companies have also been blamed by NGOs of “green washing” their advertising and reports to make their practices look more eco-friendly. The UN, for example, has already removed almost 2,000 companies from its Global Compact for non-compliance with its terms. Vogel (2006) bluntly admits that
increased corporate regulation would be preferable to CSR, but corporations are too powerful and they will not allow the requisite political changes. What we need is “market for virtue.”

INSTITUTIONALIZING CSR

“The corporation has always been a political creation” (Roy, 1997). Therefore, corporate influence and responsibility are topics of public and political concern. Thus instead of considering CSR as merely a dominion of voluntary act, institutional theory proposes seeking to place CSR unambiguously within a field of economic governance characterized by diverse approaches for regulation together with the market, state regulation and beyond. Institutional theory studies have highlighted how differences between the national institutional context and between political legacies have led to marked differences in isomorphic pressures on corporate CSR strategies as well as government policies between the USA and Europe (Doh & Guay, 2006; Levy & Kolk, 2002). CSR is now getting more closely linked to formal institutions of stakeholder participation or state intervention in other advanced economies and moving away from informal voluntary domain.

Applying the lens of institutional theory to the study of CSR allows for a better understanding of business responsibilities in two chief aspects: the diversity of CSR and the dynamics of CSR. (Brammer, Jackson, & Matten, 2012)

Observing CSR through the lens of institutional theory underscores it’s quintessentially “contested and contingent nature.”

The focus on the firm as the pivotal actor in initiating socially desirable behavior on the part of business has been institutionalized into the way of conceptualizing and studying CSR. Institutionalization is the method whereby a practice becomes approved and ultimately becoming reified as a public reality which directs actions. An individual’s dispositions are mediated through an institution’s organizational practices and collective forms of cooperation. A “sociological imagination” (Mills, 1959) is one which makes use of the conceptual tools provided by social theory and can produce a critical understanding of the relations between individuals and society, between structure and agency. An “established way of doing things” can be measured as institutionalized to the point where the “nonstandard action” has a reasonable belief of “imposition” and in the sagacity of loss of legitimacy or credibility. Institutions also have “sediment power” relationships by essentializing privileges and liabilities. In the present context, this incites us to show how underneath institutionalized CSR are the imminent political struggles that call into question the CSR meanings which are taken for granted. There are three stages of institutionalization: “habitualization, objectification, and sedimentation… This transition may be
expedited at any point by two phenomena, the informational cascade, which may occur with any practice, and the coercive cascade, which is peculiar to the CSR realm” (Haberberg, Gander, Rieple, Helm, & Martin-Castilla, 2010).

According to Vera Ivanaj et al. (2013) in an article titled “Understanding MNCs Attitude toward CSR,” the institutional dimensions are contoured by different institutional logic. Institutions are also defined as:

... the socially constructed, historical patterns of material practices, assumptions, values, beliefs, and rules by which individuals produce and reproduce their material subsistence, organize time and space, and provide meaning to their social reality. (Thornton & Ocasio, 1999)

The importance of discourses in this context is that they are seen to play an important role in constituting material reality: they realize rules, identities, contexts, values, and procedures, and these in turn shape social practices (Grant, Jedema, & Oswick, 2009).

Based on institutional theory, every organization is bound to abide by formal and informal rules. Scott (2008) points out that there are three pillars of institution: regulative, normative and cultural-cognitive systems. Scott (1995), institutions fall into three nominal categories, called pillars. The pillars are coercive, normative and mimetic. The state can use power by two ways, either by inducing or forcing agents towards compliance. Inducements are dependent on motivations while forcing is practiced by the use of fear (Scott, 2001). The organization operates by conforming to formative regulations (e.g. business licenses), and adapts it into a normative approach e.g. CSR policy. (Abdullah & Aziz, 2013)

DiMaggio and Powell paid consideration on institutional isomorphism, recognizing its three mechanisms. According to Scott (2001), “institutional pressures form the elements of which institutions are built. The pressures introduce the mechanism by which the pillars pursue their impact.” Meyer and Rowan (1997) defined isomorphism as:

... organizations are driven to incorporate the practices and procedures defined by prevailing rationalized concepts of organizational work and institutionalized society. Organizations that do so increase their legitimacy and their survival prospects, independent of the immediate efficacy of the acquired practices and procedures. (p. 340)

The inclination toward homogeneity is called “isomorphism” (DiMaggio, 1983; Powell, 1991).

Vera Ivanaj et al. (2013) explain that actions are thus embedded in institutional logic, and result from the interaction between the three levels of society — individuals, organizations, and institutions — “when organizations and institutions specify progressively higher levels of constraint and opportunity for individual action” (Thornton, Ocasio, & Lounsbury, 2013).

The institutional work concept can describe how an emerging social discourse or practice becomes part of the “institutionalized” strategy of an organization. First, institutional work bridges intra-organizational processes of institutionalization to broader processes of new practice diffusion at the societal or field level. (Lawrence, Suddaby, & Leca, 2009)
Second:

institutional work typologies provide useful “grammars” to capture institutional activities from the individual perspective. Institutional work thus relates to organizational processes to broader movements of institutionalization while considering their micro-foundations at the individual level of analysis. (Barley, 2008; Powell & Colyvas, 2008)

The Bourdieusian notion visualizes turf as site of resistance in which prevailing grouping emerges and, with that surfacing, leading implication and sense become rooted. Given the character of collective habitus as the code of production of practices that are “collectively orchestrated without being the product of the orchestrating action of the conductor” (Bourdieu, 1990, p. 53). These institutions are a socially realized phenomenon (Bourdieu, 1996). Within the context of Bourdieusian thought, CSR is envisioned as an arena within which shared values and norms are ratified which begins with tussle or contestation (Larrinaga, 2007). The existence of such differentiation among the actors and the contests among them makes the institutionalization of CSR an ineluctable political activity.

Bourdieu’s conception is comparable to what Orton and Weick (1990) illustrate as a “loosely coupled system.” The latter is characterized by an “emphasis on simultaneous coupling and decoupling” (Orton & Weick, 1990). Bourdieu also explains this antagonism as an occurrence in the context of institutions being wedged in a “double-bind” (1993) when they incredibly try to induce their pertinent publics that contending anxieties and concerns can be, and have been, reconciled:

we can speak of bad institutional faith to name the constant propensity of institutions of the state to refuse to enact, by means of a double game and a double conscience which are collectively assumed, the measures and actions that are proper to the official vocation of the state. (Bourdieu, 1993)

Bourdieu (1990) argues that “individuals are able to accept and share in the history objectified in institutions.” Individual agents achieve this through habitus adjustments in order to “appropriate institutions practically” (Bourdieu, 1990, p. 57). According to Burke, Emmerich, and Ingram (2013):

While Bourdieu himself does not use the term institutional habitus, the phrase is useful when considering the incorporation of the institution into the habitus. An institution can bring about an adjustment in the habitus of individuals within it through its collective actions (or the actions of those within it). This tends to bring agents into a state of habitus homology. It is these homologies, these shared habitus engendered by the institution, that underpins the notion of institutional habitus. It is within the institutional field that positively sanctioned, common-sense behaviours are generated. (Burke et al., 2013)

According to Bourdieu himself “The habitus is what enables the institution to attain full realization: it is through the capacity for incorporation, which exploits the body’s readiness to take seriously the performative magic of the social, that the king, the banker or the priest are hereditary monarchy, financial
capitalism or the Church made flesh" (Burke et al., 2013). Institutionalization can be reflected upon as the technique in which organizations come to accept a resemblance to each other (Meyer & Rowan, 1997). That is, institutionalization refers to a shared set of meanings, beliefs, practices, and values which, combined, tend toward the relative homogenization of organizations (DiMaggio & Powell, 1991).

The Neo-institutionalism sees institutions as routines, beliefs, norms, cultural rules or ideas that give collective meaning (sense giving). Organizations follow such rules of appropriateness in order to gain legitimacy for their actions. (Meyer & Rowan, 1997)

They adopt practices “[...] they believe their institutional environment deems appropriate or legitimate regardless of whether these practices increase organizational efficiency or otherwise reduce costs relative to benefits” (Campbell, 2006; Friederike & Wehmeier, 2010).

This perspective describes major processes of the institutionalization of CSR on the micro-level (actors of organizations), meso-level (corporations, organizations, publics and audiences) and macro-level (environment and institutions). CSR cannot be seen as a fixed script or tool that might be used by corporations in order to produce fixed effects such as legitimacy. This represents a dynamic continuum of competing meanings. (Schultz & Wehmeier, 2010)

It is part of public discourse, a construct and symbolic resource, which is alternately and often competitively used by a variety of players, such as corporations or non-profit organizations, and for a variety of purposes. (Schultz & Wehmeier, 2010)

According to Haberberg et al. (2010) in their article “Institutionalizing idealism: The adoption of CSR practices” they offer a new conceptualization of the path of the institutionalization of CSR practices.

CSR initiatives typically arise out of socially embedded concerns, and only later enter an instrumentally motivated stage of development. The pattern of institutional development is subject to flux and debate exacerbated by CSR’s high visibility to media and civil society and by the lack of clear instrumental benefits for the firm. Institutionalization may be fast tracked by coercive processes exerted by stakeholders from outside any single organizational field, and yet be retarded or undermined by ideological conflicts. (Haberberg et al., 2010)

The institutionalization of CSR is visible in the diffusion of CSR departments within companies, the spread of stock market indices related to sustainability, the proliferation of branding initiatives and even an ISO standard on CSR. (Brammer et al., 2012)

Thus, the strict assumption of voluntarism as the sine qua non of CSR has got diminished, reflecting the view that CSR is “embedded” (Moon & Vogel, 2005) in national (and international) institutions, including legitimized business practices and relationships, and public policies (Campbell, 2007). In furthering this question, Kang and Moon (2012) propose a hypothetical construction for investigating how national institutions linked with diverse “varieties” of capitalism sway CSR. Rather than seeing CSR purely as a realm of voluntary action, institutional theory suggests seeking to place CSR explicitly within a
wider field of economic governance characterized by different modes, including the market, state regulation, and beyond. The power of corporations also breaks through the fabric of modern cultural understandings and practices, as acknowledged by the contest surrounding “McDonaldization,” “Starbuckization” (Ritzer, 2010).

While CSR measures are aimed at or utilize markets as a tool (e.g. fair trade, eco-branding, etc.), institutional theories of the economy see markets as socially embedded within a wider field of social networks, business associations and political rules. This development has broadened the debate on CSR. (Brammer et al., 2012)

Government, society, and corporations can drive CSR regulation by starting a “regulation chain” involving diverse constellations of actors including across borders. What is being talked of is also referred to as “Partnered Governance.” These multi-sector partnerships draw on varied competencies to engage in solution providing that individual organizations cannot resolve. Partnered governance (also identified as collaborative or cooperative governance) refers to governance involving the teamwork of dissimilar societal actors in regulation, especially a range of private and public agents. Glasbergen (2007) refers this to a new paradigm for governance, “a project as well as a process.” The momentum with which UN bodies and MNCs have embraced the “partnership approach” is viewed by many as a constructive precursor as the MNCs are diverting resources toward social and economic progress and sustainable development, but also that corporate citizenship based on shared values is equally getting accepted.

Conceptually, partnered governance and its interfaces with political/regulatory governance and industrial self-regulation may be graphically displayed in a two-dimensional matrix. Partnering instruments (or “ties”) build on a co-regulatory networking rationale, assuming that different actors are interested in working together toward shared objectives, for example, because they can exchange complementary resources and avoid conventional regulations.

Partnered governance constitutes a middle ground where the two spheres potentially interface. By forming this interface adequately, through both complementary policy strategies and complementary policy tools, it is feasible to increase governance of the global economy. (Midttun, 2008)

In order to connect capably in partnered governance, governments need to engage beyond conventional roles. As argued by Fox, Ward, and Howard (2002),

they need to shift out of established mandating strategies based on command and control legislation to facilitating, partnering and endorsing strategies. This revealed that such partnership provided mutual benefit to businesses, community development and public sector governance.
At the same time, Midttun (2004) “proposed a new embedded relational model defined as an emerging model of CSR oriented societal governance. By analyzing the roles and role-sets in political, commercial and regulatory exchange, Midttun seeks to locate distinctiveness of the CSR-governance model compared with the two other ‘classical’ ideal types. Midttun concludes that governments need to manage the expectations of these exchange relationships to facilitate complex inter organizational networks in which all three sectors play a part” (Albareda, Lozano, Tencati, Midttun, & Perrini, 2008). On a parallel note, Ruggie (2004) explains how a newly emerging “global public domain,” in which state, private, and civil society actors take on political responsibility in a dynamic interplay, can help to (re)embed global markets within shared social values.

In recent years, national policies supporting CSR initiatives have emerged across different countries. For example, Albareda et al. (2008) have mapped CSR policies across Europe, and Steurer (2009) also analyzed government policies for CSR in a selection of European countries.

The “partnership” model (Scandinavia, Netherlands), reflected national policy traditions and focused policies on the environment. The “business in the community” model (central Europe) reflects “soft regulation” for local social and economic problems. The “sustainability and citizenship” model (central Europe) reflects “solidaristic” traditions of “social market economies” to address broad sustainability challenges. The “agora” model (Mediterranean countries) reflects the challenge of creating consensus through dialogue. Many countries have been proactive in their public sector efforts and initiatives in the field of CSR promotion. Countries like the U.S., UK, Denmark, Sweden, the Netherlands, Taiwan, France, Korea, Philippines, South Africa, Thailand, India, Ghana, Colombia etc. have shored up such policy making to tackle societal and environmental problems. Thus, the role of public regulators and the reasons why regulators should even want to regulate CSR is getting integrated into the CSR literature. The relative void in theory on the interplay between organizational studies, politics and public regulation of CSR, including from the perspective of law and legal strategies is getting filled now.

Others have investigated the relationships between types of policy-making systems and types of CSR (Gjølberg, 2009). Albareda, Ysa, and Lozano (2006) and Lozano, Albareda, and Ysa (2008) developed a CSR public policy-relational analytical framework in order to better understand the role of government in CSR. This tool facilitates the analysis of a government’s approach to CSR from two key perspectives: the overarching policy framework and policy implementation in terms of specific policies and programs. In this context, governments are now operating in a new relational approach, where the different perceptions of each exchange relationship need to be addressed to develop CSR public policy, and a consideration of these relationships allows a more inclusive view of government CSR policy. Fox et al. (2002) distinguish four types of policy to promote CSR: “endorsement, facilitation, partnering, and mandate.”

The corporation is a political creation — the state granted the corporation the benefit of limited liability in order to facilitate the accumulation of capital. The new “public domain” with
“global public policy networks” is possibly one of the commanding sources of isomorphic pressure to institutionalize CSR in business. (Brammer et al., 2012)

“Mandating role entails the specification of some minimum standard for business performance embedded within the regulatory framework” (Fox et al., 2002). Governments take the most definitive role in CSR through regulations and decrees, even though they fail as “command and control” policies. Numerous governments put into practice non-financial reporting legislation. Knudsen, Moon, and Slager (2015) provide an extensive understanding into how CSR is institutionalized by governments into their general public policy frameworks. They present a:

... typology of government CSR policies according to their “strength” and “breadth”. In strength provisos the endorsing policies are comparatively feeble. The conjecture is that government supports CSR but it does so in more “arm’s-length” manner. In contrast, the facilitating and partnering policies usually entail a specific intended direction of business behavior: they appear to steer CSR. Mandating policies are apparently the firmest, and as a consequence are probable to institutionalize CSR. (Knudsen et al., 2015)

The inference here is that governments build CSR into their own policy settings by applying not only incentive structures and organizational investments (that is, facilitation and partnerships), but also through regulation. As a result of CSR policies in these cases are not simply about encouraging new forms of business–society relations, but are also about government–business–society relations. (Knudsen et al., 2015)

The second dimension, the breadth of CSR policies, differentiates between partial and broad application of CSR policies. The more partial function reveals few government policy which means CSR is an adjunct to public policy. The broader applications reflect a systemic reach of CSR policies. The supposition is that CSR policies are pertinent to public policies. “Putting together these dimensions of strength and breadth of government policies for CSR, Knudsen et al. (2015) differentiate wide-ranging types of government CSR strategy: ‘selective support’; ‘systemic support’; ‘selective steering’; ‘systemic steering’; ‘selective institutionalization’; and ‘systemic institutionalization’” (Knudsen et al., 2015).

This chapter in the next section shows a public policy perspective which considers underlying government rationality may deliver an explanation and connection to bring the understanding of the emerging trend of governmental engagement in CSR forward. It studies the provisions of Companies Act 2013 and the responses of corporate to these provisions.

THE SPECTER OF MANDATORY CSR IN INDIA

India’s tryst with institutionalized CSR began with voluntary guidelines by the industry groups. In late 2009, Ministry of Corporate Affairs (MCA) proposed ground-breaking CSR guidelines in what is deemed as the first concrete attempt
to recognize CSR from a regulatory standpoint. However, the Companies Bill 2013 represents the first foremost attempt at methodically overhauling corporate law in India since 1956. The Bill is an effort to “update the laws in accordance with the best global practices.” The pure voluntary flavor of Indian CSR has lately been unified with a mandatory component in it.

Contrasting with other countries for example Australia, Denmark, France, Holland, Norway, and Sweden, where the CSR reporting is mandatory, India is currently the solitary nation in the world where both reporting and spending has become mandatory. As per the rules, the CSR spending becomes mandatory for firms making a net profit of at least Rs. 5 crore or have a net worth of at least Rs. 500 crore or have a turnover of at least Rs. 1000 crore. If the firms meet any of these criteria, they have to spend at least 2 per cent of their annual net profits (average of the last three years) on CSR activities from the year 2015. (Indian Express, February 28, 2014)

The move toward mandatory CSR is motivated by the conviction that the private sector has to support the government in furthering economic growth that is inclusive, with wealth distributed among the Indian population. In 2009, the MCA proposed pioneering CSR Guidelines in what has been deemed the first concrete endeavor to recognize CSR from a regulatory standpoint. The guidelines “admittedly embrace the triple bottom line approach” from international CSR standards. On the other hand, the guidelines also sketched out CSR as constituent of Indian history and culture, affirming that Indian entrepreneurs and business enterprises have a long convention of working within the values that have defined our nation’s character for millennia. (MCA, 2009)

Thereby the cardinal code of the CSR guidelines is that:

Each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, and that this should be an integral part of overall business policy and aligned with a company’s business goals. The policy should be framed with the participation of various level executives and should be approved and overseen by the Board. (MCA, 2009)

The responsibility assumed for CSR by a company should be reflected in its policy as expressed in a code of conduct and action plan.

Two years after the issuance of the voluntary CSR guidelines, the MCA formed the National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business in 2011. These guidelines contain a business responsibility reporting design and necessitate companies to formulate policies of disclosures regarding steps taken by them to put into process these values. In order to further boost transparency in the adoption of the ESG initiatives, in August 2012, India’s principal capital markets regulatory authority, the Securities Exchange Board of India (SEBI), issued a circular mandating that the top 100 listed companies based on market capitalization submit Business Responsibility Reports (BRRs) concerning their ESG schemes. The BRRs are put forward along with the company’s annual report. Other listed companies have been urged by SEBI to voluntarily release facts and figures on

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their ESG execution in the BRR design. Letdown to conform to the BRR requirement is interpreted as non-compliance with Clause-55 of the Equity Listing Agreement, even though it remains ambiguous how SEBI will cope with defaulting corporation.

In addition to a range of guidelines relevant to private sector entities, the Indian government has also made it obligatory CSR requirements for state-controlled entities. In April 2010, the government issued guiding principle for Central Public Sector Enterprises (CPSEs) which made it requisite for the CPSEs to generate a CSR budget. Furthermore, in April 2013, new and more comprehensive “Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises” came into force. These innovative guidelines view CSR as a core constituent of the public sector enterprises, stating:

in the context of public sector enterprises [CSR] should be viewed as a way of conducting business, which enables the creation and distribution of wealth for the betterment of its stakeholders, through the implementation and integration of ethical systems and sustainable management practices.

Going beyond the mandatory CSR expenditure, the guiding principle entails that all CPSE assume “at least one major project for development of a backward district” to facilitate extensively to the development of the backward regions of the country. Lately, the insertion of the CSR authorization in the Companies Act, 2013, is yet an additional endeavor to complement the government’s goal for fairly distributing the benefits of development and to utilize the corporates wherewithal for the inclusive development agenda. Policy makers, in addition to regulators, have acted in response to this concern by putting together the National Voluntary Guidelines for Social, Environmental, and Economic Responsibilities of Business or the NVGs (accompanied by the BRRs mandated by the SEBI for the top 100 companies) and the CSR clause within the Companies Act, 2013.

The new Act necessitates that the board of directors of the company, after considering the propositions made by the CSR committee, approves the CSR strategy for the corporation and releases its contents in their statement and also makes public the particulars on the company’s official website. According to Indian Institute of Corporate Affairs,

no less than 6,000 Indian companies will be required to embark on CSR projects in order to conform to the requirements of the Companies Act, 2013 with several companies undertaking this responsibility for the first time. Additionally, various studies approximate that CSR assurance from companies can amount to nearly 20,000 crore INR. This amalgamation of regulatory as well as collective demands has made it inevitable for the companies to pursue CSR activities competently.

For successful realization, the CSR working group must also supervise the methodical development of a set of processes and guidelines for CSR to deliver its proposed value to the company, including: (1) one-time processes such as
developing the CSR strategy and operationalizing the institutional mechanism and (2) repetitive processes such as the annual CSR policy, due diligence of the implementation partner, project development, project approval, contracting, budgeting and payments, monitoring, impact measurement, and reporting and communication. The CSR Activities and Non-Compliance Eligible Activities Schedule VII of the Act give prescriptive channels for undertaking the CSR activities.

Among others, it includes exhaustive list of activities involved in dealing with issues of eradicating extreme hunger and poverty; promotion of education, gender equality, and women empowerment; reducing child mortality and improving maternal health; efforts geared towards eradication of malaria, HIV, AIDS, and other diseases; projects related to ensuring environmental sustainability, development of vocational skills, and social business projects. In addition, donations to the Prime Minister’s National Relief Fund (PMNRF) or any other support set up by the central or state governments focusing on socio-economic development and assistance, and to resources for the benefit of SC, ST, OBC, and women fall under CSR spending. Furthermore, government has approved numerous detailed activities through its general circular, which includes among other things, donations to academic institutions such as IIMA for conservation of buildings. (MCA, 2014)

The Act undoubtedly entails a commitment on each company board to put forward a report, in conjunction with the financial statements, to the company in the general meeting. This report comprises the yearly details on CSR actions. The segment assumes a “comply or explain” model of CSR. In the episode of the company failure to use up the requisite sum on CSR actions in a time, the panel must explicate for not doing so. Even though the CSR stipulation in the Act has been referred to as a “mandatory” provision, it falls short in stipulating a penalty clause for companies that do not conform to the CSR expenditure prerequisite. Nevertheless, failure by the company to make statement of accounts on CSR activities would make the corporation liable to a penalty in the form of a fine ranging from “fifty thousand rupees but which may extend to twenty-five lakh rupees” (Ministry of Corporate Affairs, 2013).

Further, each official in default would be punishable with imprisonment up to three years, a fine, or both. Thus, although the Act does not explicitly offer for a penalty clause for not spending the necessary amount on CSR activities, the articulation of CSR as a board function implies that non-compliance with the provision will trigger the penalties stipulated for breach of directors’ duties. So it is open to question that the general penalty clause in the Act, which operates as the default clause for sections that do not specify any penalty, might be invoked against companies that do not fulfill the CSR requirements. (Ministry of Corporate Affairs, 2013)

CORPORATE RESPONSES TOWARD CSR

As companies announced their annual report of the last financial year (FY 2014–2015), it allows us to analyze and find a few points that can present an
overview of CSR spending and CSR compliances among the companies at this very initial stage of the implementation of the bill. This analysis depicts the reactions and compliance by industry rather than providing an in-depth study principally because of the short duration of its enactment. But the study becomes significant to recognize the import of rather trend breaking act on the business. The funds that this Bill makes available for social good will be significant. In fact, Ernst & Young estimate that the law would apply to about 3,000 companies in India and disburse US$2 billion for CSR activities. According to Majmudar, Rana, and Sanan (2014), the recent study of CSR responses by:

corporates make an interesting reading with strong evidence that the journey towards business transformation has begun for many of India’s top companies. While many senior managers confess that they are still fraught to make the business case for long-term investments in sustainability and CSR, there are others who have taken the lead and are setting the pace for responsible growth. While for many late starters the nudge has come from the government, for several others such as the IT industry, a key influence in their CSR journey has been overseas clients that mandate CSR and sustainability practices. Aditya Birla Group, Tata Motors, LIC emerge as the top three corporates in the Nielsen’s Corporate Image Monitor 2012–2013 and ITC Ltd, ABG, Infosys, TATA Steel and TATA Motors are the corporates seen most actively involved in CSR activities.

The public sector too as an exemplar has had a strong authorization for a while to be engaged with community initiatives in and around their manufacturing facilities. While the Indian law looks at a philanthropic, community-centred approach, it is too accurate that smart strategies have been developed by industry leaders that look at CSR while creating far reaching positive business impact. Simultaneously, many business leaders believe that without radical structural change to markets and systems, business may be unable to lead the way toward the peak of a responsible, sustainable economy. (Afsharipour & Rana, 2014)

The results of CSR ranking study present strong evidence that the journey toward business transformation has begun for many of India’s top companies. According to Majmudar et al. (2014):

though most companies (around 80%) have board oversight and management accountability of CSR and sustainability initiatives, few (under 60%) have corporate strategy in place. Equity and inclusion have become equally important consideration for sustainability along with profit and environmental quality.

The Economic Times Corporate Dossier (ET, 2014) “provides the definitive listing of companies in India with the best programmes for Corporate Social Responsibility (CSR). They list Tata Steel at the top because of the use Human Development Index to keep track of CSR in villages. They believe Tata Chemicals also represent robust CSR policies and the company spends Rs 12 cr on CSR every year & wildlife conservation tops priority. Thirdly, Mahindra Group has CSR policies as a mix of strategic philanthropy, shared values & sustainability. Fourth, Maruti Suzuki’s Community development and road safety propel Maruti’s CSR in the fast lane. Tata Motors drives CSR through healthcare and education” (The Economic Times, 2014).
A good code meets certain requirements: it should be comprehensive, meaning that it should apply to all workers affected by labor practices for which the company has some measure of responsibility. A code should be credible, and should include provisions of ILO Core Conventions, the Tripartite Declaration of Principles, as well as the issues of Universal Declaration of Human Rights. However, in most cases in India, CSR is restricted to a company’s operations and not extended to other channel partners/customers/stakeholders. CSR measures for employees are relatively in place for some Indian companies. Many of them had key measures/policies/initiatives related to employees such as non-discrimination, education, occupational health and safety, pre/post retirement initiatives, prevention of sexual harassment, and child/forced labor. However, conditions are not so clear regarding practices for supply chains. Less than 20% of companies disclosed initiatives for their suppliers or customers. While the initiatives differ by industry, the majority of companies invest in education, healthcare, environment, and rural development initiatives for communities in and around their operation area.

Early CR reporting trends indicate that 73% of India’s N100 companies have some type of CR disclosure. A total of 45% employ standard frameworks for CR disclosure and 31% of India’s N100 comprehensively report on CR through separate reports. Information Technology (IT) sector is among the leader with all N100 IT companies generating separate CR reports, while the financial services sector lags behind with no or some separate CR reports. There is higher trend (70%) of N100 companies releasing CR data in annual reports but integrated reporting still has not gained importance so far. The Pharmaceutical sector has the lowest average score of 20 India Corporate Responsibility Reporting Survey 2013.

Global Reporting Initiative (GRI) is the most extensively used reporting arrangement with 64 per cent of N100 reporting companies (using standard reporting frameworks) referring to GRI. 81 percent of N100 companies producing separate CR reports have demonstrated enhanced credibility and reliability of reports through external assurance and half of all assurance statements are issued by major accountancy firms. 39 per cent of N100 companies with separate CR reports have restated the information presented for earlier reporting years. However, the quality of data reported sees an improvement with 71 per cent restatements relating to improved estimations calculations, enhanced scope of reporting and updates in definitions while 29 per cent of restatements were made owing to an error or omission. (KPMG, 2013)

Besides GRI, most commonly used reporting frameworks are CDP, UNGCCOP, and NVG-SEE. Sector-specific frameworks are also referred by Oil & Gas (IPIECA, API and OGP Oil, and gas voluntary guidance on sustainability reporting), Metals and Mining (World Steel Association indicators, ICMM Sustainable Development Framework), and Building Materials (WBCSD, Cement Sustainability Initiative) sectors. GRI however emerges as a widely accepted reporting framework among the companies using standard reporting frameworks with 64% of such companies adopting the GRI reporting
framework. Of the reporters using GRI reporting framework, nearly 94% refer to one or more other reporting frameworks.

The information of companies typically pertains to separate sections in annual reports covering the company’s initiatives on community development and/or environmental protection. Such details are mostly disintegrated from the management discussion and analysis on company’s performance and future plans. The information chiefly presents the company’s achievements and positive contributions and lacks worth in terms of balance and reliability. The current format of most reports is narrative in nature with a few performance indicators. A few reporters have tried to present detailed disclosure on CR initiatives and performance, but there has been no reference to any existing integrated reporting principles or International Integrated Reporting Council’s (IIRC) consultation draft. It is expected that CR information disclosure among companies will change significantly with the recent regulation of SEBI on mandatory Business Responsibility Reporting.

CSR MATRIX

To demonstrate advancement versus expectations, post the Companies Act 2013, Majmudar et al. (2014) “develop company performance results that are cataloged across four quadrants. They were termed as pace setters, smart utilisers, starting out and low efficiency.”

**Pace setters** are companies that use up comparatively large amounts on CSR and have relatively high CSR scores. 27 Indian companies fall in this category. Amongst the key industries, steel scored the highest in Governance but was somewhat less on disclosures. Likewise, oil companies scored the least on CSR stakeholders and sustainability. **Starting out companies** spend moderately less on CSR and have lesser CSR scores. 24 companies fall in this type. The average scores for the quadrant were least across all key parameters and spend on CSR activities too was low at 0.28 per cent. The banks falling in this quadrant followed the trend with one of the lowest average sector spend as per cent of PAT at 0.20 per cent in the quadrant. **Smart utilisers** are the companies spend relatively a smaller amount on CSR but have superior tally for CSR. 13 companies are in this group. The common scores for the quadrant were high in CSR stakeholders compared to overall average, but the average spend as a percentage of PAT was the lowest at 0.25 per cent. IT companies scored above average on all parameters except stakeholders, where it scored much below average. **Low efficiency companies** spend a fairly larger amount on CSR but have comparatively low CSR scores. Probably they have not accounted for the payback of CSR investment. Another justification could be that these companies are ineffective. Ten companies fall in this group. (Majmudar et al., 2014)

The mission is to translate the legislation push into substantial effect beyond the law but also underscore the sustainable vision of companies.
CONCLUDING REMARKS

Until now, donations by firms were driven by their interests; it was arbitrary, and in some cases very small in comparison to the size of the firms. The contest is not about “should corporate be involved in Corporate Social Responsibility (CSR)” but “how?” Earlier the CSR activities were designed by factors such as cost minimization and “visibility” among the consumers. But this has transformed with the new law. Unilever’s Shakti Ammas model of empowering women and the Tata Swach water filter, which can clean 3,000 liters of water without electricity or running water are stellar examples of sustainable innovation. Harnessing the funds released because of the new Bill will require educated and motivated individuals to provide leadership across all sectors of the economy, making management education and retraining mandatory to march toward more inclusive, profitable, and sustainable businesses. Not only will corporate executives need to be trained and sensitized, business school and the curriculum will need to be reworked to confront new opportunities and challenges brought on by the twin mandate of social good and economic growth. While there are valid opinions on both side of the fence, that is, should CSR be voluntary or mandated, the point that emerges from the analysis is that the answer is not a straightforward one and it defies the binary verdict. Study by Ioannis (2014):

indicates that the economic result of the disclosure regulations is positive. This is based on research conducted using data from four countries namely, China, Denmark, Malaysia, and South Africa. While the soft laws or negotiated agreements have been functional and scrutinised, many others liable provisions for responsible investment and public procurement initiatives are still new. The assessment of how effective CSR policies are in achieving public policy goals and what opportunity costs that they imply compared to conventional regulations is yet to be fully understood.

REFERENCES


