LAW AND POLICY RELATING TO CORPORATE SOCIAL RESPONSIBILITY IN INDIA WITH REFERENCE TO COMPANIES ACT 2013

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Abstract

A corporate is a legal element that is independent and particular from its proprietors. Corporate is considered as a "legal person". Companies working within the society have many liabilities and responsibilities for the society and its people, one of the most important responsibility is Corporate Social Responsibility (CSR). Corporate Social Responsibility (CSR) is a business self-regulation type with the goal of being socially accountable. A perfect and right way for practicing of CSR for companies is not mentioned anywhere; many corporate CSR initiatives try to positively and effectively contribute and work for the public, the surrounding environment or the economy. CSR is now adopted as a means to gain sustainable development of an organization. In the present time, CSR has become a significant sector of modern corporate research theory and the growth of activities related to CSR in the overall world is remarkable. Companies within the provision mentioned under Section 135 of the Companies act 2013 must spend 2% of their total net profits towards CSR for the activities as mentioned in Schedule VII. This research paper includes all the provisions of CSR under the rules mentioned in section 135 of Companies act 2013 and Companies (Corporate Social Responsibility Policy) Rules, 2014 and activities specified in Schedule VII.
Objective:

➢ To represent all the provisions, policies and laws relating to Corporate Social Responsibility (CSR) in India and meaning and evolution of CSR.
➢ A study of Section 135 of Companies act 2013, Companies (Corporate Social Responsibility) Rules, 2014 and Schedule VII.
➢ To identify the scope and limitation of CSR policy running in India.

Introduction:

CSR (Corporate Social Responsibility) is an automatic plan of action that assists an organization with being responsible—to itself, its partners, and general society. By rehearsing corporate social obligation, likewise called corporate citizenship, organizations can be aware of the sort of effect they are having on all parts of society, including financial, social, and ecological.

Corporate social responsibility is an expansive idea that can take numerous structures relying upon the organization and industry. Through CSR projects, altruism, and volunteer endeavors, organizations can profit society while boosting their brands.

However significant as CSR seems to be for the local area, it is similarly important for an organization. CSR exercises can help produce a more grounded connection among workers and partnerships, support assurance and help the two representatives and executives feel more linked with their general surroundings.

Practically all notable organizations are companies, including Microsoft Corporation, the Coca-Cola Company, and Toyota Motor Corporation. A few partnerships work together under their names and furthermore under business names, like Alphabet Inc., which broadly works together as Google. Companies working in the society have many liabilities and responsibilities for the society and its people, one of the most important responsibility is Corporate Social Responsibility (CSR).

Corporate Social Responsibility (CSR) is a business self-regulation type with the aim of being socially accountable. A perfect and right way for practicing of CSR for companies is not mentioned anywhere; many corporate CSR initiatives strive to
positively contribute and work for the public, the surrounding environment or the economy. CSR is the act of incorporating the outside environmental or the other social concerns into a company’s method, planning and operations. The main motive of these programs revolve around the idea that businesses could make the world and environment a better place, or at least they could decrease their social and environmental negative impact on the world. Company’s any effort to improve and help its social and environmental impact is corporate social responsibility. Organizations can send CSR endeavors in a piecemeal manner, or as a piece of a more extensive program. Progressively, organizations are making exhaustive CSR programs that connect each specialty unit and have devoted staff and assets.

The pattern of Corporate Social Responsibilities (CSR) as a trend for businesses and firms to follow has started from its initial days as a trademark that was viewed as trendy by certain organizations following it to the current day real factors of the 21st century where it is not, at this point simply a pattern however a business necessity to be socially mindful.

“Companies that implement CSR stand to benefit in multiple ways.”

- Katie Schmidt, (the founder and lead designer of Passion Lilie).

As the use and adoption of CSR increases, it is rapidly becoming necessary and essential to have a social conscious image. Stakeholders and employees as well as consumers also prioritize CSR while choosing a brand or a company, and they are holding corporations accountable for affecting social change with their business beliefs, practices and profits.

**Evolution of CSR:**

Corporate Social Responsibility (CSR) has developed a lot, from being a nice thing to do, to present: a necessity for a successful business. The concept of CSR is an outcome or product of twentieth century, took shape in the early 1950s.

- **The 1800s-**
In the mid-to-late 1800s, there was growing and needy concern about worker well being and productivity among industrialists. Criticisms of the working condition, emerging factory system, employment of women and children for the time were being brought to light, especially in the United States. Andrew Carnegie, a wealthy businessman and philanthropist, following what he believed in the *Gospel of Wealth*, challenged wealthy people to support social causes. John D. Rockefeller, inspired from Carnegie, followed suit in contributing more than half a million dollars.

1 Growth of Modern CSR

In 1953, the term “Corporate Social Responsibility” was officially introduced by American economist Howard Bowen in his publication *Social Responsibilities of the Businessman*. Bowen is often referred to as the *Father of CSR*.

In 1971, the concept of ‘social contract’ between society and businesses was introduced by the Committee for mostly the Economic Development. The idea that companies function and exist because of public consent brought forward through this contract and, therefore, there is an obligation to contribute to the needs of society.

Three responsibilities were outlined by the social contract, which are still applicable today:

- Provide jobs and monetary development through well running organizations.
- Run the business reasonably and genuinely in regards to representatives and clients.
- Become all the more extensively associated with improving the states of the local area and climate in which it works.

In 1976, the Chief insights of corporate social responsibility resulted down to utilizing a corporation’s capability to help a specific need, severity of a social need, executive interest, government influence.

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1 Based on the idea/thought that business functions because of public “consent”.
2 Professor Sandra L. Holmes did a survey on CSR to find how decisions on which reasons to adopt were made.
As more organisations began incorporating social interests in their business practices while becoming more responsive to stakeholders, by the 1980s, early CSR continued to evolve.

1 **Acceptance of CSR-**

*Corporate Social Performance* added an important facet: program outcomes and impacts. This paper expanded and improved on early CSR models by providing a framework and guideline for assessing the results and impacts of CSR programs. Many of the companies we here about today developed their modern strategies in the 1980-1990s and began to communicate their contributions.

By the early 2000s, CSR had become an essential strategy for many organisations, with multi-million dollar companies, such as Wells Fargo, Coca-cola, Walt Disney, and Pfizer incorporating and adopting this concept into their businesses processes.

**CSR under Companies Act 1956:**

Under the laws of companies act 1956, there is no any provision for Corporate Social Responsibility (CSR). Prior to coming into existence of new companies act, many companies have been spending monies in a limited way on CSR activities by contributing to trusts/charitable organizations which run for the good of the society. Companies have been using Section 293(1) (e) of the old act, 1956 so far for making contributions for charitable activities.

Companies Act 1956 had no provision for corporate social responsibility but but the Companies Bill, 2012 incorporates a provision of CSR under Clause 135.

**Section 135 of Companies Act, 2013:**

The provisions of CSR applies to:

- every company
- Its holding company
- Its subsidiary company

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3 Professor Donna J. Wood published it in the early 1990s.
Foreign company

Having in the preceding financial year:

- Net Worth > 500 Crore
- Turnover > 1000 Crore
- Net Profit > 5 Crore

A foreign company having its any branch office or undertaking office in India, which satisfies the measures determined previously.

In any case, if a company stops to meet the above rules for 3 successive financial years then it isn't needed to follow CSR Provisions to the time it meets the predefined standards.

**CSR Committee:** According to **Section 135(1)** companies with above criteria in the Previous financial year needs to constitute CSR committee:

- Comprising of at least 3 directors, from which at any rate one director will be a total independent director. If in case, assuming a company isn't needed to choose an independent director, it will have in at least 2 directors in the Committee.

- Comprising of 2 directors if there should be an occurrence of a private company having just two directors on its Board.

- Comprising of at any rate 2 people in the event of a foreign Company of which one individual will be its approved person resident in India and another named by the foreign company.

**Exception:** When the total amount of CSR to be now spent is less than 50 lakhs then the requirement of CSR will be neglected. The CSR works can be done by board itself.

**Functions of CSR Committee [Section 135(3)]:**

The CSR committee shall:

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4 As defined in Section 149(6) of the 2013 Companies Act
• Plan and make the Board understand, a CSR Policy which will demonstrate the exercises to be done by the Company.
• Prescribe the measure of consumption to be caused on the exercises alluded above.
• Screen the CSR Policy of the organization occasionally.
• Foundation a straightforward checking instrument for execution of the CSR tasks or projects or exercises embraced by the organization.

Board of Directors (BoD) duties:

The BoD of each organization on which CSR is material will:
• In the purpose of considering the proposals prepared by the CSR Committee, support the CSR Policy of the Company and unveil substance of the particular Policy in Board report.
• Guarantee that the exercises as are remembered for CSR Policy of the organization are attempted by the Company.
• Will reveal the organization, of the about CSR Committee in Board Report.
• Guarantee and look that the organization spends, in each financial year, in any event 2% of the average net profits\(^5\) that is recorded of the organization made during the 3 immediately preceding financial years, in respect of its CSR Policy. The CSR projects/programs/exercises attempted in India just will add up to CSR Expenditure.

\[\Rightarrow\] If the minimum amount mentioned above is not spent, then the board should report the reasons behind not spending the amount.

5 As given in Section 135(5) [CSR Expenditure] of Companies (Corporate Social Responsibility) Rules, 2014.
• Company will confront a fine, double the amount needed to be moved by the company to the Fund or one crore rupees (whichever is the more smallest amount).
• 1/10th the amount needed to be moved by the company to such Fund or two lakh rupees (whichever is the more smallest amount) ought to be presented by each official of the company.

⇒ If more amount is spent (as mentioned above), then to spend for a particularly number of succeeding financial years, the Company can choose such abundance amounts against the necessity.

NOTES:

- The administrative overheads for CSR expenditure shall not exceed five percent of total CSR expenditure for the company of that financial year. This shall be assured by the board.
- If the company requires to spend more for the CSR, then it can be done through an entity which is registered by filing e-form CSR 1.

☐ The fund in which amounts can be transferred are Prime Minister’s National Relief Fund, PM Care Fund, Clean Ganga Fund etc;
☐ If a company ceases to a company which is covered under CSR regulations for three consecutive financial years may not:
  • Constitute a CSR committee; and
  • Spent for CSR.

COMPANY (CORPORATE SOCIAL RESPONSIBILITY) RULES, 2014:
In exercise of the provisions presented under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act 2013 (18 of 2013), the Central Government thusly makes the following principles, in particular:
1. **Short title and commencement:**

(1) These rules shall be called the Companies (Corporate Social Responsibility Policy) Rules, 2014.

(2) They should come into force on the 1st day of April, 2014.

2. **Definitions:** In these guidelines, except if the setting in any case requires:

   (a) "Act" signifies the Companies Act, 2013 (18 of 2013)

   (b) "Administrative overheads" means the costs brought about by the organization for 'general administration and organization' of Corporate Social Responsibility capacities in the organization however will exclude the costs straightforwardly caused for the planning, execution, observing, and assessment of a specific Corporate Social Responsibility undertaking or program;

   (c) "Annexure" means the Annexure added to these standards;

   (d) "Corporate Social Responsibility (CSR)" states the exercises attempted by a Company in compatibility of its legal commitment set down in provisions of section 135 of the Act as per the arrangements contained in these standards, yet will exclude the accompanying, specifically:-

1. exercises embraced in compatibility of ordinary course of organization’s business of the organization:

   Given that any organization occupied with innovative work movement of new antibody, medications and clinical gadgets in their ordinary course of business may attempt innovative work action of new immunization, medications and clinical gadgets identified with COVID-19 for monetary years 2020-21, 2021-22, 2022-23 subject to the conditions that -

   (a) such innovative work exercises will be completed in a joint effort with any of the foundations or associations referenced in thing (ix) of Schedule VII from the Act;

   (b) subtleties of such action will be unveiled independently in the Annual report on CSR remembered for the Board's Report;
ii. any movement attempted by the organization outside India aside from preparing of Indian games faculty addressing any State or Union region at public level or India at worldwide level;

iii. commitment of any sum straightforwardly or in a roundabout way to any ideological group under area 182 of the Act;

iv. exercises profiting workers of the organization as characterized in provision (k) of area 2 of the Code on Wages, 2019 (29 of 2019);

v. activities upheld by the organizations on sponsorship reason for determining showcasing benefits for its items or administrations;

vi. activities did for satisfaction of some other legal commitments under any law in power in India;

(a) "CSR Committee" signifies the Corporate Social Responsibility (CSR) Committee of the Board alluded to in area 135 of the Act;

(b) "CSR Policy" means an assertion containing the methodology and course given by the leading group of an organization, considering the suggestions of its CSR Committee, and incorporates core values for determination, execution and observing of activities just as detailing of the yearly activity plan;

(c) "Global Organisation" means an association told by the Central Government as a worldwide association under segment 3 of the United Nations (Privileges and Immunities) Act of 1947 (46 of 1947), to which the arrangements to the Schedule to the said Act apply;

(d) "Net profit" means the net benefit of an organization according to its fiscal report set as per the relevant arrangements of the particular Act, however will exclude the accompanying, specifically:

i. any benefit emerging from any abroad branch or parts of the organization, regardless of whether worked as a different organization or something else; and

ii. any profit got from different organizations in India, which are duly included under and agreeing with the arrangements of area 135 of the Act:
Said that in the event of an unknown organization covered under these principles, net benefit implies the net benefit of such organization according to benefit and deficiency account arranged as far as statement (a) of sub-section (1) of segment 381, read with section 198 of the Act;

(e) "Continuous Project" means a multi-year project attempted by a Company in satisfaction of its CSR commitment having courses of events not surpassing three years barring the monetary year in which it was initiated, and will incorporate such undertaking that was at first not endorsed as a multi-year project however whose length has been stretched out past one year by the board dependent on sensible support;

(f) "Public Authority" means 'Public Authority' as characterized in statement (h) of segment 2 of the Right to Information Act, 2005 (22 of 2005);

(g) "section" means a part of the Act.

CSR Activities: Rule 4 of The Companies (Corporate Social Responsibility) Rules, 2014

1. The CSR all activities will be embraced by the company, according to its expressed CSR Policy, as programs or projects or activities (either new or progressing).

2. Activities attempted in compatibility of its ordinary course of business will not be remembered for CSR Activity.

3. The Board of an organization may choose to attempt its CSR activities affirmed by the CSR Committee, through
   (a) a company set up under section 8 of the Act or a registered trust or an enrolled society, set up by the company, either independently or alongwith some other company, or
   (b) a company set up under section 8 of the Act or a registered trust or an enrolled society, set up totally by the Central Government and or State Government or any entity set up under the Act of Parliament or any State legislature:
Provided that- if, the Board of a company chooses to embrace its CSR activities through a company set up under section 8 of the Act or a registered trust or an enlisted society, from other than those predetermined under this sub-rule, such company or trust or society shall have an established track record of three years in endeavor similar programs or projects; and the company has decided the tasks or projects to be attempted, the modalities of usage of funds of such ventures and programs and the observing and reporting system”.

4. A company may likewise team up with different organizations for undertaking tasks or projects or CSR activities.

5. The CSR undertakings or projects or activities attempted in India just will add up to CSR Expenditure.

6. The CSR ventures or projects or activities that advantage just the workers of the organization and their all families will not be considered as CSR activities.

7. Commitment of any sum straightforwardly or in a roundabout way to any ideological part or group under section 182 of the Act, will not be considered as CSR movement.

**CSR Policy: Rule 6 of The Companies (Corporate Social Responsibility) Rules 2014**

The CSR Policy of the organization will, inter-alia, incorporate the accompanying specifically:-

a) A rundown of CSR activities or projects which an organization intends to embrace

b) Monitoring cycle of such tasks or projects:

The CSR Policy of the organization will indicate that the surplus emerging out of the CSR projects or tasks or exercises will not form part of the organization’s business profit of an organization.
Section 135(2):

➢ The board’s report under Section 134(3)\(^6\) shall disclose the formation of the Corporate social Responsibility (CSR) committee.
➢ Display of all the CSR activities on their website

Rule 9 of the Companies (Corporate Social Responsibility) Rules 2014:

The Board of Directors (BoD) of the organization will, in the wake of considering the suggestions of CSR Committee, affirm the CSR Policy for the organization and disclose substance of such policy in its report and the equivalent will be shown on the organization's site, assuming any, according to the points of interest indicated in the Annexure.

“SCHEDULE VII” OF COMPANIES ACT 2013:

Activities which might be incorporated by organizations in their Corporate Social Responsibility strategies activities identifying with:

✓ Eradicating appetite, neediness and hunger, promoting medical care including preventive medical care and disinfection including commitment to the Swach Bharat Kosh totally set-up by the Central Government for the advancement of sterilization and making accessible, hygienic and safe drinking water.

✓ Promoting education, including custom curriculum and work upgrading jobabilities particularly among kids, women, seniors and also the slightly distinctively abled and job improvement projects.

✓ Advancing sexual direction decency, empowering ladies, setting up homes and lodgings for women and vagrants; setting up old age homes, day care centers and

\(^6\) As mentioned in Companies Act 2013 about the Board of Director’s report.
\(^7\) Substituted by notification dated 27th February, 2014
\(^8\) Substituted by notification dated 31st March, 2014
\(^9\) Substituted by notification dated 24th October, 2014
such various workplaces for senior inhabitants and measures for decreasing uneven characters looked by socially and monetarily in turn around get-togethers.

Ensuring environmental manageability, biological equilibrium, insurance of widely varied vegetation, creature government assistance, agroforestry, protection of common assets and keeping up and safe nature of soil, air and also water 10 including commitment to the fund Clean Ganga Fund totally set-up by the Central Government for restoration of waterway Ganga.

Protection of public legacy, workmanship and culture including reclamation of structures and locales of recorded significance and masterpieces; setting up open libraries; advancement and improvement of customary craftsmanship and handiworks;

Measures to assist military veterans, also war widows and their wards; 11 [Central Armed Police Forces (CAPF) and also Central Para Military Forces (CPMF) veterans and their wards including widows.]

Training to advance country sports, broadly perceived games, paralympic sports and olympic games

Contribution for the Prime Minister's public help store or 12 Prime Minister's Citizen Assistance and for Relief in any Emergency Situations Fund (PM CARES Fund) or some other asset set up by the focal govt. for financial turn of events and help and government assistance of the timetable standing, clans, other in reverse classes, minorities and women;

(a) 13 Contribution to hatcheries or research and development works in the field of science, technology, engineering and medicine, funded by the Central Government and or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and the autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science

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10 Substituted by notification dated 24th October, 2014
11 Inserted by notification dated 23rd June, 2020
12 Inserted by notification dated 26th May, 2020 (effective from 28th March 2020)
13 Substituted by notification dated 24th August, 2020
and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and all the other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), occupied with leading exploration in science, innovation, designing and medication pointed toward advancing Sustainable Development Goals (SDGs).

- Rural development projects
- Slum area development.

[For the purpose of this, “slum area” will mean any region proclaimed as such by the Central government and or any State government and or some other competent authority under any law for the time being in force.]

- Disaster management including relief, rehabilitation and also reconstruction activities.

- Contribution to ‘Chief Minister’s relief fund’ or ‘State Relief fund’ for Covid-19 shall not qualify as CSR expenditure.

**Conclusion:**

Corporate Social Responsibility (CSR) is not a new idea in India, in any case, the Ministry of Corporate Affairs, and the Government of India has told the under Section 135 of the Companies Act, 2013 alongside Companies (Corporate Social Responsibility Policy) Rules, 2014, "hereinafter CSR Rules" and different notices related thereto which makes it required (with impact from first April, 2014) for specific organizations who satisfy the standards as referenced under the Sub Section 1 of Section 135 to conform to the arrangements pertinent to Corporate Social Responsibility.

14 Inserted by notification dated 7th August, 2014
15 Inserted by notification dated 30th May, 2019
While proposing the Corporate Social Responsibility Rules under the Section 135 of the Companies Act, 2013, the Chairman of the CSR Committee referenced the Guiding Principle as follows: "CSR is the interaction by which an association contemplates and develops its associations with partners for the benefit of everyone, and shows its responsibility in such manner by reception of fitting business cycles and systems. Subsequently CSR isn't good cause or simple gifts. CSR is a method of directing business, by which corporate elements noticeably add to the social great. Socially capable organizations don't restrict themselves to utilizing assets to participate in exercises that increment just their benefits. They use CSR to incorporate financial, environmental and social destinations with the organization's tasks and development."

According to Companies Act, 2013, CSR has gotten required in India. The Ministry of Corporate Affairs (MCA) in exercise of its forces gave by Section 1(3) of the Companies Act, 2013 (the Act) and vide warning dated 27th February 2014, informed first April 2014 as the date on which the arrangements of Section 135 and Schedule VII of the Act will come into power.

References:


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