

# Challenges Restraining Qualitative & Sustainable CSR- Projects by Companies

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**Abstract:** Allocation of Funds for CSR Activity has been mandated under various statutory laws of the land. Corporates both in private and government sector allocate funds for undertaking CSR activity. However, most of the times organisations face lot of difficulties in implementing the CSR projects owing to various factors like taxation issues, non-availability of data, capacity building, CSR projects in remote and backward areas thereby defeating the basic purpose of the CSR initiatives.

**Keywords :** Companies Act 2013, NITI Aayog, Public Private Partnership, Aspirational Districts, IT Act, Stakeholders, Capacity building, GST, District Administration, Human Resource

## STATUTORY FRAME WORK FOR CSR BY COMPANIES IN INDIA:

India is first country in the world to introduce CSR Laws as a statutory mandate. The CSR laws are a Success in India, but Strong Growth is fraught with obscure Challenges. One of the significant features of the new Companies Act '2013 (CA 2013) is CSR. The Central Government through 'Ministry of Corporate Affairs' in 2014 made rules called the Companies (Corporate Social Responsibility) Rules 2014 applicable from financial year 2014-15. In terms of sec.135 of Companies Act '2013, The Board of every company having Net worth of Rs.500 Crore or more; or Turnover of Rs. 1,000 Crore or more; or Net profit of Rs.5 Crore or more during any financial year, shall spends at least 2% of the average Net Profit of the company made during preceding three (3) years. The compilation of 'net profit' for CSR purpose shall be as per Section-198 of the CA-2013 which is primarily profit before tax (PBT). The projects and programs which can be undertaken by Companies (Listed/unlisted/one-man companies etc.) are enumerated in Schedule-VII of 2013. CSR projects can be executed through A Registered Trust/Society/NGO/NPO/A holding company or subsidiary or Public Private Partnership (PPP), Section-8 companies, In collaboration mode with other listed companies as per CA 2013. Department of Public Enterprises (DPE) issued "Guidelines on CSR and Sustainability for CPSEs" in Oct '2014 for Central PSUs, which are supplementary in nature to CSR rules.

## CSR GROWTH TRAJECTORY WITH PROJECTS OF NATIONAL INTEREST:

With sound statutory & regulatory frame work evolving for companies to implementation of CSR project & programs, the nation is bound to achieve its pre-determined objectives in times to come, especially in the areas identified under Schedule VII of 2013 & in the Projects of national interest like Swachh Bharat Mission (Construction of toilets), National Mission for Clean Ganga (NMCG), Skill Development, Non-Conventional energy generation etc. However, the statistics till 2019-20 financial i.e. the period over first 5 years since introduction of CSR Law have yet to achieve the pre-determined goals of the nation building thorough CSR.

## ATTAINMENT OF OBJECTIVES OF CSR LAW STILL A FAR CRY:

If we take the 339 Central Public sector Enterprises (CPSEs) as a case study - as per data of PE survey, CPSEs have spent Rs. 2450 Crore (120 CPSUs) towards CSR expenditure) in 2014-15, Rs.4028 Crore, (106 CPSUs) in 2015-16, Rs.3336 Crore (126 CPSUs) in 2016-17, Rs. 3442 Crore (146 CPSUs) in 2017-18, and Rs. 3873 Crore (150 CPSUs) in 2018-19, for implementing various projects/programs under section-135 mandate. The top 10 companies account for almost 35% total CSR fund. The top 10 companies among large 500 companies are Reliance Industries, TCS, ONGC, IOCL, HDFC Bank, Infosys, ITC, Housing Development Finance Corporation, NTPC and Coal India. The large 500 companies, listed on BSE or NSE, had consolidated CSR fund to the tune of Rs. 12079 Crore during the financial year 2018-19. This consolidated CSR fund rose by 11% during the financial year 2019-20 amounting to Rs. 13405 Crore. The entire CSR fund of all the companies falling under the ambit of the CSR law is expected to be in the excess of Rs. 17000 Crore which is significant quantum for contributing to the overall Development index of target communities under CSR.

## ASPIRATIONAL DISTRICTS PROGRAM FOR PROGRESS IN OVERALL DEVELOPMENT INDEX (ODI):

Aspirational Districts Program is an ambitious program of national interest, piloted by NITI Aayog in association with District Administration (collector/Magistrate), nominated Prabhari Officers, for each District for improving Overall Development Index (ODI) of 117 extremely poor and Backward districts including the districts of Left-Wing Extremist (LWE) identified by MHA. As

per DPE guidelines dated 10.12.2018; Company's (Amendment) Act'2019 dt.31.7.2019 and NITI Aayog's directions dtd.5.9.2019, mandated 60% of annual CSR budgetary allocation of CPSEs is to be expended on Thematic program (Education, Health & Nutrition) with effect from financial year 2018-19, in any of the 117 aspirational districts notified by NITI Aayog which also included LWE districts identified by Ministry of Home Affairs (MHA) as well.

The companies are expected to work in close tandem with the District Administration for allocation of projects in three core areas Health, Nutrition and Education which are expected to improve the ODI of these Aspirational Districts. A close look of template given hereunder reflecting matrix of variables involved in implementation of CSR in projects/ program mode and a typical cycle of CSR activity of a CPSE from the stage of baseline survey to reporting disclosures, including SEBI mandated Sustainability Reporting (BRR) & aligning the sustainability with Global Compact Network (GCN) shown reveal that the processes involved for an effective CSR growth are fraught with many challenges which we shall discuss herein below:

#### **A TEMPLATE FOR EVALUATION OF CSR PROPOSAL PROJECTS / PROGRAMS BY COS.,**

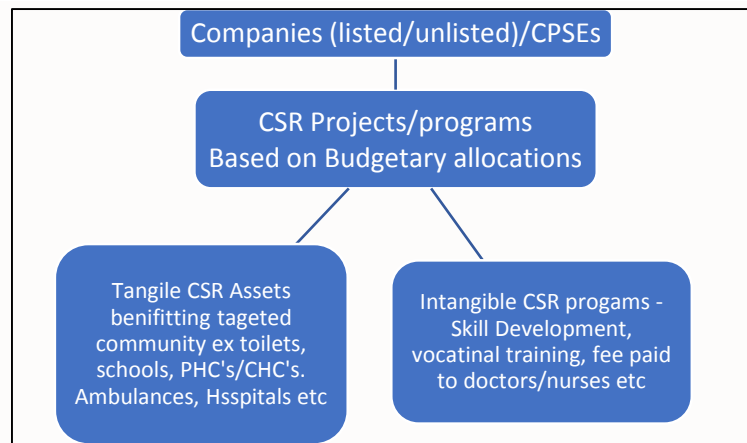
<b>INTRODUCTION OF THE TRUST/NGO/SEC-8 Cos.,</b>	<b>MINIMUM DOCUMENTS REQUIRED</b>
1. DPR/detailed proposal of CSR work	1. Registration certificate (RC)
2. Credentials of TRUST/NGO/Section 8 Co.,	2. Trust deed / Partnership Agreement
3. Relevant past experience in CSR projects	3. Memorandum of Articles (MoA)
4. Whether similar projects carried out before	4. 80G certificate (IT exemption) / 35 AC
5. Impacts/benefits of such projects	5. PAN Card & Service Tax Certificate/GST Regn.
6. Tie-ups with other companies if any	6. Audited accounts of last three years
7) Sector to benefit under CSR initiative	7. NITI Aayog Registration & Unique ID
<b>PROPOSAL SHOULD CONTAIN</b>	<b>ENVISAGED BENEFIT / IMPACT</b>
1. Need Assessment / Base Line Survey	1. Impact (Economic /Environmental /Social)
2. Broad & Detailed Plan of implementation	2. Monetary (by selling/using recycled stuff)
a) Area of intervention as per Schedule-VII	3. Intangible (quality of life improvement)
b) Duration of the project/Estimated Time	4. Number of people benefitted belonging to
c) Cost estimate- Expenditure & Overheads	a) Below the poverty line/marginalized/section
d) Involvement of the local governing bodies	b) Women/girls/ – Target stake holders
3. Implementation Plan / CSR grant needed	c) SC/ST/PW/Old Aged – Target Stakeholders
4. Steps involved in processes -Methodology	d) BPL/underprivileged Children –
5. Tools / instruments used (Incubation etc.)	5. Overall Tangible / Intangible benefit

#### 1. **Non-availability of scaled data on NGOs/NPOs:**

Companies while engaging implementing partners for CSR projects & programs, intend to associate with specialised agencies having certain capabilities, expertise to execute, CSR programs (Ref to template above). But in reality, in majority cases, the challenge is in identifying the reliable agencies having integrity, credentials and competence. The specialised agency may include Sec-8 companies (Non Profit Organizations), Non-Governmental Organisations (NGOs), Autonomous Bodies, Registered Trusts, Consultancy Organisations, Self-Help Groups, Local Bodies such as Panchayati Raj, Academic institutions, Semi-Government Organisations, Charitable Trusts etc. Companies face difficulties in shortlisting the agencies since there is no calibrated Data on NGOs as even the Government owned portals like 'NGO-Darpan' maintained by NITI Aayog, does not validate the data of NGO's uploaded, while issuing UNIQUE ID for NGOs. As per NITI Aayog website Darpan, the data associated with a Unique-ID is on 'as received basis', but not as verified or authenticated. Therefore, mere obtaining a unique-ID may not guarantee the credentials of the specialised agency/NGOs which is a risk factor for companies undertaking the CSR initiatives through these agencies. There has to be a national endeavour for streamline the data of NGOs as well as the validation of their credentials for facilitating the identification of an agency.

#### 2. **Social Impact on Assessments (SIA) of CSR Projects:**

As per DPE guidelines-2014 Impact Assessment Study by 3<sup>rd</sup> party agency, is mandated only for major /mega CSR projects whose threshold value is left to be decided by the respective Boards of CPSEs. There is no threshold value prescribed in CSR rules for Social Impact Assessments leaving a scope for discretion by companies. The true essence of the CSR project implementation and accrued benefits to the target stakeholders/community, could be determined only by carrying out impact assessment studies. The scale of operation varies from company to company based on its 'capacity building' and as consequence the percolated benefits (tangible and intangible outcomes – refer to schematic view given below) to the target communities/beneficiaries should also in ideally be both scalable and measurable. But in reality, there is very limited emphasis laid on post project implementation of a CSR.



Measurable / immeasurable CSR outcomes

### 3. CSR spend - Ambiguity in Section 37(1) vis-à-vis 80G & TDS:

At present there is no simplified & uniform tax structure on CSR & SD expenditures made by companies especially with respect to complexities involving allowance of exemptions under 80G, 35AC, ITC, TDS sections of relevant tax laws. The Sec-37 of IT Act talks about the way business income is computed and its scope is limited. The provisions of the amended Sec-37 of IT Act '1961 as brought out in Finance Act, 2014, categorically disallowed the deductions for CSR expenditure. The scope of the restriction imposed in Sec-37 does not extend to Chapter VI-A of the Act which is independent of Sec-37, hence, it can be safely derived that CSR spend is eligible for deduction under Sec.80G of the IT Act, 1961 even if same was disallowed under section 37(1). The deductions against CSR spend by companies under Sec.80G may range from 50% to 100% with no tax benefit to the expending company for incurring amount on CSR activities on its own. On the contrary, if the CSR activities are executed through specialized agencies like charitable organizations like NGOs, trusts, societies, Sec-8 companies etc. the expending company may claim tax benefits under Sec-80G. In case CSR contribution is by way of donation to a charitable organization which is exempt u/s 80G(5)(vi) then 50% of the donation will be allowed as a deduction u/s 80G. Similarly, if the company donated to Swachh Bharat Kosh (SBK) or National Mission for Clean Ganga (NMCG) Fund then 100 percent of amount contributed will be allowed as a deduction under sec. 80G. Similar if the CSR activities are carried out through NGOs etc. then the amount of contribution or donation does not attract TDS even though the donation is made for meeting the expenditure by the NGOs which attracts TDS. It is felt that there is no uniform structure for allowance of exemption under income tax deduction on CSR spend.

### 4. Lack of adequate CSR budgets :

Since introduction of CSR rules around 150 companies (CPEs) reported to have made disclosures, as mandated in Sec-135 of CA. While predominant CPSEs are not making significant profits thereby not falling under statutory ambit of Sec-135. DPE in Dec 2018, allocated CSR projects only to the top 73 CPSEs with estimated CSR budgetary outlay of more than Rs. 2 Crore for implementation of CSR projects in Aspirational Districts leaving around equal no of reporting PSUs (72) with an advisory for CSR spend preferably in Aspiration Districts. In addition, companies' business performance is affected resulting in no incremental profits or in certain cases total losses.

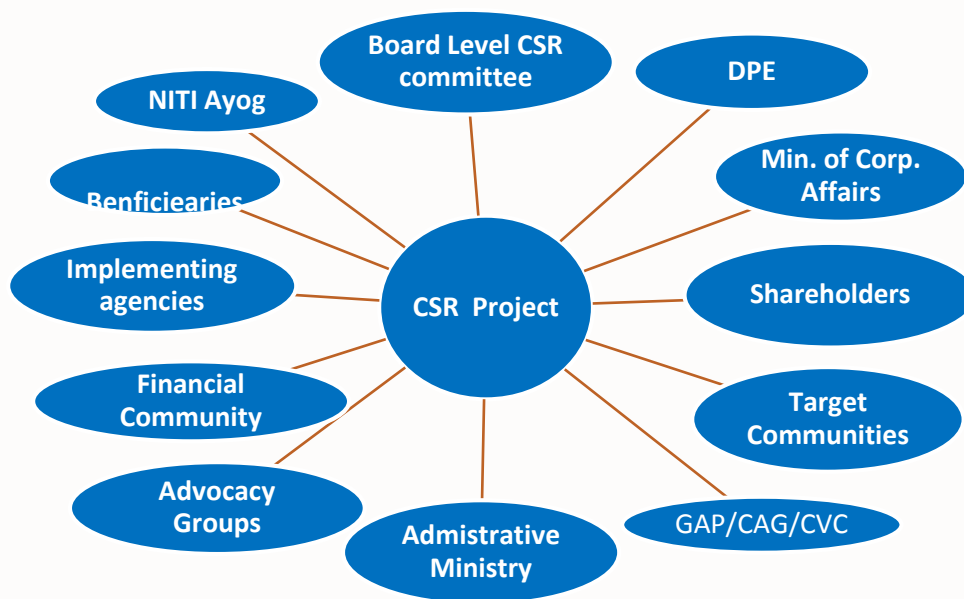
### 5. Tendering processes for CSR works take longer time for implementation:

While predominant contribution on CSR is coming from private corporates who are not obligated to observe norms stipulated by the DPE, GAP, CVC, CAG, NITI Aayog, etc, the statistics reported show that the spend patterns of CPSEs is bogged down with compliances of regulatory frame work and audit objection in implementation of budgeted projects. CPSEs are constrained to observe CVC stipulated tendering norms for all tangible CSR projects & programs resulting in creation of CSR assets for which revenue is recognised in the books of accounts. On many occasions the tendering process results in delay in implementation of the CSR projects. Non-adherence to the tendering process leads to audit and vigilance objections. There is also ambiguity whether a company can associate with an implementing agency at the discretion of Board on nomination basis or tendering norms are to be followed even for shortlisting agency.

### 6. Too many regulatory stakeholders on same turf:

(please ref to schematic sketch given below) Companies often received guidelines and instructions from MoCA, DPE, NITI Aayog, MHA, Administrative Ministries etc. where each statutory body recommends for perusal of their own objectives (say aspirational program, National Health Mission, Poshan Abhiyaan, Swachh Bharat Mission, Clean Ganga Mission, Anganwadi etc.) vigorously resulting in CPSEs caught up in a quagmire of statutory obligations. Some of the CPSEs are neither capacitated nor equipped to handle such escalated statutory thrust resulting in even the special class of PSUs like Maharana's / Navaratna's failing to expend the annual budgetary allocation in a given time frame. For example, as per DPE 33% of annual CSR budget is to be expended in

Swachh Bharat Mission and 10% allocation for sports development etc. which is coming in conflict with the subsequent guidelines of DPE/NITI directing CPSEs to allocate 60% for aspirational districts.



For each transaction of CSR, Companies (CPSEs) have to provided compliances to multiple Government / Regulatory Entities stretching the administration time

7. **Difficulty in selection of innovative, sustainable & scalable CSR interventions:**

The CSR projects & programs based on budgetary allocations of the Companies result in both tangible and intangible CSR outcomes. However, PSUs are straddled with numerous proposals from organised and unorganised sectors, pressure groups, and other stakeholders, without much focus on the feasibility of the projects /programs in terms of its scalability or sustainability. 60-70% of proposals received are incomplete with no proper need assessment/baseline survey, financial estimates and there is no standardisation of project proposals resulting in companies clogged with voluminous proposals but without focus on quality or innovation benefitting the target community.

8. **Capacity building (Internal) :**

Resources & Skilled manpower familiar with nuances of CSR & SD: Barring top 72 CPSEs as per the data captured by DPE remaining PSUs out of 300 odd companies are not technically equipped to understand the nuances of the statutory obligation set under the CA provisions Sec-135. It is a general impression that many PSUs leaving few exceptions do not have exclusive manpower for undertaking CSR implementation.

9. **Capacity building (External) availability of Land, Labour, Electricity in remote areas for CSR operations:**

For example CPSE majors like IOCL, HPCL have petrol pumps located all over India and SBI having branches all over India; accordingly they have extensive reach to far interior places even in backward districts facilitating the scope for implementation of CSR even in the remote locations. Same is not true for other PSUs who do not have such reach. Similarly, while ONGC has an average annual CSR budget of Rs.500 Crores for companies like ITI, NTC etc. have budget less than Rs.1 Crore annually. In such context, it is very difficult for smaller companies to organise labour, electricity for projects in aspirational districts like Kalahandi, Kandhamal etc. which are not only remote districts but are infected by Naxal movement as well. Further the projects are mostly executed on the land allocated by District Administration which in normal course takes very long time for sanction.

10. **Stake holders' commitment not uniform:**

In most of the CSR projects where assets are created like schools, toilets, public health centres, modular OTs, etc. there is deep routed ambiguity as regards the responsibilities of stakeholders. Toilets constructed in remote areas needs a local community stakeholder's commitment to maintain the toilets with the resources required (water, drainage, cleanliness, creation of awareness etc.). In many cases it was reported that the toilets constructed were either converted in to store rooms or abandoned in dilapidated condition not resulting in sustainable benefit to the community.



11. **Difficulty in executing projects under collaboration mode:**

Most of the companies preferred to go it alone instead of collaborative mode along with other PSUs owing to ambiguity prevailing in tax structure, lackadaisical response of the collaborating Boards an obvious need to assimilate the project benefits for their company.

12. **High Powered Committee(HPC) terms of reference**

Or any such monitoring by Govt. shall tantamount to pre-compliance monitoring: Resulting in more paper work as public companies are already straddled with audit, vigilance, and stipulation in addition to board's mandates.

13. **Annual accounts are not finalized by 1<sup>st</sup> April for preceding year:**

This becomes an impediment for formulating the CSR policy and firming up of the CSR budget for upcoming year in a firm manner as most of the board would prefer to arrive at CSR budget only after completion of annual accounts which mostly defers up to first / 2<sup>nd</sup> quarter of succeeding financial year.

14. **CSR projects in collaboration- who will be the beneficiary of eligible exemptions:**

If project is implemented through PPP Model amongst the CPSEs or CPSEs & private organisation then whether both the partners are entitled for exemptions/benefits. Will there be multiple points of supply consideration leading to multiple taxation. It is not clear whether both partners are entitled for eligible tax exemption.

15. **CSR impact of small companies not visible:**

Barring Big league Companies, Maharatna /Navratna companies the other CPSEs end up spreading their meagre budgets thinly over several CSR projects resulting in marginal/transient social /economic /environmental impact.

16. **Inadequate clarity on GST & availability on Input Tax Credit (ITC):**

a) As per Sec-7(1) of CGST Act, supply of goods and services or both under GST Law is Taxable Event. If there is no supply then no GST should be levied on it. Supply of anything other than goods or services does not attract GST meaning thereby that if there is a transaction of supply resulting in any consideration or ownership to the company then GST is leviable. In other words, GST should be made for Consideration or in the course of furtherance of business by the taxable entity within a tax regime. As CSR Activities are mandatory as per Sec-135 of the CA2013, non-compliance of expenditure of CSR by companies would lead to violation of the statutory provisions. On the other hand, companies are receiving visibility & goodwill by creation of the CSR asset, however they do not result in ownerships of such assets. Having said so, the said CSR expenditure is a component of furtherance of Company's business since the revenue is recognised in its books of accounts whereas there would be no consideration from such assets creation. Therefore, it is inferred that ITC (Input Tax Credit) can be availed on expenditure made for CSR Activities. As per amended CGST Act 2018, input tax credit should not be denied for those expenses incurred by companies in connection with statutory obligation imposed as per company laws. To understand this, the following case laws are seen as giving conflicting perspective.

b) The case law in respect of Essel Propack Ltd. Vs Commissioner of CGST, Bhiwandi (CESTAT Mumbai) pronounced in August 2018, the Mumbai CESTAT held that the input service credit in respect of expenditure on CSR can be availed by the Company which discharges CSR obligations.

c) Similarly, when we see the Advance Ruling decision by Kerala Authority in case of Polycab Wires Private Limited it was held that applicant cannot avail ITC-input tax credit, for CSR expense incurred. Here the applicant distributed electrical items like, switches, fan, cables etc., free of cost, to flood affected persons as a measure of Social responsibility. The authority stated that in terms of sec.17(5)(h), of CGST Act the input tax credit shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. By this interpretation the applicant was denied ITC benefit on free goods distributed under CSR as per section 17(5) of CGST and KSGST by Kerala AAR(Authority for Advance Ruling).

Thus, it can be appreciated from the few case citations as given above that there are conflicting views on eligibility of ITC (Input tax credit) on GST and also there is no clarity on whether CSR activities attract charge of both SGST & CGST on supply of Goods/Service, as such inputs are not resulting in a measurable consideration for the company. This ambiguity is leading to a situation where many companies are facing disallowance of genuine input tax credit(ITC).

17. **Delay in allocation of projects by District Administration:**

At the district level the administration is saddled primarily with issues related to the developmental activities of the zone and resultantly consolidation of projects through companies is not a focussed activity. Accordingly, there is reluctance in prompt

redressal of issues by district administration to decide on allocation of CSR Projects/ land etc. for implementation by companies. For example, in some cases there is a conflict of interest as district administration also received funds through say National Health Mission which are used for development of health sector infrastructure. At same time activities closely related to NHM are allowed to be undertaken through CSR (supply of Life-saving ambulances, construction of Primary health centres, MOTs, nutrition for under nourished children and lactating mothers etc) which results in delay in decision making by District Administration for projects implementation or sanctioning NOC to the companies. Same is true in getting clearances for land for rural infrastructure projects and or in urban slums etc.

**18. Inadequate skilled human resource:**

That are willing to work at grassroots level like specialised doctors/nursing staff required to maintain a Modular Operation Theatre(MOT) in a remote backward district like Kandhamaal, Kalahandi, Karauli, Baran etc. Similarly, for running the Primary Health Centres(PHCs)/Community Health Centres(CHCs) for CSR project involving provision of healthcare facilities, then getting doctors and medical staff in remote villages to run primary care facilities is a key concern for companies. Similar is the problem faced in running educational institutes in such remote/backward districts. Operating Health centres and educational centres smoothly is further compounded in the Maoists infested areas where there are more challenges to address.

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