Will this positively or negatively impact CSR in India?

After years of debate, the Indian Parliament passed its first update of the country's corporate law in more than 50 years, which includes several important provisions that modernize India's corporate governance rules. The Companies Act 2013 requires that one-third of a company's board comprise independent directors, and that at least one board member be a woman. It also requires companies to disclose executive salaries as a ratio to the average employee's salary, and it allows shareholders to file class-action law suits.

The provision that has got the most attention is the so-called "2 per cent" requirement, which made India the first country to mandate CSR.

Schedule VII of the Companies Bill, requires the CSR policy created by the CSR Committee to involve at least one of the following focus areas:

Eradicating extreme hunger and poverty

Promotion of education

Promoting gender equality and empowering women

Reducing child mortality and improving maternal health

Combating HIV, AIDS, malaria and other diseases

Ensuring environmental sustainability

Employment-enhancing vocational skills

Social business projects

Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central government.

While a company is not subject to liability for failing to spend on CSR, a company and its officers are subject to liability for not explaining such a failure in the annual report of the board of directors.

Undertaking CSR builds a positive image of the company in the public benefiting it in its interaction with the government, investors and business partners. Therefore, in the long term business stands to gain in financial terms by undertaking CSR initiatives. There is no doubt either that the country as a whole and the needy and non-priviledged sections in particular will gain when companies get involved in social welfare and development. This is because companies are resourceful partners to have in terms of finances, knowledge base, technical knowhow and human resources. In the end, one can conclude that CSR would prove a win-win situation for both sides.

In a country such as India, where one-third of the population is illiterate, two-thirds lack access to proper sanitation, and 400 million people still live on less than US$2 a day, the passage of the

Companies Act should be hailed as a positive step forward in ensuring that business contributes to equitable and sustainable economic development.

But there are also a number of reasons to think it may not greatly improve CSR. Indian companies still equate CSR with corporate philanthropy rather than considering CSR as a holistic view of the impacts business has on society and the environment through its operations. By reinforcing this view, the bill could distract business leaders who are ready to embrace strategic CSR.

Also, by making CSR mandatory, companies may treat it as a “check the box” exercise rather than looking at ways to innovate and generate a return from doing social and environmental well. And most companies will comply by channeling funds to community organizations that are addressing one of the priority topics mentioned. There is no shortage of organizations that will be willing to accept these funds—there are an estimated 3.3 million NGOs in India—but few organizations have the capacity and the skill to effectively manage projects that can have a large-scale impact. In an effort to meet the spending obligations, companies may not do the right due diligence to select high-impact, credible organizations.

It’s too early to say what the real impact of this act will be, especially given that passing it and enforcing it are two different things. But with the controversy around the CSR provision, and the lack of specificity and detail, there is an opportunity for leading companies to influence the way the CSR mandate is interpreted. Given the immense need and tremendous business opportunity in India, this can only be a good thing.

It is smart to mandate CSR in order to reduce such inefficiencies in the economy. Via 2% CSR, there will be more human capital developed (education, healthcare, training, etc.) in the economy which will have long term ripple effect on Indian economy to accelerate production of goods and services. Moreover, through CSR spending in energy, environment and R&D other factors of production will be more efficiently utilized. This will in turn boost capital generation and thereby boost the economy in the long run. By not increasing taxes and allowing companies to invest in their own CSR programs, the government is actually increasing efficiencies in the economy. Businesses in terms of their technical, local and information capabilities are in a unique position to better provide social goods than the government.

The mandated 2% CSR investment in the new Indian Companies Bill is a novel solution to India’s social problems. It may not be perfect but it is a product out of necessity for economic justice in India. Corporations in India have failed to take the responsibility for the real cost of their functioning. Many often pollute the environment and run away from human hazards that they invent. 2% CSR policy envisions a system in which each industry would contribute in a manner apt with their expertise. Chemical and oil companies might take environmental and safety initiatives and technology companies might take tech-education initiatives. Thus, in a nutshell, this new policy may turn out to be a boon for both the corporates and the society, propelling India towards the path of equitable and sustainable growth.

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