

IMPLICATIONS OF CORPORATE SOCIAL RESPONSIBILITY ON CIVIL SOCIETY IN INDIA

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CHANGING CON- TEXT OF AND SPACE FOR CIVIL SOCIETY IN INDIA

In the 1990s there were only two known billionaires in India, and not a single corporation featured on the list of Fortune 500 companies. In contrast, by 2015, a record 90 Indians were on the Forbes list of billionaires, placing India at fourth place in the world, and eight companies were on the Fortune 500 list.¹

This rapid growth of private wealth can be ascribed to India's economic liberalisation, which began in the 90s. What started as a response to a balance of payments crisis has gone on to affect not only the nature of the Indian economy but also the very role of the state and the way in which different stakeholders engage with each other and with the government. It was widely believed that liberalisation, as well as being an antidote to the absence of economic growth, would also provide answers to the lack of good governance, persisting high levels of poverty and substandard performance on human development indicators. However, while it has delivered on the first part, its results in delivering on the second set of expectations have been more or less disappointing. Moreover, the number of corporate scams, corruption, collusion and crony capitalism in the allocation of public resources for private gain has only increased. For any conscious observer, instances of the corporate fraud in Satyam,² illegalities in the allocation of telephone spectrums,³ allocation of coal and iron mines,⁴ and forceful acquisitions of tribal lands

for industrial projects in Kalinga Nagar⁵ and Niyamgiri⁶ represent only the uppermost manifestations of a deep rooted rot that has set in within the government, in collusion with the private sector.

Ironically, in the face of its own continuing failures to address developmental problems, the government is looking for ways to strengthen legitimacy in the corporate sector, on which it must increasingly rely for growth and employment. A policy mandate on compulsory corporate social responsibility (CSR) seems to be the newest mask for the government and companies to appear more socially responsible to citizens. These developments pose serious questions for Indian civil society and the route it must chose to respond effectively and forcefully.

Civil society in India is known as one of the most dynamic and independent in the world. It has long set an example in standing alongside the poor and voiceless. However, over the years, the more that Indian civil society has ventured into the political sphere to address issues of democratic and governance deficits, the more it has found itself being pushed to the edges by governments. One of the early examples of this governmental crackdown on civil society space still exists, in the form of the draconian Foreign Contribution Regulation Act (FCRA), which emerged as a response to civil society's voice against the National Emergency in 1975, and has controlled the nature and extent of the receipt of foreign funding by civil society organisations (CSOs) to date. Subsequent governments have always had something of a love-hate relationship with the civil society, but the speed and extent of the crackdown, particularly against CSOs with dissenting voices, has been remarkable in the last few years.⁷

Restricting the flow of funding into civil society, with the objective of financially crippling CSOs' capacity to take up activity against existing government policies, has been one of the most frequently used tools. Recent times have seen the mass cancellation of permission, and temporary suspension of permission, to receive foreign donations by CSOs. Along with many smaller CSOs, established ones such as Greenpeace India have been targeted.

Coupled with this, India's domestic philanthropic giving, even though growing, has so far remained largely based on religious lines, and charitable in nature, and so has never really been an asset to CSOs advocating alternate policies.

There are two main factors responsible for the changing government attitude towards civil society, which is causing civil society space to shrink in India.

First, India is a middle income country, with a growing global aspiration to be a superpower, and this aspiration does not go hand in hand with being portrayed as a net foreign aid recipient. Thus, the Indian government has been slowly pushing out most bilateral and multilateral aid institutions. The explanation has been that these agencies portray India in a poor light in international arenas. The net inflow of aid has also been very small compared to India's own spending in development interventions in recent years. A previous finance minister described British aid to India, for example, as "peanuts."⁸ Second, the Indian government has started seeing CSOs with dissenting voices as barriers to India's economic development. A leaked 2014 report by the Intelligence Bureau (IB),⁹ India's highest intelligence agency, accused CSOs of "negatively impacting

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economic progress” of the country. It even specified that 2-3% of GDP is affected by CSO activities, which are stalling progress on major developmental and commercial projects. Sustained protests against the Kudankulam nuclear plant in Tamil Nadu offer one prime, recent example of this acrimony between CSOs and the government. Pluralistic democratic values, for which civil society has consistently been advocating, seem to be the things to be sacrificed in the face of the government’s growing obsession with economic development at any cost.

INDIA’S MANDATORY CORPORATE SOCIAL RESPONSIBILITY LAW

In 2013 India became the first country in the world to enact mandatory corporate expenditure on CSR related activities, of 2% of profits, by profit-making corporate entities above a certain size.¹⁰ The objective was to mainstream private sector participation in national development in areas not immediately related to commerce, and it was widely discussed that civil society would be a critical partner in implementing these activities. A section of civil society was quite excited with this development, for two reasons: first, CSR funds seemed to provide a potential additional source of funding for resource-starved CSOs; and second, the CSR mandate also seemed as though it might provide a framework for wide-ranging civil society-corporate partnerships.

EMERGING TRENDS IN CSR IN INDIA AND IMPLICATIONS FOR CIVIL SOCIETY

However, the devil lies in the details, and a seemingly innocuous CSR provision turned sour when the detailed rules under the CSR mandate were issued by the Ministry of Corporate Affairs, causing an uproar by CSOs. Even after a couple of amendments, the rules were and still are largely prescriptive in nature, with a select number of activities listed under which expenditure will count towards CSR. The activities listed are in alignment with the government’s welfare services, while areas such as human rights, participatory governance and accountability are not mentioned. The following are some of the trends that have emerged in CSR since it was made mandatory:

SKEWED AND LIMITING NATURE OF CSR INVESTMENT

Following the lead provided by the CSR rules, most qualifying companies have invested in the areas listed under the rules. Not surprisingly, many studies have confirmed that corporate CSR is concentrated in a handful of areas, while other areas are severely underfunded. A 2013 study by the National Foundation for India found that of the top 50 companies in India, 39 are focusing their CSR activities on health, 38 on education and 23 each on livelihood and environment (companies may have more than one focus area).

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Few focused on other areas. Further, systematic and rigorous needs assessments, and proper designs of intervention strategy, are often missing: in other words, one of key strengths of the corporate sector, when launching business ventures, suddenly goes missing in case of planning CSR strategies. The need to invest in addressing the root causes of underdevelopment is still largely absent; reactive response dominates corporate giving.

DISAPPOINTING CSR FUNDS FLOWING INTO CIVIL SOCIETY

The flow of CSR funds, at least in the first year, has been pretty disappointing. The Ministry of Corporate Affairs readjusted total CSR spending for the first year to around Rs 5,000 crore (approx. US\$790m), instead of the initial target of Rs 20,000 crore, owing to, among other stated reasons, the lack of preparedness of companies to undertake CSR and, interestingly enough, the inability of companies to find credible CSOs.¹¹ While the amount may increase in coming years, the actual flow of funds for CSOs may remain significantly lower than was initially projected.

A GROWING TREND OF ESTABLISHING CORPORATE FOUNDATIONS

An increasing number of companies are establishing their own foundations to implement CSR activities, rather than partnering with CSOs to do so. Most such foundations are operational foundations that directly implement their activities without the need to partner with CSOs, even though CSOs are best placed to work

with communities, given their years of understanding, experience and rapport with local communities. In many instances, because companies need to have complete control over activities, they may be reinventing the wheel of development.

GOVERNMENT POLICY DETERMINING NATURE OF CSR EXPENDITURE

The new government has been actively encouraging CSR investments in some of its pet initiatives, such as the Swachh Bharat Abhiyan initiative to clean infrastructure, streets and roads and the Make in India initiative, to encourage manufacturing in India, by providing tax incentives and other measures. After a call to build toilet blocks as part of Swachh Bharat Abhiyan by the Prime Minister of India, this became the most popular area for CSR expenditure. Many senior leaders, including from companies and corporate associations, acknowledge that government priorities have resulted in a very large chunk of CSR money being invested in a handful of programmes. To some extent, this is becoming another way for the government to finance its programmes, and the qualifying companies are willing to put in what is sometimes their entire resourcing for CSR, to win direct or indirect goodwill from the government.

GROWTH OF INTERMEDIARY AGENCIES FOR CSR

A new set of interlocutors have emerged to act as a bridge and influence investments. However, they are guided by a corporate ethos, and not rooted in a civil

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society philosophy. Service delivery through social entrepreneurship seems to be the most attractive business model for most such agencies, and they are yet to pay attention to issues of social justice and democratic policy.

INCREASING FOCUS ON INTEGRATED BUSINESS RESPONSIBILITY BY A SMALL SECTION OF CIVIL SOCIETY

On the positive side, a few civil society initiatives have emerged that are starting to look at the idea of corporate responsibility more holistically, beyond the focus on 2% CSR. Corporate Responsibility Watch, a coalition of nine CSOs, is one such initiative, examining CSR on the basis of publicly available documents and undertaking policy advocacy.¹² The National Foundation for India is working towards a Business Responsibility Index for the top 100 companies, which should help to strengthen such initiatives.

RESPONSE AND ROLE OF CIVIL SOCIETY

Indian civil society is a large and diverse group. Understandably, the response to the CSR mandate has been fragmented at best. The resulting changes in resource flows for development have sharpened the differences in approaches between different civil society groups. While CSOs focused on service delivery have tended to be fairly optimistic, seeing CSR as a new source of revenue for them, CSOs that

offer dissenting voices to government tend to be more cautious, and indeed rather critical at times. This is slowly giving rise to a group of CSOs and other agencies that are formed with a view to accessing CSR funding, which is creating a parallel development discourse to the one practised by longstanding CSOs.

Given the context described above, what positions can a CSO take with respect to CSR? The following seems to be the most appropriate:

BUILD TRANSPARENCY AND ACCOUNTABILITY

Given the fact that the government still remains the primary welfare service provider, and civil society can only play a gap-filling, complementary role in this, CSOs should work to ensure that principles of participatory good governance, social justice and human rights are upheld.

In the context of CSR, it is not enough to focus only on the expenditure of 2% of profit: more needs to be done to scrutinise how those profits are made. One of the critical roles of civil society is that of the watchdog, and civil society should continue in that role by critically assessing business responsibility. More can be done by the small but growing number of initiatives in India that are critically looking at business responsibility and asking questions about transparency and accountability in CSR and business responsibility.

Some tools and approaches here could be indices and rankings to focus attention on issues of business responsibility. Indices in particular have been a convenient tool to communicate complex issues in

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a simple manner to a diverse group of stakeholders. National Foundation for India is in the process of developing a Business Responsibility Index for the top 100 listed Indian companies, to measure performances of these companies on broader business responsibility principles. Increasingly a number of organisations and civil society coalitions are now taking an interest to undertake similar initiatives, which will add immense value to strengthening public discourse around the issue of business responsibility and CSR.

Additionally, publicity campaigns and protests have always been a popular tool for helping to give a voice to the voiceless, and will remain relevant as a way of demanding transparency and accountability from large companies. Finally, relevant policy research, with evidence from the grassroots, is needed to inform policy advocacy.

BUILD UNDERSTANDING AND CAPACITY OF CORPORATE SECTOR ON DEVELOPMENT ISSUES AND APPROACHES

Given the nascent stage of Indian corporate philanthropy, much capacity needs to be built, both at the sectoral level and individual company level. However, there is a serious dearth of trust and confidence between civil society and the corporate sector. Many companies do not feel they have much to learn from CSOs. Unfortunately, some of the weaker CSOs, facing a funding crunch, are acting to implement the pre-decided corporate mandates of CSR activities. This goes against the principles of equal partnership, and is something that CSOs ought to be concerned about.

Some of the ways in which partnerships can be made more balanced are as follows:

KNOWLEDGE BUILDING AND AWARENESS DRIVES

CSOs can develop research briefs, discussion papers, case studies and other materials to communicate effective philanthropic practices and good practice in designing interventions. However the impact of this would depend on CSOs' capacities to reach out to a wider corporate audience and build trust with them. Given the lack of trust between civil society and the corporate sector, this approach could additionally hold immense long term value in building their understanding of each other for more effective partnerships.

BUILDING SECTORAL PLATFORMS

One of the key reasons why some areas are underfunded is the lack of national level sectoral platforms. While such platforms exist in some areas, such as education, health and livelihoods, there are few platforms in other fields. Sectoral platforms help to generate knowledge and insights, and facilitate cross-sectoral partnerships. These platforms can reach out to corporations in a focused way to influence their investment decisions, by building their knowledge in those areas.

STRENGTHEN THE NATURE AND IMPACT OF CSR

CSOs that chose to partner with CSR initiatives should focus on building high impact interventions based on the ethos of civil society and the principles of partic-

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ipatory development, to generate learning for other companies. CSOs also need to bring out examples of poor and failed CSR intervention, to also generate learning for companies, and for intermediary agencies that channel and manage CSR funds. CSOs also need to exercise care when selecting corporate partners.

CONCLUSION

This contribution to the 2015 State of Civil Society report has discussed early trends, and the hopes and apprehensions of civil society, on the new CSR mandate. Given its relative newness, the full implications are yet to be realised and understood. At the same time, these apprehensions are not a complete rejection of

the potential for collaborative space, but an attempt to improve and further strengthen it. Civil society in India has stood alongside the poor and voiceless in the most difficult of times, and in spite of increasingly unequal relationships between the government and the corporate sector on the one hand and civil society on the other, it will continue to do so.

The reactions and future strategies of civil society will also depend, to a large extent, on whether citizens' movements gather steam and are able to compel the government to take a more inclusive position to rebalance power dynamics among the three sectors. Until that time, CSR and the changes in development financing that have resulted need to be viewed with caution.

1 Forbes Billionaires List 2015, <http://www.forbes.com/sites/naazneenkarmali/2015/03/03/a-record-90-indians-on-forbes-billionaires-list-2015>; Fortune 500 list: 'Indian Oil', <http://fortune.com/global500/indian-oil-96>.

2 The 2009 Satyam scandal was one of the biggest financial scandals in India in recent times, after its chairman confessed that the finances of the company were manipulated by over US\$1.47bn.

3 The 2011 spectrum scam was a US\$28bn scam, according to the Controller and Auditor General of India (CAG), in which collusion between politicians and telephone companies for spectrum allocation was severely underpriced for select players.

4 The 2013 coal scam was the result of inefficient and dubious allocation of coal mines to select players. The CAG

put the resulting loss to the national exchequer at US\$170bn.

5 In January 2002 police fired on a group of protesting tribal people over land acquisition and compensation issues following the setting up of a steel plant, resulting in the killing of 12 tribal people.

6 Niyamgiri is a mountainous tribal area in the state of Odisha, for which government clearance was given to the Vedanta Corporation for forest clearance and mining in 2013, leading to long standing protests by tribal people. The Supreme Court finally gave the power to village councils to decide on the permission, which they rejected.

7 'Govt biggest Crackdown on Foreign Funding of NGOs: Kudankulam Effect', IBTL, 10 September 2012, <http://www.ibtl.in/news/national/2012/govts-biggest-crackdown-on-foreign-funding-of-ngos-kudankulam-effect>;

'MHA cancels licenses of 1142 NGOs and associations including Osmania University', The Economic Times, 18 March 2015, http://articles.economictimes.indiatimes.com/2015-03-18/news/60249858_1_associations-annual-returns-fcra.

8 'If India doesn't want our aid, stop it now, Cameron told after country labels £280m-a-year donations as 'peanuts'', Daily Mail, 6 February 2012, <http://www.dailymail.co.uk/news/article-2096628/British-foreign-aid-India-tells-Britain-dont-need-peanuts-offer-us.html>.

9 'The Intelligence Bureau and Its Not Very Intelligent Report on NGOs', Economic and Political Weekly, 28 June 2014, <http://www.epw.in/commentary/intelligence-bureau-and-its-not-very-intelligent-report-ngos.html>.

10 Clause No. 135 in the Companies Bill 2012 states that every company with a

net worth of Rs 500 crore or an annual turnover of Rs 1,000 crore, or a net profit of Rs 5 crore, has to create a CSR committee, of which at least one board director must be independent. The company's board shall ensure that at least 2% of its annual average net profit made during the three preceding financial years is spent on CSR every financial year. One crore Rupee equals 10m Rupees.

11 Ministry of corporate affairs slashes estimate of companies CSR spend by half', The Economic Times, 30 September 2014, http://articles.economictimes.indiatimes.com/2014-09-30/news/54475231_1_csr-spending-csr-ambit-average-net-profit.

12 See Corporate Responsibility Watch, <http://www.corporatewatch.in/index.php>.