

The Role of Corporate Social Responsibility in Indian Healthcare With Respect To Legal Obligation in Accordance to Indian Legal System – An Analysis

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ABSTRACT: Corporate Social Responsibility is a phenomena that is being followed globally by majority of the Corporate Houses/Organizations to part with some of their profits for the welfare of the society and to uplift the underprivileged and down trodden. If the history is traced back in India, social activities though not in the present form is a known phenomena and many organizations, societies and individuals used to spend part of their income to the welfare of the people and community at large. This phenomena has changed its form and has developed a social Responsibility and many organizations/Corporate Houses have started implementing the same in the form of social obligation to the society because the profits that are earned by these Corporate Houses/Organizations have come from the very same people. The concept of Corporate Social Responsibility has gained considerable movement in the business community globally and attracted the two main important wings of the society namely education and healthcare. Corporate spending through CSR activities in healthcare are next to education.

The CSR activities by the Corporate Houses/Organizations will have the benefit of getting recognized and also financial benefits from the respective governments and a recognition worldwide not only for the organization but also to their products, subject to provisions of law,

“to undertake impact assessments to an independent agency, to maintain accountability and transparency and such reports should be placed before the board of that organizations and annexed to their report on CSR to their annual report.”

Participation of International Players that have compliance with local CSR laws affected change of International Trade and Investment Agreement with suitable amendments.

“the parties shall strive to facilitate and promote trade in goods that contribute to sustainable development, including goods that are the subject of schemes such as fair and ethical trade and those involving Corporate Social Responsibility and accountability”.

An attempt is made to summarize the CSR activities on healthcare with respect to Indian Legal System

KEYWORDS: Corporate Social Responsibility, Role of CSR Committee, The Evolution and Legal Framework of CSR, CSR expenditure, Fines and Penalties for Non compliance of CSR.

AIM AND OBJECTIVES:

“The Role of Corporate Social Responsibility towards Indian Healthcare in line with the legal obligations of the India Legal System”.

I. INTRODUCTION:

India is the 1st country to realize the importance spending through CSR activities by many corporate houses and organizations has become mandatory because of the amendment of Companies Act in 2013 by the Indian Government. The amended Section 135 of the Companies Act, 2013 requires any organization having a profit continuously for a period of three years/turnover of 500-1000 crores should constitute a CSR Committee with pre planned programs and

boards approval should implement the plans thus approved for benefit of society and in this regard India stands first to make CSR mandatory.

The World Business Council for sustainable development has defined Corporate Social Responsibility (CSR) as,

“The continuing commitment by business to behave ethically and contribute to economic social development while improving the quality of life of the work force and their families as well as the local community and society at large. CSR has introduced a new perspective to understand the relationship between business and society – one where Corporate growth and social welfare are not treated as a zero sum game”.

(4. Wbcsd.org. WBCSD – World Business Council for Sustainable Development, 2014. Available from: <http://www.wbcsd.org/home.aspx>)

(5. Sanjeev Gupta & Nidhi Sharma, ‘CSR – A Business Opportunity’ (2009) Vol. 44 no. 3, Indian Journal of Industrial Relations, 396.

The concept of Corporate Social Responsibility has gained considerable movement/significance in the business world universally and has gained much importance in healthcare sector. Healthcare Sector a unique organizational network that deals with humans and human feelings, have realized the responsibility of not only earning profits but also share part of the profits to the benefit of the society especially with respect to under privileged. In a word, it is nothing but,

“Healthcare Organizations have benefited much from the society in whatever means, their responsibility starts and ends with paying back something to the society”.

Globalization of Healthcare and entry of private and foreign players into the Healthcare Sector, once it is under the control of the Governments of the respective Countries; having realized that the government’s spending on health is meager, they allowed private participation also in health sector so that, they can uplift the health of their own people.

As Mahatma Gandhi, the father of nation (India) once said,

“Health is Wealth but not a piece of Gold and Silver”

Also it is a known fact that,

“An healthy nation is a wealthy nation”

(Late) Dr. APJ Abdul Kalam, the former President, Government of India rightly considered,

“Health Sector as one of the core competent area of India which will help India to transform from developing country to developed country”.

II. THE EVOLUTION AND LEGAL FRAMEWORK OF CSR IN ACCORDANCE WITH INDIAN LEGAL SYSTEM:

Social Responsibility is not a new phenomenon in India. It is being followed by philanthropic activists and light minded and NGOs, even individuals who have inclination to part with some of their profits/earnings for social causes and community development through various activities. As time passes this social activity attracted many Corporate Houses/Organizations to venture into it. So as to be a part of community development in the form of repayment of what they get from the society. The Government of India has amended the Sec 135 of the Companies Act, in 2013 and brought CSR activities under Indian Legal System. India is the first country in the world to create a legal framework on CSR activities and statutorily, direct the companies to report on the same. The Amendment of Companies Act, is the first initiative to bring the CSR activities by corporate houses/organizations with in the ambit of Indian Legal System and introduced some regulations. So that based on the Regulations the Corporate Houses/Organizations who are actively pursuing CSR activities should not deviate/violate, so as to ensure that the CSR funds are spent for the purpose for which they are allocated. In addition, Ministry of Company Affairs to measure and evaluate the effectiveness of the outcome of CSR initiatives notified Companies (CSR) Policy Amendment Rules, 2021, vide notification dated 22.01.2021 through which **the tools of impact assessment** was introduced. The rules that requires the Corporate Houses/Organisations who are in the CSR activities,

“to undertake impact assessments to an independent agency, to maintain accountability and transparency and such report should be placed before the Board of that Organization and annexed as report on CSR to their annual report”.

The CSR Committee of any Corporate House/Organization in their report should explain the unspent amount and the reasons thereon and should be transferred to succeeding year for utilization. Since the enactment of this law/amendment by the Ministry of Company Affairs, the CSR spending through their activities have mainly focused on education, healthcare and rural development, and Healthcare stands second in the spending. A purview of the last seven years from 2014-15 to 2020-21 based on the filings made by the Corporate Houses/Organizations/Companies in the MCA, 2021 registry, the Education Sector received nearly 47,187.68 crores which amounts to approximately 37% of CSR expenditure. The healthcare sector comes next with 30% of CSR expenditure amounting to Rs. 38,011.49 crores in the same period.

The Government initiative of amending company law making the Corporate Houses/Organizations to spend 2% of their earnings (profits) as mandate has changed the outlook of corporate houses from, **“voluntary and unsystematic approach to a structured way of contributing to social welfare”.**

The amount spent by Government on healthcare is 1.5% of the total GDP which is much much lower than the other countries.

CSR activities and their International Role of CSR activities can be identified by tracing the history; such as labour related CSR clauses in trade and investment international agreements such as BITs, Transpacific Partnership (TPP), The Comprehensive Economic and Trade agreement (CETA), negotiate between the EU and Canada, the EU – Vietnam Free Trade agreement or the Canada-Burkina Faso Foreign Investment Promotion and Protection agreement (FIPA) are some of the International Agreements that make references to CSR. Inclusion of CSR clauses in Trade and Investment Agreements is in an infant stage. This shows that majority of the International Agreements do not refer to CSR but the recent development shows increasing number of countries and regions started to include CSR language in their trade and investment agreements. Though the Trade and Investment Agreements between the different countries across the Globe, the inclusion of CSR clauses clearly shows that CSR activities are being legalized universally.

The 1st Agreement that include CSR are.

“the Joint declaration concerning guidelines to investors, developed parallel to the EU – Chili Association Agreement (2003), The US Chili Trade Agreement 2004, the EU – Cariforum Economic Partnership Agreement 2008 and the Canada – Peru Agreement 2009, CSR Clauses have become more elaborated in terms of obligation, precision and delegation”.

In 2014, Agreement with Central America, EFTA explained this Approach by the inclusion of CSR language,

“in the core text of the Agreement, i.e. the chapter on Trade Sustainable Development”.

The Agreement also contains stronger commitments in terms of obligation and delegation. According to the above agreement,

“the parties shall encourage CSR, and the same implementation mechanisms that are provided in the chapter of Trade and sustainable development apply to the CSR clause, i.e. Cooperation activities, monitoring through a joint committee and consultations in case of disputes”.

Canadian Agreement do not explicitly refer to the specific CSR instruments but rather make general references towards Internationally recognized Corporate Social Responsibility standards and principles and/or statements of principle that have been endorsed or/are supported by the parties.

The other International Agreements, mainly Bilateral Trade Agreements compared to the other types of agreements such as Unilateral schemes, a limited number of more recent BITs include references of CSR. Off late many countries have CSR activities in their own countries and started including CSR activities in Bilateral agreements also.

CSR clauses in the International Trade and Investment Agreements reflects,

“The parties shall strive to facilitate and promote Trade in goods that contribute to sustainable development, including goods that are the subject of schemes such as fair and ethical trade and those involving Corporate Social Responsibility and Accountability (Article 13.6(2))”.

In India, spending on CSR by any organization including Healthcare Sector is not only a voluntary activity but also has become ‘**Mandatory Obligation**’ under the Companies Act, 2013.

A Legal framework of CSR in India: Section 135 of the Companies Act, 2013, herein after called as “***The Act***” mandates that companies must allocate a minimum of 2% of their average net profits from the preceding three financial years towards CSR activities. The Act also mentions that this provision of CSR spending applies to companies with a net worth of Rs. 500 Crores or more / a turnover of Rs. 1000 Crores or more or a net profit of Rs. 5 Crores or more during the immediately preceding financial year. Those organizations who fell under this category shall constitute a CSR Committee of the Board consisting of a minimum of three directors and of which at least one director shall be an independent director, unconnected with the functions of the organization; this clause of appointing an independent director is not required under Sec 149(4) of the Act then CSR Committee shall consists two or more directors. The provisions of CSR would not applicable on any organization/company where neither of the three criteria under section 135 of the Amended Act as mentioned above are being fulfilled.

Composition of the CSR Committee: The CSR Committee of any Organizations when it attracts as per Section 135 of the Amended Act,

- The Committee shall consists of three or more directors and of which at least one director shall be an independent.
- Where a company is not required to appoint an independent director under sub section (4) of section 149 of the Act, the company shall have in its CSR Committee two or more directors.
- The composition of the CSR Committee has to be disclosed in the Board meeting of that organization or the Annual Report of the Board as per Section 134(3).

Role of CSR Committee: Following are the functions of CSR Committee

- The role of the Committee is to formulate and recommend to the Board, a CSR Policy indicating the activities to be undertaken by the Company/Organization in areas or subject, specified in Schedule VII of the Act.
- The Committee will recommend to the Board, the amount of expenditure to be incurred on the CSR activities in one financial year.
- The role of the CSR Committee also includes in monitoring the CSR Policy framed and accepted by the Board from time to time.

CSR Policy: The main function of the CSR Committee of any Organization/Company is to formulate and recommend the CSR Policy, in line with the wishes and functions of the Organization, shall indicate the activities that are to be undertaken by the Company/Organization in areas or subject, specified in Schedule VII of the Act. In addition to the above, the CSR Policy of any Organization/Company should also include the following activities.

- Eradicating hunger, poverty and malnutrition, promoting healthcare and sanitation.
- Promotion of Education, including special Education and Employment Enhancing, Vocation Skills and Livelihood enhancement projects.
- Promotion of Gender equality, women empowerment and measures for reducing inequalities faced by socially and economically backward groups of the society.
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water (Environmental Protection)
- Protection, Promotion and development of natural heritage, art and culture including restoration of buildings and sites of historical importance and works of arts.
- Measures for the benefit of armed forces veterans, war widows and their dependents
- Training to promote rural sports, nationally recognized sports, para Olympic sports and Olympic sports.
- Contribution to the Prime Minister’s National Relief Fund (PM Cares Fund) or any other fund set up by the Central Government for socio economic development.
- Contribution to the incubators funded by the Central Government or any agency.
- Rural development projects

- Slum area development
- Disaster management including relief rehabilitation and reconstruction activities.

Though the above mentioned activities are in general, the Organizations/Companies can choose any activity which is near and dear to their functional activity covering the importance of the local areas around them for spending the amount earmarked as per the recommendations of the CSR Committee and approved by the Board of Directors.

Responsibilities of Board of Directors of any Company/Organizations in implementing CSR activities through their respective CSR Committees:

- The primary responsibility in implementing CSR activities of any Company/Organizations is initially to approve the CSR policy as recommended by the Committee and approved by the Board.
- It is also necessary for any Company/Organization to disclose the activities/policies of such CSR functions in their annual report and also the Company/Organizations is under obligation to put it in their website/public domain for the benefit of the society.
- The Company/Organizations should make themselves sure that such activities of the Company/Organizations for the benefit of the society are included in CSR Policy of that company/organization.
- In accordance with Section 135 of the Companies Act, 2013, any Company/Organization should ensure that such spending shall be not less than 2% of the average profits of the Company made during three immediately preceding financial years, in every financial year.
- Under Section 134(3)(o), the Board of any Company/Organization has to specify the details about the CSR Policy developed and adopted by the CSR Committee on the activities of any Company/Organization towards initiatives of spending for CSR activities.

Penalty for violation of CSR provisions by any Company/Organizations that attracts provisions of the Companies Act, 2013:

- Any Company/Organization can be punished for any violations of CSR provisions under Companies Act, with a fine which shall not be less than Rs. 50000/- but which may extend to Rs. 25 Lakhs depending on the severity of the violation.
- For default of any officer punishment with imprisonment for a term which may extend to three years or with fine which shall not be less than 50000 rupees but which may extend to Rs 5 Lakhs or with both.

Measures to correct the violations of CSR provisions under Companies Act, 2013

- If any Company/Organization has failed to make the necessary disclosure of CSR activities of that company/organization by the Board in its Board's annual report, the remedy being it can be by virtue of Sec 131, prepare a revised report after obtaining approval of the tribunal.
- If any company/Organization fails to spend the approved amount by the board of that particular company/organization towards CSR activities in its report made under section 134 (3)(o), specify the reasons for not spending the approved amount in that financial year.
- Any amount that is not being utilized from the approved amount of 2% in any financial year has to be transferred by the company to a special account to be opened by the company/organization is to be called as "*Unspent CSR Account*" and such amount has to be spent by the Company/Organization in accordance with their obligation towards the CSR Policy of the Company/Organization within a period of three years from the date of such transfer.
- The Company/Organization and its officers can make good, the offence by applying, for compounding of offence u/s 441 of the Act.

III. CSR LAWS IN INDIA AND ITS IMPLICATIONS:

Prior to legalization of CSR activities, the companies have no obligation to introduce CSR in their organizations. However, during 2014 India made it mandatory for any organization to introduce Corporate Social responsibility; incidentally India became the 1st country to make it legally mandate for corporations to implement CSR Schemes for the benefit of the Society in the chosen field by mentioned by Government of India. The compliance of CSR is governed by Companies Act under Section 135.

Why CSR Laws are needed: It is a social obligation by any person or organization who benefits from the society to part with some share of that profit to the welfare of the society keeping this in view all the countries world over has started making it mandatory to part with the profits of any organization to the welfare of the people and society as a whole from the derived the profits.

However, the implementation of CSR is not working in its entirety because the organizations/companies who wants to spend money on CSR having anormous physical resources but lack of adequate knowledge of public problems and policy measures. In addition, some CSR activities will fail to yield results because of misguided efforts.

Steps to be taken to make CSR Laws effective and result oriented:

- a. The implementation of CSR Laws in India suffers from infirmities in policy and procedures. It is not enough to see CSR is a money spending resource on certain aspects to the benefit of society but the spending of CSR funds/resources should be smart and goes directly in benefit the societies needs. While deciding the CSR spending of any organization or company goes companies/organization should collect expert data that is available on CSR activities and also taking into consideration the suggestions and advises of the researchers/research institutes on the subject and put their efforts in spending according to the advise and eradicating the preexisting social problems.
- b. Any company or organizations who wants to implements CSR schemes sincerely should collaborate with governmental and non-governmental organizations who have specialized in CSR activities in identifying the actual needs of the society.
- c. Keeping all these things in mind the Government of India made it CSR activities/funding is mandatory to certain terms and conditions that applies to a section of organizations/companies. In this regard, I presume that the present CSR laws though mandatory to certain extents needs changes in the present scenario of the needs of the society as the needs of environmental and global situations are making more complicated than before, the present laws that covers CSR activities should be amended/revised/modified.
- d. On 27.02.2014, Government of India, Ministry of Corporate Affairs made a gazette publication, *“In exercise of the powers conferred under section 135 and sub sections 1 & 2 of Section 469 of the companies Act, 2013 the Central Government hereby makes the following rules”*.

The following are the important rules pertaining to CSR activities included in the Gazette notification:

(c) (1). “Corporate Social Responsibility (CSR) means and includes but is not limited to”

- Projects or programs relating to activities specified in Schedule VII to the Act;
- Or Projects or programs relating to activities under taken by the Board of Directors of a Company (Board) in pursuance of recommendations of the CSR Committee of the board as per declared CSR Policy of the company subject to the conditions that such policy will cover subjects enumerated in Schedule VII of the Act;

(d). CSR committee means the Corporate Social Responsibility of the Board in refer to section 135 of the Act;

2(e) CSR Policy relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities under taken in pursuance of normal course of business of a company.

2(f) net profit means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following namely;

- ❖ Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise;
- ❖ And;
- ❖ Any dividend received from other companies in India, which are covered and complying with the provisions of section 135 of the Act;
- ❖ Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956 (1 of 1956) shall not be required to be recalculated in accordance with the provisions of the Act;
- ❖ Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub section (1) of Section 381 r/2 section 198 of the Act.

- ❖ 2©(2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act

In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 2, in sub-rule (1) - (i) for clause (c), the following clause shall be substituted, namely:-

“(c) Corporate Social Responsibility (CSR)” means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these Rules, but shall not include the following, namely

- ❖ Activities undertaken in pursuance of normal course of business of the company.
- ❖ Any activity undertaken by the company outside India.
- ❖ Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- ❖ activities that significantly benefit the employees of the company and their families. Provided that in case of any activity having less than twenty five percent employees as its beneficiary, then such activity shall be deemed to be CSR activity under these rules.”;

(ii) for clause (e), the following clause shall be substituted, namely :-

“(e) “CSR Policy” means a statement containing the approach and direction given by the board of a company, as per recommendations of its CSR Committee, for selection, implementation and monitoring of activities to be undertaken in areas or subjects specified in Schedule VII of the Act.”

(iii) for clause (f), the following clause shall be substituted, namely :- “(f) “International Organization” means an organization notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply.”

(iv) after clause (f), following sub-clauses shall be inserted, namely:-

(g) “Net profit” means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: -

- any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act: Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) shall not be required to be re-calculated in accordance with the provisions of the Act: Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

(h) “Ongoing Projects” means a multi-year project undertaken by a Company in fulfillment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall also include such projects that were initially not approved as a multi-year project but whose duration has been extended beyond a year by the Board based on reasonable justification.

(i) “Public Authority” means ‘Public Authority’ as defined in subclause (h) of section (2) of Right to Information Act, 2005.” 3. In the said Rules, in Rule 3, in sub-rule (2), in clause (b) for the words, brackets and figure ‘sub-section (2) to (5)’, the words, brackets and figure ‘subsection (2) to (8)’ shall be substituted;

4. In the said Rules, for rule 4, the following rules shall be substituted, namely:-

“CSR Implementation –

(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through: (a) a company established under section 8 of the Act, or (b) any entity established under an Act of Parliament or a State legislature. Provided that such company/entity, covered under clause (a) or (b), shall register itself with the central government for undertaking any CSR activity by filing the e-form CSR-1 with the Registrar along with prescribed fee. Provided

further that the provisions of this sub-rule shall not affect the CSR projects or programmes that were approved prior to the commencement of the Companies (CSR Policy) Amendment Rules, 2020.

(2) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(3) A company may engage international organizations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR. Provided that a company may also engage an international organization for implementation of a CSR project subject to prior approval of the central government.

(4) Board of a company shall satisfy itself that the funds so disbursed have been utilized for the purpose and in the manner as approved by it and Chief financial Officer or the person responsible for financial management shall certify to the effect.

(5) In case of ongoing projects, the Board of a company shall monitor the implementation of the project with reference to the approved timelines and year wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.”

5. In the said Rules, in rule 5, for sub-rule (2), the following sub-rule shall be substituted, namely:-

“(2) The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following:

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of Rule 4;

(c) the modalities of utilization of funds and implementation schedules for the projects or programmes; and

(d) monitoring and reporting mechanism for the projects or programmes.

(e) Details of need and impact assessment, if any, undertaken by the company.”

6. In the said Rules, Rule 6 shall be omitted.

7. In the said Rules, for rule 7, the following rules shall be substituted, namely:-

“CSR Expenditure:

(1) The board shall ensure that the administrative overheads incurred in pursuance of sub-section (4) (b) of section 135 of the Act shall not exceed five percent of total CSR expenditure of the company for the financial year. Provided that a company undertaking impact assessment, in pursuance of sub-rule (3) of Rule 8, may incur administrative overheads not exceeding ten percent of total CSR expenditure for that financial year.

(2) Any surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and action plan of the company.

(3) The CSR amount may be spent by a company for creation or acquisition of assets which shall only be held by a company established under section 8 of the Act having charitable objects or a public authority. Provided that any asset created by a company prior to the commencement of Companies (CSR Policy) Amendment Rules, 2020, shall within a period of One hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the board based on reasonable justification.

(4) Unspent balance, if any, towards fulfilment of CSR obligation at the time of commencement of these Rules shall be transferred within a period of thirty days from the end of Financial Year 2020-21 to special account viz., 'Unspent Corporate Social Responsibility Account' opened by the company and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year."

8. In the said Rules, in rule 8, after sub-rule (2), following sub-rule shall be inserted, namely:-

"(3) A company having the obligation of spending average CSR amount of Rs 5 Crore or more in the three immediately preceding financial years in pursuance of sub section 5 of Section 135 of the Act, shall undertake impact assessment for their CSR projects or programmes, and shall disclose details of the same in its Annual Report on CSR."

9. In the said Rules, for rule 9, the following rules shall be substituted, namely:-

"Display of CSR activities on its website: The Board of Directors of the company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website for public viewing, as per the particulars specified in the Annexure."

10. In the said Rules, after rule 9, following rule shall be inserted, namely:-

" Rule 10 :National Unspent Corporate Social Responsibility Fund :

(1) The Central Government shall establish a fund called the "National Unspent Corporate Social Responsibility Fund" (herein after referred as "the Fund") for the purposes of sub-section (5) and (6) of section 135 of the Act. The Fund shall be utilized for the purposes of undertaking CSR projects in the in areas or subjects specified in schedule VII of the Act. Provided that until such fund is created the unspent CSR amount in terms of provisions of sub-section (5) and (6) of section 135 of the Act shall be transferred by the company to any fund as specified in schedule VII of the Act.

(2) The manner of administration, authority for administration of the Fund shall be in accordance with such guidelines as may be prescribed by the Central Government from time to time."

11. In the said rules, in the annexure,-

(i) The e-form CSR-1 shall be inserted, namely (See Annexure –I)

VI. Corporate Social Responsibility and its legal validity in accordance with Indian Legal System:

In 2014, with amendment of Companies Act, CSR has become mandatory in the Corporate Level with certain boundaries. As it is a known fact that violation of provisions of Companies Act relating to CSR activities of the organizations comes under such provisions have to implement them or otherwise such organizations who failed adhere to the legal system are liable for prosecution, penalty and both; moreover it is benefit for the society at large and for the majority of the good, as defined by Gemy Bentham takes precedence but individual validity as emphasized by Ronald Dworkn becomes secondary. There is another theory by some eminent personalities that advocates,

"because the Company utilizes society's resources and labour they should be held accountable, as it is in exchange for what they obtain from the society"

On the other hand Wood's "**Stake Holder Theory**", presents its contradictions to what exactly the other theory said. Wood mentions that, *his main point of opposing is*

"the ethics of enforcing Corporate Social Responsibility"

The concept of giving back to society though began as a voluntary function to society sustainability but if the legislations of the Government of India with reference to Companies Act, it has become a legal requirement of the Corporations to return to the society something from the profits derived by consuming from society. For example, laborers working in organization are compensated with wages and other benefits, society is being benefited from the products and services offered by the corporations that means the resulting analysis of the law from the above two statements is either a legal compulsion or legal responsibility but without any associated rights.

However, Salmond rejected the concept of

“absolute liability, believing that 1st a right should be granted and then a correlative duty should be imposed”.

So according to Salmond, the law is unfair from his perspective because,

“the absolute liability is modified strict liability. The rule applies without exception and makes a person fully accountable for any mistake. Absolute liability and great retraction constitute this liability as an absolute liability”.

To emphasize the same, the hon’ble Apex Court in M.C. Mehta vs UOI and Bhopal Gas Leak Cases, while dealing with

“the theory of established absolute liability, the Hon’ble Apex Court mentioned the case relating to Rayland’s Fletcher Rule passed by the House of Laws of the United Kingdom on Strict Liability”.

When compared to both this Apex Court’s ruling on absolute liability is substantially broader than the ruling of House of Lords.

Henken made an attempt to demonstrate,

“a link between obligation and human rights by introducing social expectations and the Laws that enshrine such social expectations”.

According to John Locks:

“Social Contract theory”, “for the good of society is for the social good of the people who live together.”

On the otherhand Dworkn, made a statement by contradicting the above theory,

“When a pragmatic approach is utilized wrongly the Law loses validity records it is based on achieving the greatest good for society at the expense of individual interest”.

Likewise there are many exponents opposing and subscribing to the theory,

“While the Law is meant to serve the greater good of the people, some individual liberty may be jeopardized. At the same time it is also true that a regulation that violates and individual’s right could cause social discrepancy or dissatisfaction”.

VII. Corporate Social Responsibility vs Article 14 of Fundamental rights embaded in the Indian Consitution:

A reading of the Article 14 of the Indian Constitution emphasizes that,

“Every person in India has equality before the Law and equal protection of the Law. Article 14 allows for a rational categorization of legislation”.

The Apex Court also repeatedly held in various judgments, held that,

1. It is predicated on an understandable, differential and
2. The differentia bears a reasonable relationship to the statute stated objective.

Section 135(1) of the Companies Act says,

“If a business reaches one of the networth, turnover or net profit levels, it falls under the ambit of section 135. Thus even if a corporation does not exceed the requirements in future, it is still required to spend on CSR initiatives.”

The companies Act also mentions that,

“A loss making business has the same requirement to contribute to CSR as a profit making business, as long as the average net earnings test is met”.

To conclude Section 135 of Companies Act applies to,

“Corporations registered under section 8 of the Act. The section mandates corporations to use their profits exclusively to promote their objectives but under the same section the computation of the net profit for a foreign company with a subsidiary in india is unclear and ambiguous because the classification requirement is not met, and section 135 regards unequal as equals, Article 14 is violated in certain instances”.

Is Corporate Social Responsibility violates fundamental right according to Indian Constitution.

The entire Indian Legal System is based on the Indian Constitution because neither the Legal system is beyond constitution nor it can ignore the Constitution but has to travel in line with the Constitution.

The Companies Act subjects corporations to specific restrictions, imposing constraints while implementing Corporate Social Responsibility.

Schedule VII of the Companies Act that contains a list of CSR activities that are to be followed by Corporates means that all CSR activities fall under, Article 21 of the Indian Constitution.

Article 21 of the Indian Constitution that emphasizes about fundamental rights of the citizen of India,

“the right to life includes the right to cohabit with other persons. Dignity and all that entails, specifically, the bare necessities of life, such as food, clothing and shelter, health protection, the right to medical assistance, prompt medical care on government hospitals.”.

Is the state’s responsibility to ensure that no citizen of this country dies of hunger and the states obligation to provide safe drinking water to its inhabitants.

In this regard, the Apex Court has interpreted the Fundamental Rights (Article 21) of the Indian Constitution in number of cases like **a. Bundan Mukti Morcha vs UOI, b. Kirloskar Bros vs ESI Corporation, c. Paschim Banga keth Majdoor Samiti vs State of West Bengal and d. PUCL vs UOI.**

The Apex Court laid down that, CSR efforts should serve as stimulous for the auxiliary arm of the Government to enforce fundamental rights, most notably **Article 21.**

The Right to education is incorporated into the “**Right to life”**; Article 21A expressly recognize the right to education as a fundamental right and this includes the right to Free education upto 14 years of age irrespective of social and economic conditions.

IV. CSR COMMITTEES:

As per the amendement of Companies Act,

“The CSR activities shall be under taken by the company, as per its stated CSR policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.”

The Board of Company may decide to undertake its CSR activities approved by the CSR Committee to a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act.

V. CSR EXPENDITURE:

CSR expenditure shall include all expenditure including contribution to corpus for projects or programs relating to CSR activities approved by the Board on the recommendation of the CSR Committee but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

VI. CSR REPORTING:

The Boards report of a company covered under these rules pertaining to a financial year commencing on or after the first day of April 2014 shall include an annual report on CSR containing particulars specified in Annexure. If this is a foreign company the rules are separate.

VII. DISPLAY OF CSR ACTIVITIES IN WEBSITE:

The Board of directors of any organization/company shall take into account. The recommendations of CSR Committee, approve the CSR Policy for the company and disclose the contents in the website which is mandatory.

Format for the Annual Report on CSR Activities to be included in the Board's Report [For Financial Year Commenced Prior To 1st Day of April, 2020]

- ✓ A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
- ✓ The Composition of the CSR Committee.
- ✓ Average net profit of the company for last three financial years
- ✓ Prescribed CSR Expenditure (two per cent of the amount as in item 3 above)
- ✓ Details of CSR spent during the financial year.
 - (a) Total amount to be spent for the financial year;
 - (b) Amount unspent, if any;
 - (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S.No.	CSR project or activity identified	Sector in which the Project is covered	Projects or programs (1) Local area or other (2) Specify the State and district where projects or programs was undertaken	Amount outlay (budget) project or programs wise	Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on projects or programs. (2) Overheads:	Cumulative expenditure upto to the reporting period.	Amount spent: Direct or through implementing agency*
1							
2							
3							
	TOTAL						

*Give details of implementing agency:

6. In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.

7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Sd/- (Chief Executive Officer or Managing Director or Director)	Sd/- (Chairman CSR Committee)	Sd/- (Person specified under clause (d) of sub-section (1) of section 380 of the Act) (wherever applicable)
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From time to time there are number of amendments to the Constitution of India that necessitated to enforce the law in accordance to the particular situations and in that,

“The right to life has been enlarged to encompass tradition, culture and inheritance. It includes the right to shelter, the right to decent place to live and dwellers of steep locations where access to the path is itself regarded as a gateway to life”.

All these rights are recognized judicially are the rights stated in the VII Schedule of the Companies Act and listed as CSR activities. At a nutshell,

“protection of national treasures, are and culture, rehabilitation of historic structures and places and creation of works of art, establishment of public libraries, promotion and progress in the development of traditional arts and crafts”.

In addition the Constitution provides a guarantee to the citizens of India to an **“unpolluted environment, and the responsibility and protect nature’s boundary that also includes right to life. It also include right to protect wildlife, forests, lakes, historic sites, vegetation, ecological balance and sustainable development”.**

One of the clauses in the Companies Act, 2013 (amended/CSR Policy) mentions a specifically with respect to sports as,

“Training to promote Rural Sports, Nationally Recognized Sports, Para Olympic Sports, and Olympic Sports”.

However though the clause regarding sports mentioned in the Companies Act, CSR spending towards sports between 2014-15 and 2020-21 comes to less than 1% but healthcare and education capturing 51% of the total spending.

Corporate Social Responsibility and International Human Rights in the light of Indian Legal System due to globalization and opening up of economy the World has shrunk and many Corporate Houses Indian and International are expanding their wings to other parts of the Globe regarding their activities. In this regard, there is a continuous debate or human rights or CSR intersection. As we are aware CSR activities basically being social reforms and focuses on committing to moral obligations, this kind of globalization presently seen necessitates making changes in International Laws in line with CSR activities. As Corporate Social Responsibility admits the responsibility of the Corporate Houses towards society both socially and economically in addition to safeguarding the environment with respect to local environmental laws, many international organizations have to make amendments to their CSR activities in line with the laws of that nation where they want to spread their activities. Following are the list of international human rights norms in CSR.

- a. ILO (International Labour Organisation) tripartite declaration of principles of concerning multi-national enterprises and social policy.
- b. ILO tripartite declaration of fundamental principles and right to work.
- c. OECD guidelines for multinational enterprises.
- d. UN Global Compact (UNGC)
- e. Johannesburg declaration on sustainable development (2002)
- f. Universal declaration of human rights.

1. The Hon'ble Delhi High Court in Ahmed vs Union of India and others on 17.04.2014 dwelt at length about the fundamental right of the citizen of India under Article 21 of the Constitution,

"The issue that arises for consideration in the present petition is whether a minor child born to parents belonging to economically weaker section of the society suffering from a chronic and rare disease, gaucher, is entitled to free medical treatment costing about rupees six lakhs per month especially when the treatment is known, prognosis is good and there is every likelihood of petitioner leading a normal life."

2. The Hon'ble High Court decided by Hon'ble Justice Manmohan has also dealt at length regarding Corporate Social Responsibility and is quoted as,

"CORPORATE SOCIAL RESPONSIBILITY.

72. This Court may mention that before the final hearing commenced, the counsel for the petitioner had drawn this Court's attention to the Companies Act, 2013 which for the first time incorporated Corporate Social Responsibility (for short "CSR"). Section 135 of the Companies Act, 2013 stipulates that a company having a net worth of more than Rs. 500 crores or turnover in excess Rs. 1,000 crores or a net profit of Rs. 5 crores during a financial year must spend at least 2% of its average net profits during the last three financial years on CSR activities covered in Schedule VII of the Companies Act, 2013.

73. Section 135, Schedule VII and the Companies (Corporate Social Responsibility Policy) Rules, 2014 were notified on 27th February, 2014 and have come into effect from 1st April, 2014. Prior to the enactment of the new Companies Act, there existed only a set of Voluntary Guidelines issued by the Ministry of Corporate Affairs in 2009.

74. Prior to its notification on 27th February, 2014 Schedule VII of the Companies Act, 2013 permitted companies to carry out CSR activities under ten heads which included "reducing child mortality"(at Sr. no. 4 of the un-notified Schedule VII) and "combating HIV, AIDS, malaria and other diseases" (at Sr. no. 5 of the un-notified Schedule VII).

75. However, when Schedule VII was notified on 27th February, 2014 these two entries were inexplicably dropped from the list of permitted CSR activities. The only area under the then notified Schedule VII was "preventive healthcare". Since the notified Schedule VII would have closed the CSR funding route as an option to sponsor treatments for rare diseases, this Court vide its order dated 28th February, 2014 directed the Ministry of Corporate Affairs to re-examine the matter.

76. The Ministry of Corporate Affairs filed a letter dated 24 th March, 2014 before this Court stating "Ministry of Corporate Affairs has decided to amend the Schedule VII of the Companies Act, 2013 to bring in clarity regarding the ambit of 'promoting preventive health care' as included in the said Schedule. It has been decided to amend the said item in Schedule VII as follows: 'promoting health care including preventive health care'. This would encompass the entire health care area, including the treatment of diseases etc."

77. On 28th March, 2014, the Ministry of Corporate Affairs filed an affidavit clarifying the scope of the term "normal course of business" used in Rules 4 and 6 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, by giving the following example:-

"...a pharmaceutical company donating medicines/drugs within section 135 read with Schedule VII to the Act is a CSR Activity, as the same is not an activity undertaken in pursuance of its normal course of business which is relatable to health care or any other entry in Schedule VII."

78. This Affidavit clarifies that an activity carried out by a Company covered under Schedule VII which is a part of its core business, if not done with a profit motive, amounts to a CSR Activity. The aforesaid letter and affidavit of Ministry of Corporate Affairs are taken on record and accepted by this Court. Government of India is held bound by the same.

GOVERNMENTS WOULD BE WELL ADVISED TO CONSIDER EXPANDING THEIR HEALTH BUDGET

79. It is unfortunate that even after sixty-six years of independence, universal medical healthcare is still a distinct dream. Even today, economically weaker sections of the society do not have access to free medical treatment. But one need not be despondent. Only on 26 th August, 2009, the Parliament passed The Right of Children to Free and Compulsory Education Act, 2009 which provides for free and compulsory education to all children of the age of six to fourteen years.

80. This Court is of the view that Government needs to seriously consider expanding its health budget if their right to life and right to equality as enumerated in Articles 14 and 21, are not to be rendered illusionary. If poor patients are to enjoy benefit of recent innovations in the medical field, like robotic surgery, genome engineering the Government must immediately think of increasing its investment in the health sector.

SUGGESTIONS BY THE COURT

81. This Court suggests that both the Central and State Governments should consider the following suggestions:

i. All government hospitals could have a separate CSR/ Charitable entity/account wherein donations can be received. The donations could be subject to an audit.

ii. Each hospital could have a designated officer, to whom applications for assistance can be made by patients in need. The decision to whom financial assistance could be provided, be left to the Medical Superintendent/CEO of the Hospital along with Head of the Departments. Delhi could be adopted as the first model state.

iii. The Ministries of Corporate Affairs and Finance could consider providing extra credit (for instance increased credit) for donations in certain sectors, such as health.

iv. The Government could adopt a holistic approach to facilitate donations, so that the tax regime supports the said efforts.

v. All donations in cash and kind must be accounted for, with complete transparency to ensure no misuse or misappropriation of donations.

vi. Government hospitals could put up list on the State Department of Health website of the drugs, implants and devices they require for EWS/BPL patients. This way people would donate as per the need of each hospital. This could be revised on a monthly basis.

vii. The State Government may put up a list of drugs, implants and devices which are excluded from its budget for which donations would be welcome.

viii. Both the Central and State Governments could create a revolving fund to take care of recurring expenditure of patients suffering from chronic and rare diseases.

ix. The Government could constitute a High Powered Inter-disciplinary Committee to:

- Develop and update a list of guiding principles/best practices in the area of donations in healthcare.

- Develop a policy for tackling rare diseases and promoting the development of orphan drugs.

- Evolve new and innovative methods for attracting spending in the area of healthcare.

- This Committee could have representatives from various State and Central Government departments, private and government hospitals, non-governmental organizations working in the area of healthcare, representatives of patients rights groups, representatives of pharmaceutical and other companies in the healthcare sector.

82. However, as the concept of CSR is still at a nascent stage and there is no mechanism in place which popularizes and facilitates donation, this Court is of the view that State must bear the burden of the treatment.

83. Before parting with the judgment, this Court would like to place on record its appreciation for the high level of debate and the assistance rendered to it by all the counsel appearing in the present case.

84. While Mr. Ashok Aggarwal deserves credit for filing the present petition and for bringing the plight of the petitioner to the notice of this Court, Ms. Zubeda Begum put forth her submissions in a concise manner. Ms. Manisha Dhir was very helpful in getting the Ministry of Corporate Affairs to promptly accept and implement the suggestions given by this Court with regard to CSR. Mr. Anand Grover, learned senior counsel not only provided valuable insight, but also gave a contextual meaning to the right to health. This Court may mention that without the assistance and the hard work put in by the Amicus Curiae, Ms. Shyel Trehan, it would not have been possible for this Court to conclude the hearing and pronounce judgment in a short time period.”

85. Any corporate house/organization in conducting business activities, these organizations exploits various resources of the society and the environment. Of which Corporate Social Responsibility (CSR) is an act of incorporating the social and environmental concerns into their business models.

As mischievously interpret CSR activities as voluntary act, on the other hand it has been made mandatory by provisions of the company act, 2013. In the amended act, it is clearly stated that according to Sec. 135, “every company meeting the requisite criteria has to mandatorily set up CSR committee, formulate CSR policy and spend in every financial year at least 2% of the average net profits of that company/organizations made during the three immediate preceding financial years.

(i) Company having net worth of Rs. 500 crores or more, or

(ii) Company having turnover of Rs. 1000 crores or more or

(iii) Company having netprofit of Rs. 5 crores or more during the immediately preceding financial year.”

For any Company/Organization that attracts CSR activities should have any one of the above three clauses, otherwise it will not come under the provisions of CSR. This was held in the matter of,

“Bill Finger Neo Structo Private Limited”

(2019 SCC Online NCLT 108, CP No. 54/441/NCLT/MB/MAH/2018)

XII. PENALTY FOR VIOLATION OF CSR PROVISIONS:

Under Section 134 (3)(o) the Board of any Organization has to specify the details about the CSR Policy developed and implemented by the Organization on CSR initiatives taken during the Year and it is the duty of the Board to implement the recommendations of the CSR Committee; failing which,

Penalty will be imposed for violation of CSR provisions. As,

“a. For company; punishment with fine; which shall not be less than Rs. 50,000/- but which may extend to Rs. 25 lakhs;

b. Punishment with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 50000 but which may be extended to Rs. 5 lakhs or with both.”

XIII. Provision for corrective measures for violations of CSR activities:

a. Any Company/Organization failed to make the disclosure of necessary CSR activities in its Board meeting or Annual report, it can

“by virtue of section 131, prepared a revised report after obtaining approval of the Tribunal.”

b. Any Company/Organization fails to spend the threshold amount earmarked towards CSR activities, the Board has to, in its report made under section 134(3)(o), specify the reasons for not spending the amount in that particular financial year.

c. The unspent amount of the earmarked CSR activity funds based on 2% profits is to be transferred by the company to a special account to be opened by the company/organization to be called as the Unspent CSR Account and such amount has to be spent by the company/organization in pursuance of its organization towards the CSR Policy within a period of 3 years from the date of transfer.

d. The company and its officers can make good the offence by applying for compounding of offence under section 441 of the Act.

VIII. CASE LAWS:

The NCLT, in a decided case in Technicolor India (P) Ltd vs Registrar of Companies - (2020 (7) TMI 423),

Where

“the Company met the net profit criteria u/s 135 of Companies Act, 2013, had a CSR Committee but it spent some amount as per the CSR Policy of the Company during the financial year 2017-18, which remain below the threshold amount as per section 135(5) of the Act for which reason was duly provided by the company in its directors report. The NCLT found that the amount spent on CSR and its associated detail is incorrectly captured in the directors report. The Tribunal allowed the application of the company to revive this report by giving liberty to the company to file for compounding under sec 441 of the Act”.

In another case, Alok Pharmaceuticals and Industrial Company Private Limited – (2018 SCC Online NCLT 28915, C.P. No. 396/441/ND/2018), Rapid Estates Private Limited (2018 SCC Online NCLT 545, C.P. No. 11/44/ND/2017), Avinash Developers Private Limited (2018 SC Online NCLT 29665, C.P. No. 2710/441/NCLT/MB/MAH/2018), all these companies filed compounding application before the Registrar of Companies, Chattisgarh and the same has been forwarded to NCLT, Mumbai along with ROC report. In this report, the ROC has informed that this application was filed because the company has violated the provisions of section 134(3)(o) of the Companies Act, 2013 r/w Rule 8 of Companies (Corporate Social Responsibility) Rules, 2014 where in the Company fails to give explanation for the Non spending of the CSR amount for the financial year 2011-12 to 2013-14 respective years as per director's report.

It is observed by the NCLT, Mumbai that,

“the Compounding of offence in respect of violation of section 134(3)(o) for non disclosure of the CSR policy details in the Board's Report can be done by forwarding an application under Sec. 441 of the Act.”

In another case, Pan Asia Logistics India Private Limited – (2018 SCC Online NCLT 11589, CA/80/(441)/CB/2018), K. Ananta Padmanabha Swamy, Member Judicial has observed that,

“Under consideration is an application which has been filed by Petitioner/s before the Registrar of Companies, Tamilnadu & Andaman and Nicobar Islands, Chennai for compounding of the offences committed u/s 135 along with Schedule VII and Rules 3 of the Companies (Corporate Social Responsibility Policy) Rules, 2014. These provisions are come into the effect from 1st April, 2014. The Deputy Registrar of Companies along with his report dated 07.08.2017, forwarded the application to the Registry of this Bench which has been numbered as CA/80(441)CB/2017.”

The averments made in the application are,

a. The Company is a Private Limited Company and was incorporated on 18.04.2005 under the Companies Act, 1956 with its Registered Office at No. 46 & 48, Echrich Labs Building, 2nd Floor, Masilamani Road, Balajinagar, Raipet, Chennai.

b. The Petitioners are the company and its two offices who have filed E-form No. GNL-1 vide dated 12.04.2017 for the violation of the provisions of section 135 r/w section 450 of the Companies Act, 2013. The offence arose when the company and its officers failed to constitute the CSR Committee for the related provisions accordingly in the ensuing year 2016-17.

The observations made are,

“As per Section 135 (1) of the Companies Act, 2013, every company having networth of Rs. 500 crores or more, or turnover of Rs. 1000 crores or more or netprofit of Rs. 500 crores or more during any financial year should constitute a CSR Committee of the Board consisting of three or more directors out of which atleast one director shall be an independent director”.

During their deliberations the applicant company and the directors have suomoto submitted that “they would like to compound the said offence under section 135 r/w 450 of Companies Act, 2013 and also submitted that the present application is being filed voluntarily for violations of the provisions of the section 135 r/w 450 of the Companies Act, 2013 for non constitution of CSR Committee for the financial years 2014-15 and 2015-16 and also submitted that for the financial year 2014-15 and 2015-16 none of the provisions of section 135 were complied as the Company and its officers were ill.

The applicability of the CSR for company for financial years 2014-15 and 2015-16 arose on the basis of General Circular No. 21/20145 dated 18.06.2014 which extended the applicability of CSR to three preceding financial years instead of any financial year as originally mentioned in the Act and Rules.

5. The Dy. Registrar vide report dated 07.08.2017 has stated that if any person being the director of the company fails to take all reasonable steps to comply with the provisions of the section 135 r/w 450 of the companies Act, 2013, the company and every officer of the company, who is in default, shall be liable to be punishable with fine which may extend to ten thousand rupees and where the contravention one, with a further fine which may extended to one thousand rupees for very day after first during which the contravention continues.

6. Further, the Deputy Registrar of Companies stated in his report that there is no prosecution pending in relation to the said offence, and his Office has no objection, if the offence is compounded, e-form LNC28 is filed along with compounding Order.

7. Originally the Assistant Registrar of Companies, Tami Nadu, Chennai sent notice dated 20.03.2017 (Annexure A6) pointing out the default under section 134 read with section 134(8) and section 135 read with section 450 of the Companies Act, 2013. In this regard the counsel for petitioner has placed a copy of order dated 23.02.2018 passed in CA/79/(441)/CB/2018 by NCLT, Single Bench, Chennai, where in petitioners were permitted to compound the offence under section 134(3)(o) of the Companies Act, 2013 by imposing penalty of Rs. 1 lakhs each to the Company and its 2 officers (who are petitioners herein).

8. While submitting above, the counsel for petitioner prayed to take lenient view on the ground that this is the first offence committed by them. The ROC Report also conforms the same being the first offence. Therefore, the Application of the company and the officers in default is allowed and the offence is compounded in exercise of the powers conferred under section 441 of the Companies Act, 2013. The fine imposed on the Company and its Directors are given below:
Name of defaulters Period of Default Penalty Pan Asia Logistics India Private Limited 2014-2015 And 2015- 2016 1,00,000/- Mr. Siva Kumar Achanta (Managing Director) 2014-2015 And 2015-2016 1,00,000/- Mr. Thirumala Vinjamoori Sreedhar (Whole Time Director) 2014-2015 And 2015-2016 1,00,000/-

9. The Company is directed to remit the penalty from its accounts and the two Directors in default shall pay the penalty from their own resources. The Petitioners shall comply with order within three weeks from the date; the order is uploaded on the website of NCLT. The company is directed to file a copy of this order along with required from with the Registrar of Companies, Chennai, within the stipulated time.

10. Accordingly, the Application No. 80/ (441)/2017 is disposed of. The certified copy of the Order is permitted to be issued to the Petitioner(s) only after deposit of the amount of fine, as per the procedure prescribed, Shoft Shipyard Private Limited[7], thus it has been observed that the compounding of offence in respect of violation of CSR provisions under Section 135 can be done by forwarding an application under Section 441 of the Act. The determination of the Quantum of the CSR responsibility can only be ascertained after the finalization of accounts at the close of the Books of Accounts of a particular financial year. As a result, the amount to be contributed for charitable purpose as CSR responsibility can be intimated to the concerned authorities thereafter only i.e. after the finalization of accounts of a particular financial year. The same view has been taken up by the tribunal in the matter of M/s. Hira Power and Steels Limited[8]. The Applicants / Defaulters herein had violated the Provision of S. 134 (3) (o) of the Act. And for the said violation the punishment is provided u/Section 134 (8) of Companies Act, 2013. The Sections which are relevant in this case are as follows: “S. 134 (3) (o) : There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.” “S. 134 (8): If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.”

11. This Bench has also taken into consideration that, this provision regarding CSR is newly incorporated in the Statute and thereafter number of circulars were issued and as a result of those circulars no clear clarification regarding the provision can be recorded by the Company or its Directors. The further important argument taken into consideration that, the determination of the Quantum of the CSR responsibility can only be ascertained / quantified after the finalization of accounts at the close of the Books of Accounts of a particular financial year. As a result, the amount to be contributed for charitable purpose as CSR responsibility can be intimated to the concerned authorities thereafter only i.e. after the finalization of accounts of a particular financial year.

12. It is also noticed that the Company had made the default good by constituting the CSR committee and by furnishing declaration in the Director’s Report for the F. Y. 2015-16.

13. On the above facts and circumstances it is noticed that Application made by the Applicants/ Defaulters herein for compounding of offence committed under S. 134 (3) (o) of the Companies Act, 2013, merits consideration, though belatedly the default has been made good.

The Apex Court many a times ruled that,

“The legal right to environmental protection may take precedence over the economic concerns of society. Employees of a state cooperation who were harmed by a X Ray radiation have a right to adequate relief consented by Courts.”

XV. Fines and Penalties for Non compliance of CSR:

No company/organization/corporate house that fall under amended Companies Act and attracts CSR activities fails to comply with the provisions relating to CSR spending, transferring and utilizing. Unspent amount, such company/organization/corporate house will be punishable with a minimum fine of Rs. 50,000/- which may increase to Rs. 25 lakhs depending upon the nature of offence, every officer of such company who defaults in the compliance of CSR provisions will be liable for punishment which is imprisonment for a term which may extend to three years or with a minimum fine of Rs. 50,000/- and may be increased to Rs. 5 lakhs or with both

XVI. To make CSR Laws effective and efficient in India:

The present status of CSR Laws in India will not have that much enforceable clauses and tools to punish the guilt and the government should take some more initiatives to strengthen the laws by giving more teeth to punish the guilt.

XVII. Following are the some of the suggestions made:

a. It is not enough that an organization spend money on CSR activities but it should be seen that the organizations spend their resources on CSR activities judiciously. As an example Organizations involved in Food and Food related products

should concentrate their activities on serving that particular community which is under below poverty line. In such a manner, Telecom companies can concentrate on their CSR activities to set up Telecom Centres in remote and inaccessible areas to reduce the gap between remote and underdeveloped areas and developed areas. It is also advisable that to include some measures to make it easy for the companies to have their CSR activities according to their strength and field of expertise.

2. No organization/corporate house should start their CSR activities blindly and spend their physical resources but they should relay on concrete data and suggestions put forth by research institutions and individuals and philanthropic organizations you have done some research work on the subject this will make the CSR activities by any organization more effective and result oriented leaving no room for unruly and unwanted ailments entering into the activities for their own games.

3. The Organizations/Corporate houses should collaborate their CSR activities to the people/communities at ground level and who are the beneficiaries. This kind of cooperation will have identification of who are in need and also majority of the funds are spent on the needy only; thus eliminating malpractices and misconceptions.

4. Activities and main work of any organization/corporate house and entirely different and unconnected with the social activities, it is compulsory on the part of the organizations/corporate houses to collaborate with specialists, non-government institutions who are well versed with the environment of that particular activity. This kind of cooperation will be useful to the organizations to utilize their CSR funds/resources better as the dedicated NGOs and individuals guide them effectively in implementing the CSR activities and programs.

IX. CONCLUSION:

Corporate Social Responsibility though not a new phenomena since in Ancient India because Charity and compassionate help are there since Ancient India, many philanthropic Institutions, charitable organizations and individuals used to part with part of their resources for the benefit and upliftment of mankind. Hence, the present CSR activities can be linked and traced from that Ancient Hindu Philosophy of "live and let live". India is the first country in the world to make CSR activities and CSR funding a mandatory by amending the Companies Act to certain provisions. In this article, an attempt is made to discuss the role of Corporate Social Responsibility in Indian Healthcare and the Legal obligations that the Corporate Houses/Organizations/Institutions should adhere to with examples of decided cases from Law Tribunals and Hon'ble Apex Court and High Courts of the country; in addition not only the obligation but also legal provisions that attracts for any violations of spending of CSR activity funds and the legal recourse etc are also discussed at length. In addition some of the malpractices that few greedy/corporate houses/organizations/individuals making use of CSR funds for personal were also discussed threadbare.

Pooling up of all the material it is observed that majority of the corporate houses/organizations (public and private) are sincerely putting efforts and spending amounts through CSR activities mainly on education and health for those communities who are neglected and badly in need of help as their personal resources cannot come to their rescue. Unlike other countries India is far more superior in CSR activities by spending more than the stipulated amount by law which is a commendable service.

One can see a black sheep in any good amount of work which has to be weeded out by introducing stringent laws and giving more to the existing laws to punish the guilt.

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Annexure – I

FORMNO.CSR-1

(Pursuant to section 135 of the Companies Act, 2013 and Rule 4(1) and (2) of Companies (CSR Policy) Rules, 2014)

Form Language English

Hindi



सत्यमेव जयते

Refer the instruction kit for filing the form.

Registration of Entities for undertaking CSR Activities

1. *Nature of the Entity

- Company established under Section 8 of the Companies Act, 2013 with Section 12A and Section 80G registrations under the Income Tax Act, 1961.
- Registered Public Trust with Section 12A and Section 80G registrations under the Income Tax Act, 1961.
- Registered Society with Section 12A and Section 80G registrations under the Income Tax Act, 1961.
- Company established under Section 8 of the Companies Act, 2013 or Registered Trust or Registered Society established by the Central Government or State Government.
- Entity established under an Act of Parliament or State Legislature.

2. (a) Whether the Entity is established by any company or group of companies

Yes No

(b)(i) If yes, the n provide the details of such company(s)

Add

CIN of the Company		Pre-fill
Name of the Company		

(ii) If no, whether the entity has an established track record of three years in undertaking similar activities

Yes No

3. (a) *Type of Existing entity

*CIN/Registration Number

Pre-fill

(In case of a Section 8 company, enter CIN. Else, enter registration number)

(b) *Name of the entity

(c) *Date of incorporation of the entity

(DD/MM/YYYY)

(d) *Address of the entity

Line I

Line II

City

State/Union
Territory

Pin Code

District

(e) *E-Mail ID of the entity

Send OTP

(f) *Enter OTP for Email ID

Verify OTP

(g) *PAN of the entity

4. *Details of Directors/ Board of Trustees/ Chairman/ CEO/ Secretary/ Authorized Representatives of the entity:

S. No.	Name	Designation	DIN/PAN	Email Id
		<input type="text"/>		

List of Attachments

Attachments

- 1. * Copy of Certificate of Registration
- 2. * Copy of PAN of entity

Attach	
Attach	
Remove attachment	

***Declaration**

I am authorized by the Entity vide *resolution number *dated to sign this Form and declare that the particulars given in the form here in above are true and also in agreement with the documents maintained by the Entity.

To be digitally signed by one director in case of Section 8 company

To be digitally signed by one of the Trustee/CEO in case of Registered Public Trust

To be digitally signed by Chairperson/CEO/Secretary in case of Registered Society

To be digitally signed by Authorized Representative in case of Entity established under an Act of Parliament or State Legislature

*To be digitally signed by

*Designation

*DIN of the director; or DIN or PAN of the Trustee or CEO or Chairperson or Chief functionary or authorized representative of the Entity;

***Certificate by Practicing Professional**

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules there under for the subject matter of this form and matter incidental there to and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

1. The said records have been properly prepared, signed by the required officers/authorized representatives of the entity and were found to be in order;
2. All the required attachments have been completely and legibly attached to this form;
3. It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage.

* To be digitally signed by

Chartered accountant (in whole-time practice)
 Cost accountant (in whole-time practice)

Company secretary (in whole-time practice)

* Whether Associate or Fellow Associate Fellow

* Membership Number

Certificate of Practice Number

Note: Attention is drawn to provisions of Section 448 and 449 of the Act which provide for punishment for false statement / certificate and punishment for false evidence respectively.

Modify

CheckForm

Prescrutiniv

Submit

This e-Form has been taken on file maintained by the Registrar of Companies through electronic mode and on the basis of statement of correctness given by the authorized person and professional.