

## Law and Policy Issues for Corporate Social Responsibility with reference to Education as Priority Sector

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### Introduction

As time went on institutions both at international and national level emerged which took the responsibility of generating jurisprudence for reforms in the area of education from the informal to the higher levels. United Nations Economic, Social and Cultural Organizations (UNESCO), United Nations Children Fund (UNICEF) of United Nation (UN), Integrated Child Development Service Scheme (ICDS) of India (Schemes and programmes for persons with disabilities both children with special needs and adults). Pursuant to convention on Rights of Person with Disabilities (UNCPRD) and the Rights of Persons with Disability Act of 2016 of India.

The Constitutional 86<sup>th</sup> amendment ensure Free and Compulsory Education for children from age group 6-14 years as per Article 21-A and subsequently through Right of Children to Free and Compulsory Education Act. 2009 (RTE Act).

An interesting and pertinent question arise that when the institutions at international and national level and various schemes for education are implemented by Centre and State Governments then what could be the additional role of companies treating Education as a priority area? The probably the appropriate answer regarding the role of Corporate Social Responsibility in area of education is that our nation is not yet reached the goal set for primary, secondary education and also higher education targets as per targets set by different committees/commissions on education appointed now and then by the governments. The authors of this article like to discuss and focus upon the challenges, opportunities and remedies through CSR as per the existing legal framework in the Companies Act 2013.

Furthermore the authors of this article also discuss some of the policy reforms in law and provide some suggestions for contribution of Corporate Social Responsibility for education as a priority area for the social, economic, psychological, intellectual and physical well being of children, young men and women in our great country India.

### Constitutional and Legislative Commitment for Education

Education is invisible organ to human being. Education is one of important part in each and every human life. If a person was educated he /she acquires knowledge, learns behavioral activities and methods to survive in the society, in simple manner, a person will be respected if he/she had some dignity in the society and a only way to attain dignity and personality is education for himself/herself.

In 2002, the 86<sup>th</sup> amendment to the Constitution introduced Article 21-A making the right to education a fundamental right. For the first time in independent India. The Supreme Court first recognized the right to education as a fundamental right in *Mohini Jain V Union of India*<sup>1</sup> it observed that 'right to life is the compendious expression for all those rights which courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which individual is free to pursue. The right to education flows directly from right to life. Right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Governments is under an obligation to make endeavor to provide educational facility at all levels to its citizens.

The Supreme Court in *J.P. Unnikrishnan V State of Andhra Pradesh*<sup>2</sup> observed that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the " State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that the "State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". Article 46 commands that the "State shall promote with special care the educational and economic interest of the weaker section of the people, and , in particular, of the Schedule Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation

The Right of Children to Free and Compulsory Education(RTE) Act, 2009,<sup>3</sup> which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in formal school which satisfies certain essential norms and standards in the age group of 6-14.<sup>4</sup>

<sup>1</sup> (1992) 3 SCC 666

<sup>2</sup>1993 SCC (1) 645.

<sup>3</sup>W.e.f 4<sup>th</sup> August 2009.

<sup>4</sup><https://mhrd.gov.in>, Department of School Education and literacy Ministry of Human Resources Development Government of india

### **Legal Frame Work for Corporate Social Responsibility In India With Reference To Education:-**

Section 135 of Companies Act deals with Corporate Social Responsibility

1. Every company having net worth of five hundred cores or more, or turnover of rupees one thousand core or more or a net profit of rupees five core or more during any financial year shall constitute a corporate social responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
2. The Board's report under section (3) of Section shall disclose the composition of the Corporate Social Responsibility Committee.
3. The Corporate Social Responsibility Committee shall
  - a) Formulate and recommend to the Board , a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in schedule VII
  - b) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
  - c) Monitor the Corporate Social Responsibility Policy of the company from time to time.
4. The Board of every company referred to in sub-section (1) shall –
  - a) after taking into account the recommendations made by the corporate Social responsibility Committee, approve the CSR policy for the company and disclose contents of such Policy in its reports and also place it on the company's website, if any, in such manner as may be prescribed ; and
  - b) ensure that the activates are included in Corporate Social Responsibility Policy of the company undertaken by the company
5. The Board of every company referred to in sub-section(1) shall ensure that the company that the company spends, in every financial year, at least two percent, of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. This sub section (5) in section 135 of principal Act amended in 2019 inserted (I) after the words “ three immediately preceding finical years”, the words “or where the company has not completed the period of three financial years since its incorporation, during such immediate preceding financial years,'Provided that company shall give importance to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility.

If the company fails to spend such amount the Board shall in its report according to section 134 of companies Act 2013 relates to Financial statement of Board's report, consolidated which shall be approved by Board of Directors. Section 134(o) of sub Section 134, specify the reasons for not spending the amount. Section 134(o) details about the policy developed and

implemented by the company on Corporate Social Responsibility initiatives taken during the year.<sup>5</sup>

#### **Education : .**

Support to Technical /Vocational Institutions for their self – development, Academic education by way of financial assistance to Primary, Middle and Higher Secondary Schools, Adult literacy amongst those belonging to BPL, Awareness Programmes on girl education, Counseling of parents , Special attention on education, training and rehabilitation of mentally & physically challenged children/persons, Spreading legal awareness amongst people and disadvantaged sections of the society about their rights & remedies available, Promotion of Professional action by setting up educational Institutions offering courses in Engg, Nursing, Management, Medicine and in Technical subjects etc, Provide fees for a period of one year or more to the poor and meritorious, preferably girl students of the school in the operational area of the Company to enable them to get uninterrupted education.

#### **Transfer of Unspent Corporate Social Responsibility Account:**

Section 135(6) from the companies Amendment Act 2019, any amount remaining unspent under sub section(5), pursuant to any ongoing project, fulfilling such conditions as may prescribed, undertaken by the company pursuance to CSR, shall be transferred by the company within a period of 30ndays from the end of financial year to a special account to be opened by the company in that behalf for the financial year in any schedule bank to be called unspent corporate social responsibility Account, an such account shall be spent by the company in pursuance of its obligation towards the CSR policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same fund to specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.<sup>6</sup>

#### **Penalty for Non-Compliance of Corporate Social Responsibility Activities:**

As per the amendment to section 135 (7) from the Companies (Amendment) Act, 2019 that talks about penalties for non-compliance if a company contravenes the provisions of sub section (5) or sub section(6), the company shall be punishable with fine which shall be not be less than fifty thousand rupees but which may extend to twenty- five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to three years or fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.<sup>7</sup>

#### **Civil Offence and Civil Liability of Non Compliance of Corporate Social Responsibility Activities:**

The companies law was amended in the budget session which made the companies for imprisonment of up to three years for executives of companies that broke CSR rules apart from fine of Rupees 50,000 to Rs. 25 Lakh

<sup>5</sup>CA. Kamal Garg, Bharat's Corporate Social Responsibility, Bharath Law House Pvt. Ltd., New Delhi, pg. 189-192

<sup>6</sup>[www.indiafilings.com](http://www.indiafilings.com) Guides to Companies Act CSR Amendment 2019

<sup>7</sup> ibid

The government will not issue follow up rules required to implement the provisions had drawn strong criticism, the decision follows recommendation by the high level committee on CSR submitted its report to finance minister Niramala Sitharan it suggested that the violation should be regarded as civil offences that are liable to monetary penalties to make CSR provision more effective and less burdensome for companies.<sup>8</sup>

In additions to issues prescribed eligible for education under Companies Act 2013 (Amended) Act 2019.

In the foregoing paragraphs the authors of this article like to discuss about issues, challenges and interventions for education by CSR.

### **Issues, Challenges And Opportunities In The Area of Education :**

The Indian education systems is replete with enormous challenges and opportunities. This can be evaluated through an assessment of developmental milestones/phases in the education sphere from birth to gainful employment of a person. Each of these milestone/phases requires a study itself and are too vast to comment upon at one go.

Issues such as accessibility, enrolment quality, retention, quality of teachers, pedagogy, school infrastructure, employability, community readiness and participation etc. provide lenses through which each education. Milestone/phase can be evaluated, to determine the challenges and opportunities in the sector for Corporate Social Responsibility.

### **Additional Skills Required For Employability:**

Entering the workforce every year are considered unemployable or not job ready. Employment potential depends on lot more than technical skills. it requires the ability to work effectively, have good interpersonal skills, communications and creative skills. Life skills, if integrated into the school programme, can help prepare young students.

Having focused about on the role of international agencies and national schemes, issues, challenges and opportunities in the area of education it would be appropriate for authors focus on the role judiciary towards education and the challenges ahead for implementing Corporate Social Responsibility in India.

Nations growth depends upon the quality education that country provides right from elementary level to higher education. Under this sub heading the authors of this article provide an in exhaustive issues to be taken up under the CSR activity in addition to those of the eligible issues under education as an eligible activity pursuant to Companies Act 2013 and subsequent amendment in 2019.

Skill development has been the primary focus of attention under many CSR activity in the attention under many CSR activity in the education as a priority sector this goes to show that CSR activity like to apply knowledge on practical basis that knowledge sought education in classroom environment.

<sup>8</sup><https://m.economictimes.com> by DeepshihaSikarwar updated Aug- 14 - 2019

The following are the priority issues under education activity by CSR in India.<sup>9</sup>

- a) Gender Equity
- b) Providing toilets or other infrastructure for girl child and woman
- c) Establishing training institutes for teachers
- d) Establishing libraries for rural school education<sup>10</sup>

Trends also show increasing investment towards STEM education, Digital education, capacity building of teachers. Upgrading and capacity building of the school management and leadership development is another essential component which requires much attention and action.<sup>11</sup>

It is evident from the data that as per the India CSR outlook report 2017, education projects (with skills development )n received 32% of the CSR investments in the 2016-17, forming highest contribution of CSR to any sector.<sup>12</sup>

According to a NASSCOM Foundation study, 60-70% of companies CSR contribution are spent education initiatives.<sup>13</sup> This large chunk into the education sector is due the corporate perception that there is huge potential for change with a skilled knowledgeable society and belief in the education system being the root that needs strengthening.

### **Challenges for Corporate Social Responsibility Activity In Education As Priority Sector:**

As said above nation's growth, development and progress depend upon the educational system of any country. Towards these end for the growth and progress there are some challenges ahead for CSR in Education which are listed as

Accessibility, Quality, Retention, Poor capacity of teachers, Academic issues especially a curriculum that is not updated, Enrolment, Pedagogy, Girl Enrolment, Skill building

The magnitude and scale of these challenges require concrete efforts and funds from all stake holders and collaborations between government, educational institutions and corporate to help accelerate educational reform and bring about the desire social development. Even though the education sector receives maximum attention in terms of CSR spends, mere involvement from financial perspective to strengthen the education system is not enough.

### **Need for Immediate Corporate Social Responsibility Intervention In The Area Of Education:-**

<sup>9</sup>IndianSchool Education Vision 2030 <http://www.centraquarefoundation.org/wp-content/uploads/2015/08/India-School-education-Vision-2030.pdf> in December 2014

<sup>10</sup>Dr.PoojaDeshmukh (2017). Corporate social responsibility and education sector,issues and remedies, International Journal of Management(IJM). Volume 8, Issue 1, pp.137-144

<sup>11</sup>Rahul Choudhury (2017),CSR Education projects-Needs to create impact. <http://indiacsr.in/csr-education-projects-need-to-create-impact/>

<sup>12</sup>CSR Spend Analysis of Financial year 2016-17 BSE Big 300 Companies,<http://ngobox.org/media/India%20Outlook%202017-V1.pdf>,pg.13 Setember,2017

<sup>13</sup>Business Standards (2016) NASSCOM Foundation says most firms spend 70% CSR fund in education,<http://www.buisness-standard.com/article/ptistories/nasscom-foundation-says-most-firms-spend-70-csr-fund-on-education-116112400666-1.html>

There are certain gaps in extending CSR activity including lack of trends in the following areas of education activity they are

- 1) Systemic Chain
- 2) Accelerate change in the education sector.

With the quantum of CSR investments, it is vital for the companies to make informed decisions. Along with the focus on classroom construction, providing books or scholarship, attention should also be given to supporting processes or organizations with clear, easily measurable learning outcomes. Behavior change communication has also not gained much attention in this context.

### **Contribution of Judiciary Promoting Corporate Social Responsibility Activity in Education:**

In Mohd. Ahmed (Minor) Vs Union of India and others<sup>14</sup>

Right to work, to education and to public assistance in certain cases the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. The Honorable Supreme Court held that the habit of giving donations needs to be popularized and facilitated. The Center and State Governments can entirely tap the resources of the civil society to provide healthcare, education, work access to the poor and unprivileged. The governments can and should attract donations both in cash and kind. Both Corporate Social Responsibility and donations need to be made which is inaccessible to the common man relating to entries in Schedule VII of the Companies Act 2013 read with Rule 6 Cos. (Corporate Social Responsibility Policy) Rules, 2014. .

### **Suggestions :**

The following suggestions are made by the authors jointly for the purpose of immediate attention by Corporate Social Responsibility Policy implementers in India.

Collaboration between Government, educational institutions and corporate will accelerate educational reform and has bring the desired social change in society.

Corporate Social Responsibility Policies by Corporate should focus more on school infrastructure mainly reasonable number class rooms, wash rooms with good sanitary conditions, Play ground, Library etc.,

Corporate Social Responsibility by Companies should give more attention to converting traditional classroom to digital classrooms and also the facility of digital library for the students.

Corporate Social Responsibility Policy should concentrate to funds for NSS, NCC, Yoga, Sports and Equipments for playing both traditional and modern games.

Corporate Social Responsibility Policies by companies should strive to improve cultural activities and programmes that help to know more about our heritage, culture and way of life in

society for Pre-University and Under Graduate students of the college.

Corporate Social Responsibility Policies should focus more on encouraging science studies in colleges by way of establishing different laboratories with reasonable equipments for conducting experiments by colleges and also the schools from class 7<sup>th</sup> to 10<sup>th</sup> standard.

In order to increase information and knowledge communication system should be strengthened in schools and colleges by providing Radio's , Televisions so that students view some programmes which help in their capacity building and career advance. In this regard Corporate Social Responsibility policies should generously allocate funds.

Corporate Social Responsibility Policies by Companies should focus on Information Technology and help the schools and colleges to have facility of computer training, facility of internet and Wi-Fi.

<sup>14</sup>On 17 April 2014.