

CSR in context of Bhagavad Gita!

Recent change in Section 135 and corresponding rules is laying down best practices and is channelizing CSR in a more policy-process driven social work. There is very close resemblance of teaching of recent CSR amendments and Satvik Dana in Bhagavad Gita. This article elaborates teachings of Bhagavad Gita and connects it to various styles/approach in which a corporate try to do CSR and subsequent logical outcome of that.



Makarand Joshi, FCS
Practising Company Secretary
Mumbai
makarandjoshi@mmjc.in

INTRODUCTION

On 22 January 2021 provisions of the Companies (Amendment) Act 2019 and 2020 amending section 135 of the Companies Act, 2013 (the Act) and corresponding amendments in the Companies (Corporate Social Responsibility - CSR) Rules 2014 became effective. Since these amendments became effective, many different questions were raised by some friends such as (a) if company does COVID tests/ vaccinations for employees of its group companies will it be considered as CSR? (b) if company gifts some medical equipment to some private hospital will it be considered as CSR? (c) if company runs COVID Vaccine drives for its distributors would that be considered as CSR? When I was trying to answer these questions it reminded me about wisdom as old as minimum 5000 years on this subject. Yes, you are right! I am referring to guidance given by Lord Shree Krishna on the subject of spending for the needy (Dana). Even after 5000 years those statements still act as torch bearer for entire human kind and particularly Corporate World, only thing is we will have to read it in context!

TYPES OF CHARITIES IN BHAGAVAD GITA

In 17th Adhyaya, Lord Shree Krishna describes 3 types of charities which are as follows –

दातव्यमिति यद्दानं दीयतेऽनुपकारिणे ।
देशे काले च पात्रे च तद्दानं सात्त्विकं स्मृतम् ॥17.20॥

Meaning – Charity given out of feeling of duty, without any expectation of return, at the proper time and place and to worthy person is considered to be in the mode of goodness.

यत्तु प्रत्युपकारार्थं फलमुद्दिश्य वा पुनः ।
दीयते च परिक्लिष्टं तद्दानं राजसं स्मृतम् ॥17.21॥

Meaning – Charity performed with expectation of some return or with a desire of fruitive results or in grudging mood is said to be charity in the mode of passion.

अदेशकाले यद्दानमपात्रेभ्यश्च दीयते ।
असत्कृतमवज्ञातं तत्तामसमुदाहृतम् ॥17.22॥

Meaning – Charity performed at an impure place, at an improper time to an unworthy person or without proper attention and respect is said to be done in the mode of ignorance.

For understanding meaning of these shlokas, we first need to understand about three modes [Triguna] which are explained in Gita.

THREE MODES

Bhagavad Gita in 5th Shloka of 14th Adhyaya says -

सत्त्वं रजस्तम इति गुणाः प्रकृतिसम्भवाः ।
निबध्नन्ति महाबाहो देहे देहिनमव्ययम् ॥14.5॥

There are three modes (Triguna) and these modes influence behaviour/ conduct of every human being. There are following three modes -

1. Mode of goodness (satva)
2. Mode of passion (raja)
3. Mode of ignorance (Tama)

Which one out of 3 modes is dominant mode in personality of human being determines the thinking, behaviour of that person. Further his/ her conduct will decide his/her destiny. For example, person with dominant mode of goodness will be always be surrounded by wise people (14.14), person with dominant mode of passion will always be surrounded by greedy people (14.15) and person with mode of ignorance will be surrounded by people with qualities of animals (14.15). Mode of passion is born of unlimited desires (14.07) and the result of mode of ignorance is madness, blunder and excess sleep etc. (14.08).

In 17th Adhyaya, Lord Shree Krishna describes three different types of diet, sacrifice/ work, austerity, charity in context of 3 modes i.e. mode of goodness/ passion or ignorance. Lord Shree Krishna narrates that the way a human being eats (Aahar), does work without expectation/ sacrifice (Yadnya), practices austerity (Tap) and does charity (Dana), he will acquire dominance of these three modes in his personality. Characteristic of persons/ entity dominated by any of these three modes and result of their behaviour/ destiny is explained below:

Type of Mode	Characteristic of person	Results
Mode of Goodness	Clarity of thought Does work with discipline Driven by purpose	Sustainable success, peace and Happiness Wisdom
Mode of Passion	Lot of business Greed Endless wish for pleasure	Sorrow and grief
Mode of Ignorance	Blind attachment Indiscipline Erratic behaviour	Confused Egoistic

Having understood the concept of 3 modes, its impact on behaviour and destiny and how 3 different ways of charity determine the mode which is dominating our personality, let us understand how these are closely connected with CSR.

CHARITY PERFORMED IN MODE OF GOODNESS [SATVIK DANA] AND CSR

Corporate is concept of modern world which has separate legal entity (and destiny as well!). As a responsible citizen, corporates are expected to meet its obligation towards society and environment as a duty and not as favour. Modern concept of CSR is manifestation of charity performed in the mode of

goodness! If we see the expectation of section 135 of the Act read with Companies (Corporate Social Responsibility) Rules, 2014 we will be surprised to see close resemblance of 5000 year old principles and modern CSR Principles!

Let's compare expectations of Gita and CSR provisions –

दातव्यमिति यद्दानं दीयतेऽनुपकारिणे ।
देशे काले च पात्रे च तद्दानं सात्त्विकं स्मृतम् ॥17.20॥

Meaning – Charity given (1) out of feeling of duty, (2) without any expectation of return, (3) at the proper time and (4) place and to (5) worthy person in considered to be in the mode of goodness [Satva].

Expectation of Gita	Expectation of CSR Rules	Section	Rule
Charity as his duty	Doing CSR to the extent of minimum 2% of profits every year is mandatory	135(5), (6)	-
	Since it is duty (obligation) non-performance of it attracts penalty provisions	135(7) + 450	-
Charity without expectation	Definition of CSR specifically excludes activities <ul style="list-style-type: none"> In normal course of business or deriving marketing benefits Benefiting employees of the Company Meeting statutory obligations of the Company 	-	Rule 2(d)
Charity at Right place / Cause	Activities should be carried out in India ¹ except activities for training of Indian Sports personnel representing any State or Union territory at national level or India at International Level	-	Rule 2(d)
	Preference should be given to local area	First proviso section 135(5)	-
	CSR Activities should permissible under Schedule VII of the Act ² CSR Activities should be permissible as per CSR Policy of the Company	135(3) & (4)	-
	Activities making measurable positive impact under impact assessment	-	Rule 8 (3)
	Activities for social cause and not for profit. Profits made in pursuance of CSR activities should be ploughed back for CSR	-	Rule 7 (2)
Charity at right time	Company needs to undertake CSR activities and spend 2% of its average profits of last 3 years on those activities each year	135(4) 135(5)	+ -
	Companies once triggers compliance of mandatory CSR will have to continue for minimum 3 years, even if subsequently its performance is down and is not meeting thresholds under section 135(1)	135(1) 135(5)	Rule 3(2)
	CSR Committee and Board of Directors of the Company needs to approve Annual Action Plan and plan activities for the whole year	-	Rule 5(2)

¹ As per UN, India needs to invest in social development goals to ensure inclusive growth

² Schedule VII covers all thrust areas which are identified by UN in Social Development Goals.

Charity to right person	Activities benefitting employees is not considered as CSR	-	Rule 2(d)
	Contribution of any amount directly or indirectly to any political party is not considered as CSR	-	Rule 2(d)
	Implementation Agency should have valid registration under section 12A and 80G of Income Tax Act, 1961 Or an entity established by Centre or State Government	-	Rule 4(1)
	Implementation Agency should be registered with Ministry of Corporate Affairs	-	Rule 4(2)
	Only non-profit distributing entity is allowed to act as Implementing Agency	-	Rule 4(1)
	International Organisation is not allowed to act as Implementing Agency.	-	Rule 4(3)

In short, CSR provisions of the Act are actually laying down minimum standards of best practices while doing CSR which are very close to mode of goodness described in Gita. In fact Lord Shree Krishna explains secret of sustainable success, peace and happiness in 16 Adhyay – 23 Shloka as follows -

यः शास्त्रविधिमुत्सृज्य वर्तते कामकारतः।
न स सिद्धिमवाप्नोति न सुखं न परां गतिम्॥16.23॥

Meaning of 'Shastra' here is scientific processes which are prescribed and/ or evolved as best practices over the period, arising out experience or teachings of wise people/ institutions. One who does not follow (best/ prescribed) processes and acts according to his own whims will not get sustainable success, peace and happiness and vice versa. In short if CSR is done as per prescribed / best practices/ processes will give sustainability, peace and happiness.

CSR performed in mode of Passion [Rajas Dana]

यत्तु प्रत्युपकारार्थं फलमुद्दिश्य वा पुनः।
दीयते च परिक्लिष्टं तद्दानं राजसं स्मृतम् ॥17.21॥

Meaning – Charity performed with expectation of some return or with a desire of fruitive results or in grudging mood is said to be charity in the mode of passion.

As a responsible citizen, corporates are expected to meet its obligation towards society and environment as a duty and not as favour. Modern concept of CSR is manifestation of charity performed in the mode of goodness! If we see the expectation of section 135 of the Act read with Companies (Corporate Social Responsibility) Rules, 2014 we will be surprised to see close resemblance of 5000 year old principles and modern CSR Principles!

Any company doing CSR with a passion to derive some material benefits for itself is a CSR performed in a mode of passion. Some examples of CSR done in mode of passion can be as follows –

1. When company feels doing CSR is not its duty and it is unnecessary burden
2. When company undertakes CSR activities to derive benefit from it like –
 - promotion or penetration of its products to masses
 - disposing slow moving items freely as CSR
 - activities fetching loyalty of distributors/ suppliers/ service providers to the company or Group
 - activities benefiting its/ groups employees/ contract labour / temporary labour
 - activities giving political mileage
 - activities which are actually statutory obligations
 - activities developing supply chain or distribution channel
 - activities indirectly benefiting promoters and promoter group
 - activities indirectly benefiting expansion of market for the Company
 - activities attributed towards changing habits of masses to benefit company products / services
3. When Company undertakes activities without following proper process and are blinded with motive to derive benefits

There can be many examples of such attempts to undertake CSR activities to directly/ indirectly benefit the Company economically. However, we need to remember that activities (a) benefitting employees (b) activities in normal course of business (c) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products / services are specifically excluded from term CSR. Companies would also be cautious about the fact that section 135(7) makes violation of section 135(5) an adjudicable non-compliance. This means penalty levying power is going



to be with Ministry of Corporate Affairs (MCA) and any such penalty levied on the Company can certainly bring disrepute and can cause much higher losses and thereby grief/ stress.

CSR performed in mode of Ignorance [Tamas Dana]

अदेशकाले यद्दानमपात्रेभ्यश्च दीयते ।
असकृतमवज्ञातं तत्तामसमुदाहृतम् ॥17.22॥

Meaning – Charity performed at an impure place, at an improper time to unworthy person or without proper attention and respect is said to be done in the mode of ignorance.

Any company doing CSR through wrong implementing agency/ at wrong time /at wrong place/ for wrong person without following proper process/ diligence or without giving respect to the cause is CSR in the mode of Ignorance. Some examples of such CSR are as follows –

1. Drawing cheques in the name of implementing agencies in last few days of the financial year and claiming it as spend in the annual report without giving time for implementation and without verifying utilisation towards CSR activities [wrong time/ wrong process]
2. Disbursing amount towards CSR without verifying 12A, 80G certificate of Implementing Agency [wrong process / lack of diligence]
3. Disbursing CSR amount to Implementing Agency which is not registered with MCA [wrong process / lack of diligence]
4. Disbursing CSR amount to Implementing Agency for undertaking project which is not approved in Annual Action Plan by CSR Committee and by the Board of Directors of the Company [wrong process / no respect for the process or cause]
5. Satisfying about utilisation of disbursed amount based on certification provided by implementing agency itself. This indicates absence of adequate process and lack of respect for the cause.
6. Disbursement of further amount towards CSR without verifying whether earlier disbursed amount has been utilised in the manner and for the purpose specified by CSR Policy and Annual Action Plan. [Lack of diligence, monitoring and respect for the cause]
7. Engaging Implementing Agency which does not have credentials to carry out project approved by CSR Committee [lack of diligence]
8. Manipulation and mis-representation of administrative expenditure as project Cost (lack of Monitoring)
9. Engaging Implementing Agency whose office bearers are charged with moral turpitude [lack of diligence]

10. Implementing Agencies resorting to corrupt and fraudulent practices in order to complete the project (lack of monitoring)
11. Implementing Agencies are in turn engaging entities, which are owned by promoters of the donor company or implementing agency, for actual undertaking projects. (Conflict of Interest and Lack of Monitoring)

If company does not verify correctness of registration of 12A and 80G or registration with MCA and provides details in Boards Report, it may be considered as mis-representation on the part of the Company. If Implementing Agency engages any entity for undertaking project which is related party to the donor company it would be related party transaction with donor company and requires necessary compliance like approval of audit committee of the donor company. If the transactions are entered without proper processes, it would trigger adjudication process under section 188 of the Act and may trigger disqualification and/ or vacation of Directorship for the concerned Director. This may also trigger personal liabilities to Directors and Key Managerial Persons of the Company under section 447 and 448 of the Act. In nutshell, if proper processes are not followed by the Company and its management it might give sleepless nights and unnecessary stress and result in financial loss by way of penalty.

What are benefits of CSR with proper processes [under mode of Goodness]?

In 18th Adhyay Lord Shree Krishna gives formula for success -

अधिष्ठानं तथा कर्ता करणं च पुथीवम् ।
विविधाश्च पुथक्चेष्टा दैव चैवात्र पन्चमम् ॥18.14॥

This rule can be applied in any aspect. We will discuss it in context of CSR. Success / Destiny depend on 5 factors.

- (1) Our Vision/ Mission/Goal = CSR Policy/ Annual Action Plan
- (2) the one who does or who is responsible for it = CSR Committee/ Board/ KMP
- (3) the means / tools / techniques = tools / techniques which Company uses for identifying, implementing, monitoring CSR Projects
- (4) various / numerous efforts which the Company/ Management take in this regards
- (5) our luck which also originated from our own deeds!!!

Here luck means the destiny which gets manifested based on the modes of conduct – goodness/ passion/ ignorance from



One who follows proper processes for right cause, right time and does CSR through right person and for right person and does as duty and not derive any economic or other benefit will always get sustainable success.

which one operates. As mentioned above one who follows proper processes for right cause, right time and does CSR through right person and for right person and does as duty and not derive any economic or other benefit will always get sustainable success. Effective implementation and monitoring of CSR program will

- help companies in mitigating risks like Fraud risk, Reputational risk, Corruption risk, Statutory and Regulatory risk
- such companies will have no mis-match between schedule VII- CSR Policy - Annual Action Plan – Actual project undertaken and money utilised
- these companies will always be able to avoid conflict of interest position and thereby will eliminate any legal risks to promoter/ directors and Key Managerial Persons
- Impact Assessment of these Companies will always reflect impressive results
- Admin overhead will always be within 5% of the total CSR spent
- These companies will attract only genuine implementing agencies
- People working in such organisation would always be surrounded by great minds, will be respected in society/ community. Even if there are any inspections Key Managerial Persons will not lose peace

CONCLUSION

Though Gita is 5000 year old guidance, it is relevant now and will be so even for eternity. We just need to read it in context. As far as sustainable development is concerned, even UN was concerned about it and hence the concept of Sustainable Development Goals emerged providing blueprint for peace and prosperity for people and the planet, now and into the future. A corporate culture of integrity has a positive effect on CSR and the leadership and vice versa. Same was shared by Lord Shree Krishna in Gita when he says that how your behaviour and destiny depends on what you eat, what you work/ sacrifice, how effective are your charities for the real cause. Story can be told from both sides, (1) Company/ management which are influenced by mode of goodness will do CSR as per their nature OR (2) Company which practices CSR as per mode of goodness will have destiny which is narrated above!!!