

Editorial

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Justice to Babysana should be justice for 1000s babysanas

Voice of anger now spread far and wide across the state over the mysterious death of Ningthoujam Babysana, a class-VII student, in her hostel room at Standard Robarth (Hr. Sec) School. With the cry for justice becoming louder, people witnessed conducting the post mortem of the lifeless body of Babysana twice, in order to convince the people who are crying for justice of the ill fated 14 years old minor girl, the state government even prepared proceedings for handing over the case to the Central Bureau of Investigation. And to make sure that the government will not left any stone unturned in the case of the mysterious death, a Special Investigation Team under an Additional Superintendent of Police had been formed and speedy investigation in the matter is seen carrying out since the SIT took over the case.

The first suo moto case taken up regarding the mysterious and unnatural death of Babysana inside her hostel room was registered under section 305 of the IPC. But from the pressure of the JAC formed against the death, the police had now incorporated section 302 of the IPC. This means that there is going to be a slight diversion to the case; the final argument may be on the matter regarding IPC 302 and IPC 305, and as per report there seems no possibility of IPC 302, if in case it is proved then the case is settled either by awarding punishment of the culprits as per the law of the land. The matter ends as per the law and justice of 1000s babysanas will never be provided.

It shooked every Manipuri, when the tragic news of a minor girl was found dead in a mysterious way was heard by everyone. It was everybody's demand that justice be delivered for the ill fated minor girl. People across the state expressed shock as there has been many such cases happened in the state.

When the JAC formed against the mysterious death of the minor girl stuck to their demand for the specific case of Babysana, then it is not the right move. The society may witness more instances of the fate of Babysana forced to suicide. We should also keep in mind those incidents where minor girls were raped and molested in school-run hostels, torture of minor boys in hostels by the authorities, death of a student after allegedly falling from the hostel stairs. All those incidents including Babysana were caused by negligence, irregularities and failure to follow guidelines by the hostel authorities in running the hostel.

While the people demands justice for Babysana it should be a demand for delivering justice for all students of the state. The soul of Late Babysana will only find peace and happiness when the system in hostels or residential schools of Manipur is made to conform to the rules and regulations both in letter and spirit. When corporal punishment is abolished and when children in hostels are provided love and affection to make feel homely.

One more thing that the state machineries seem to forget is about the students of this school. It is being told that there are over 4000 students in Standard Robarth Higher Secondary School. What will be the condition of these students? What will the mental and psychological state of the 36 students with whom Babysana stayed together? Have the Social welfare department taken up any initiative to settle the mental disturbance of the 36 students which are reported to be living in mental trauma after the incident? And it seems that until the investigation is over, the school is likely to remain closed due to pressure from various groups.

Will Babysana be happy even if justice is delivered for her when the rights of her friends in the school are continued to be deprived? It is neither the JAC nor the School authority that should be blamed when it comes to the fate of the students of the school. Why no initiative is seen to be taken up for rescue of the students of Standard Robarth, why government is not ordering the concern department of the state to give counseling to the 36 students who shared the same dormitory with Babysana, when the tragic incident occurred?

A simple suggestion to the government is to take over the administration of the school until the case is over to save the students by appointing a representative from the government.

The SIT investigating the matter is showing its seriousness in the incident. Their inquiry had also revealed that the hostel that the Standard Robarth is running does not have a valid license. Many more irregularities and anomalies are likely to be found during the course of the investigation.

Let's hope babysana turns out to be the last victim of injustice and apathy meted out to students in the state.

Penalising Companies for CSR Non-Compliance Is Like Killing a Fly With a Sledgehammer



By: Pushpa Sundar

Courtesy The Wire

The Companies Amendment Bill, passed by the Lok Sabha two weeks ago, has really let the cat loose among corporate pigeons.

The controversy has been caused primarily because of one draconian measure. From now on, non-spending of the required amounts on corporate social responsibility (CSR), within the time period proposed, will attract penal action – heavy fines and/or imprisonment of concerned officers for three years.

The Bill also empowers the Registrar of Companies (RoC) to initiate action for removal of the name of the company from the RoC if it is not carrying on any business or operation in accordance with the company law.

Under Section 135 of the Companies Act 2013, eligible firms had to set aside 2% of their average net profits of the past three years for what are called CSR activities, and which were indicated in Schedule VII of the Act.

The Act was to come into effect in 2014. Then minister Sachin Pilot, while introducing the Act, explained that despite it being mandatory, the provision would follow a "comply or explain" process. That is, companies will not be penalised if they can give a convincing explanation for not complying.

This, in my opinion, was a flaw in the initial legislation. Having made the law mandatory, it should have had, right at the outset, a strong enough deterrent to ensure compliance, especially since Indians are experts in *jugaad* and notorious at finding loopholes in any regulation.

So, to some extent, the government, after judging that companies were not pulling their weight, is right in strengthening the law to ensure stricter compliance.

Some of the requirements are not unreasonable. For instance, for companies that are not able to spend their full amount for CSR activities in ongoing projects within a particular financial year, the money can be transferred to a CSR account. The latter amount has to be spent within the next three financial years. One year has been given to firm up the CSR proposal, and another three years to spend the funds. Any amount remaining unutilised in such a CSR account would be transferred to any fund specified in Schedule VII of the Act, which includes the PM's Relief Fund, the Clean Ganga Fund and others set up by the government in furtherance of its social development policies.

However, it is the proposal to amend Section 135, to provide for a specific penal provision in case of non-compliance, which is tantamount to killing a fly with a sledgehammer. More than ever, it makes mandatory CSR contributions a corporate tax by another name, a tax which has not been imposed by proper legislative procedure.

CSR, as proposed by the Companies Act, 2013, has always really been a 'Corporate Tax By Another Name'. Back in 2011, I noted that while it was not coercive at the moment, it would end up being so.

To me, it seemed that the state was simply passing on its responsibility

for social development to NGOs and the private sector. The most basic flaw in the Act, however, was that it equated financial allocations by companies with social responsibility. While the law may ensure more funds for development projects, it will not ensure more ethical and responsible behaviour on the part of companies. Nor will it make them more transparent and accountable towards the environment, towards the consumer or towards labour. It would not even ensure more tax compliance or meet the ends of social justice through more equitable distribution of corporate income, both within companies and externally.

Put simply, what was needed was not more CSR funds, but more responsible behaviour; and that would require more than simple money spend.

After the passage of the Act, however, I took comfort from the fact that it did make more companies, especially those who were not earlier giving anything back to society, somewhat more socially aware.

As was to be expected, companies took time to gear up for the new law in terms of establishing in-house procedures, recruiting staff, identifying good NGOs or other partners. It took almost till FY'2017, three years after the rules came into force, for companies to get their act together and the spending to go up.

But thereafter there was a steady increase in the amounts to be spent and actually spent. According to one data source (IAS), the amounts allocated by BSE 100 companies went up from Rs6,571 crore in FY'16 to Rs7,052 crore in FY'17 and to Rs7,456 crore in FY'2018. Data from the Ministry of Corporate Affairs for FY'17, for a larger number of 19,933

companies out of 21,498 eligible companies, showed that they spent Rs 13,466 crore on CSR activities. Alongside this, the amounts unspent went down from Rs 1078 crore in FY'16 to Rs 141 crore in FY'17.

Only in FY 2018, the unspent amounts increased, perhaps due to the economic slowdown. The BSE 100 companies showed unspent amounts of Rs 523 crore in 2018, and at least 33 companies, or one-third of firms on the S&P BSE 100 list, have fallen short of the required CSR spending as mandated by the Companies Act.

There were other shortcomings. Various evaluation reports pointed out that CSR as practiced by the majority had not led to scale in the operations and impact of NGOs; nor had they led to policy changes, or to the strengthening of the development sector as a whole. There has also been creative accounting and other malpractices. Only 0.01% of companies have their CSR audited, to ensure programme outcomes.

Most companies have been more concerned with the tax and compliance implications of CSR than with the impact of their contributions, as a result of which, barring a few, the efforts are amateurish. So, some tightening of rules and stricter monitoring was necessary. However, in view of the fact that there was a steady increase in spending except for the last year, the penal provision seems excessive.

Compulsion is not appropriate for charity, and if it is not charity then it amounts to a tax. Paying a compulsory 2% of profits cannot, by itself, make a company a good citizen. Moreover, given the slowing down of the economy, instead of

unleashing the "animal spirits" needed to reach the government's avowed goal of a \$5 trillion economy, penalisation of non-spending on CSR, along with increased corporate taxes and taxes on the very rich, will only increase risk aversion and encourage animal instincts for self preservation.

The amendment mentions that the officer or officers concerned with CSR will be liable for imprisonment of up to three years, in case of non-compliance with the spending requirements. In any company the CSR commitment is the responsibility of more than one person. There are usually three separate parties involved in the process: those who formulate the policy, the directors on the committee who approve it, and those who implement it. Will all of them be jailed in case of default or will only the lowest be made a scapegoat?

It would have met the needs of the situation if the non-spending had been categorised as a civil default, as has been done with 16 other offences under the Act, and only heavy fines imposed as proposed. Finally, one can question whether the money transferred to the government funds would be spent any more speedily, accountably or creatively. An audit of these funds, if any, has seldom been put in the public domain or discussed in parliament.

Ultimately, it might have been better to put in some non-monetary incentives like awards for good compliance, instead of using a hammer.

Pushpa Sundar is the author of *Business and Community: The Story of Corporate Social Responsibility in India* (Sage, 2013).



A tribute to Sushma Swaraj

By- M.Asnikumar Singh
State Vice President, BJP
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Absolutely devastated to hear about the demise of Smt. Sushma Swaraj ji. Today the Nation mourns the demise of a strong, visionary and a dynamic leader who truly loved the nation. Her relentless and eternally inspiring optimism, far sightedness and remarkable ideology for our nation building will remain with us forever. Her demise is a great loss to the nation and the BJP.

A remarkable, selfless individual who dedicated her whole life to her work. Her sincerity, honesty and the touch of genuine humanity she brought in her work will always remain etched in our memories forever. The nation has lost a great soul and her demise leaves an unfulfillable void.

May her soul rest in peace.

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