

**CHAPTER 2: IMPLICATION OF CORPORATE SOCIAL
RESPONSIBILITIES**

**CHAPTER 2: IMPLICATION OF CORPORATE SOCIAL RESPONSIBILITIES
UNDER THE COMPANIES ACT, 2013 IN INDIA**

“Business has a responsibility beyond its basic responsibility to its shareholders; a responsibility to a broader constituency that includes its key stakeholders: customers, employee, NGOs, government - the people of the communities in which it operates.”

Courtney Pratt, Former CEO Toronto Hydro

2.1 INTRODUCTION

The second Chapter discusses the Implication of Corporate Social Responsibilities under the Companies Act, 2013. From the industrial revolution to recent years, social objectives have been almost entirely the responsibility of government. Social movements, NGO activity and pressure groups during the 70s and 80s led to the mobilization of public opinion demanding from corporations to demonstrate a socially responsible stance. Since the ending of Nineteenth Century, Indian Government has enacted legislation to control the relationship between employee and the firm, health and safety at work¹³¹, issues of environmental interest, discrimination and equal opportunities at workplace. Across India, state owned companies were created to pursue commercial and social objectives, whereas private sector companies were allowed to pursue their commercial objectives almost exclusively. Legislation, regulation and taxation have been the favorable tools employed by government to promote and protect social objectives¹³².

¹³¹ Vishaka & Ors v. State Of Rajasthan & Others AIR (1997) SC 3011.

¹³² “Corporate Social Responsibility A Role in Government Policy and Regulation?”
University of Bath School of Management Center for the Study of Regulated Industries.

Governments around the world have become increasingly proactive in creating enabling framework conditions for CSR. Governments have begun to see CSR as a subject with relevance for public policy, due to its ability to enhance sustainable and inclusive development, increase national competitiveness and foster foreign investment. Much of this can be accomplished by using policy tools to encourage voluntary business activities as a complement to traditional regulatory channels¹³³. The administration's way to deal with elevating CSR ought to look to standard CSR inside group arrangements, connect with the general population and private sections and advance more prominent straightforwardness in the commercial center. The Government's way to deal with CSR ought to base on profitability and intensity and on accomplishing straightforwardness in the market to advance a compelling exchange with partners.

The aim of the Companies Act 2013 is to mandate the CSR norms. The reason behind the enactment is that a company should attain its goal by focusing on the objectives of corporate social responsibility. S.135 in the Act states that every company with the prescribed net worth or turnover should constitute a CSR Committee¹³⁴, with clearly defined composition, activities to be undertaken, budgets and responsibilities of the Committee. It is to be noted that very few companies currently spend the 2% of net profit which is being envisaged in Companies Act 2013¹³⁵. In Schedule VII of the S.135 of Companies Act 2013 it has been stated that nine activities according to which companies will formulate their CSR policy¹³⁶. It had actually complicated the situation and makes corporations more and more powerless as there.

http://www.bath.ac.uk/management/crri/pubpdf/Research_Reports/16_Bichta.pdf. Last visited on 3-10-2016 at 18.24.

¹³³ http://www.unglobalcompact.org/docs/news_events/8.1/UNGC_Bertelsmann.pdf. Last visited on 14-06-2016 at 12.00.

¹³⁴ *Mohd. Ahmed (Minor)* supra note 85.

¹³⁵ *Id* at 381.

¹³⁶ *Id*.

2.2 CORPORATE SOCIAL RESPONSIBILITY- RULE

Rule 1: Short title and commencement of CSR.

Rule 2: Definitions of Corporate Social Responsibility, CSR Policy & Net Profit.

Rule 3 : (1) Every company including its holding or subsidiary, and a foreign company defined under section (42) of section 2 of the Act having its branch office or project office in India, which fulfils the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules: Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act. (2) Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to— (a) constitute a CSR Committee; and 3 (b) comply with the provisions contained in sub-sections (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135¹³⁷.

CSR Activities. Rule 4: (1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or on-going), excluding activities undertaken in pursuance of its normal course of business. (2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through 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 or otherwise¹³⁸: Provided that— (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects; (ii) the company has specified the

¹³⁷ *Mohd. Ahmed (Minor)* supra note 85.

¹³⁸ *Id* at 380.

project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism. (3) A company may also collaborate with other companies for undertaking projects or programs 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 programs in accordance with these rules. (4) Subject to provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure. (5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act. (6) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure [including expenditure on administrative overheads,] shall not be inserted by the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014, w.e.f. 12-9-2014. 4 exceed five per cent of total CSR expenditure of the company in one financial year. (7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity¹³⁹.

CSR Committees. Rule 5 : (1) The companies mentioned in the rule 3 shall constitute CSR Committee as under:— (i) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director; (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors; (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company. (2) The CSR Committee shall institute a

¹³⁹ *Mohd. Ahmed (Minor)* supra note 85.

transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company¹⁴⁰.

CSR Policy. Rule 6 : (1) The CSR Policy of the company shall, inter alia, include the following namely :— (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and (b) monitoring process of such projects or programs: Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company : Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act. (2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company¹⁴¹.

CSR Expenditure. Rule 7: 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 its CSR Committee, but do 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 Act¹⁴².

CSR Reporting. Rule 8: (1) The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure¹⁴³. (2) In case of a foreign company, the balance sheet

¹⁴⁰ *Mohd. Ahmed (Minor)* supra note 85.

¹⁴¹ *Id* at 383

¹⁴² *Id.*

¹⁴³ SINGH supra note 1.

filed under sub clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR¹⁴⁴.

Display of CSR activities on its website. Rule 9 : The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure¹⁴⁵.

Disclosures about CSR Policy Rule 9 of the Companies (Accounts) Rules, 2014 provides that the disclosure of contents of Corporate Social Responsibility Policy in the Board's report and on the company's website, if any, shall be as per annexure attached to the Companies (Corporate Social Responsibility Policy) Rules, 2014.

Deduction of CSR expenses under section 37(1) of the Income-tax Act, 1961

Finance (No. 2) Act, 2014 has inserted an Explanation 2 to section 37(1). New Explanation 2 provides as under: "Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession"¹⁴⁶. The existing provisions contained in sub-section (1) of section 37 provide that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". Finance (No. 2) Act, 2014

¹⁴⁴ SINGH supra note 1.

¹⁴⁵ <http://www.icsi.edu/portals/70/NIRRULE.pdf>. Last visited on 06-08-2016 at 12.56.

¹⁴⁶ PARANJAPE supra note 51

has inserted a new Explanation 2 in sub-section (1) of section 37 so as to clarify that for the purposes of sub-section (1) of section 37, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession¹⁴⁷.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years. Thus, CSR expenditure is disallowed by new Explanation 2 to section 37(1) if following conditions are satisfied: (i) The expenditure disallowed should fall within the scope of section 37(1). In other words if CSR expenditure falls within the scope of sections 30 to 36, there will not be any disallowance¹⁴⁸. Further, if the CSR expenditure falls within the scope of Chapter VI-A deductions (such as donation to Prime Minister's National Relief Fund u/s 80G), the same will be allowed and not hit by new Explanation 2. (ii) The expenditure incurred by the assessee is on activities referred to in section 135 of the Companies Act, 2013. The plain language of the Explanation 2 seems to suggest that expenditure on activities referred to in section 135 of the Companies Act, 2013 shall be disallowed if incurred by any assessee. The plain language does not suggest that scope of new Explanation 2 is limited in operation to only those companies which are obliged to spend on CSR by section 135 of the Companies Act, 2013. However, the Explanatory Memorandum seems to suggest that New Explanation 2 shall apply only to companies having CSR obligations under section 135 of the Companies Act, 2013. The Explanatory Memorandum clarifies the new Explanation 2 as under: Corporate Social Responsibility (CSR) Under the Companies Act, 2013 certain companies (which have net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more, or a net profit of Rs. 5 crore or more during any

¹⁴⁷ PARANJAPE supra note 51.

¹⁴⁸ *Id at 378.*

financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR)¹⁴⁹.

Under the current arrangements of the Act consumption brought about entirely and solely for the motivations behind the business is just permitted as a reasoning for registering assessable business pay. CSR use, being a use of wage, is not caused completely and solely for the motivations behind carrying on business. As the utilization of wage is not permitted as conclusion for the reasons for processing assessable pay of an organization, sum spent on CSR can't be permitted as derivation for figuring the assessable wage of the organization. In addition, the target of CSR is to share weight of the Government in giving social administrations by organizations having total assets/turnover/benefit over a limit. In the event that such costs are permitted as duty reasoning, this would bring about sponsoring of around 33% of such costs by the Government by method for assessment use¹⁵⁰.

The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession¹⁵¹. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37¹⁵². However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections

¹⁴⁹ supra note 88.

¹⁵⁰ *Id*

¹⁵¹ PARANJAPE supra note 51.

¹⁵² *Mohd. Ahmed (Minor)* supra note 85.

subject to fulfilment of conditions, if any, specified therein. This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years. [Section 13] Taxation of surplus from CSR activity Rule 6(2) of the CSR Rules provides that “The CSR Policy of the company shall specify that surplus arising out of the CSR activity shall not form part of business profits of a company.” So, taxability of CSR surplus as business income seems to be ruled out. However, will it be taxable as income from other sources under section 56 of the Income-tax Act, 1961? This needs CBDT’s clarification¹⁵³. However, one thing is clear. CSR surplus can be put out of the pale of MAT under section 115JB by crediting CSR surplus to CSR Reserve Fund/CSR corpus account so that it does not form part of ‘book profit’ for MAT calculations¹⁵⁴.

Listing Agreement section 55 of the Listing Agreement provides that listed entities shall submit, as part of their Annual Reports, Business Responsibility Reports, describing the initiatives taken by them from an environmental, social and governance perspective, in the format suggested as under:

2.3 BUSINESS RESPONSIBILITY REPORT

Suggested Framework

Section A: General Information about the Company¹⁵⁵

Corporate Identity Number (CIN) of the Company

Name of the Company

Registered address

Website

Email id

Financial Year reported

Sector(s) that the Company is engaged in (industrial activity code wise)

¹⁵³ SINGH supra note 1.

¹⁵⁴ <http://taxguru.in/company-law/deduction-of-csr-expenses-under-income-tax-act-1961.html>. Last visited on 10-04-2017 at 22.05

¹⁵⁵ http://www.sebi.gov.in/cms/sebi_data/attachdocs/1344915990072.pdf. Last visited on 14-06-2016 at 12.00.

List three key products/services that the Company manufactures/ provides (as in balance sheet)

Total number of locations where business activity is undertaken by the Company

Number of International Locations (Provide details of major 5)

Number of National Locations

Markets served by the Company Local/State/National/International

Section B: Financial Details of the Company¹⁵⁶

Paid up Capital (INR)

Total Turnover (INR)

Total profit after taxes (INR)

Total Spending on Corporate Social Responsibility (CSR) as percentage of profit after tax (%)

List of activities in which expenditure in 4 above has been incurred:

- a.....
- b.....
- c.....

Section C: Other Details¹⁵⁷

Does the Company have any Subsidiary Company/Companies?

Do the Subsidiary Company/Companies participate in the BR Initiatives of the parent company? If yes, then indicate the number of such subsidiary company(s)

Do any other entity/entities (e.g. suppliers, distributors etc.) that the Company does business with, participate in the BR initiatives of the Company? If yes, then indicate the percentage of such entity/entities? [Less than 30%, 30-60%, More than 60%]

¹⁵⁶ supra note 154.

¹⁵⁷ *Id* at 1.

Section D: BR Information¹⁵⁸

1. Details of Director/Directors responsible for BR

(a) Details of the Director/Director responsible for implementation of the BR policy/policies

DIN Number

Name

Designation

(b) Details of the BR head

S.No.	Particulars	Details
1.	DIN Number (if applicable)	
2.	Name	
3.	Designation	
4.	Telephone number	
5.	email id	

2. Principle wise (as per NVGs) BR Policy/policies (Reply in Y/N)¹⁵⁹

S.No.	Questions	P	P	P	P	P	P	P	P	P
		1	2	3	4	5	6	7	8	9
1.	Do you have a policy/policies for....									

¹⁵⁸ *Id.*

¹⁵⁹ *supra* note 154.

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2.	Has the policy being formulated in consultation with the relevant stakeholders?									
3.	Does the policy conform to any national/ international standards? If yes, specify? (50 words)									
4.	Has the policy being approved by the Board?									
5.	Does the company have a specified committee of the Board/ Director/Official to oversee the implementation of the policy?									
6.	Indicate the link for the policy to be viewed online?									
7.	Has the policy been formally communicated to all relevant internal and external stakeholders?									
S.No.	Questions	P	P	P	P	P	P	P	P	P
		1	2	3	4	5	6	7	8	9

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8.	Does the company have in house structure to implement the policy/policies.													
9.	Does the Company have a grievance redressal mechanism related to the policy/policies to address stakeholders' grievances related to the policy/policies?													
10.	Has the company carried out independent audit/evaluation of the working of this policy by an internal or external agency?													

2a. If answer to S.No. 1 against any principle, is 'No', please explain why: (Tick up to 2 options)¹⁶⁰

S.No.	Questions	P	P	P	P	P	P	P	P	P
		1	2	3	4	5	6	7	8	9
1.	The company has not understood the Principles									
2.	The company is not at a stage where it finds itself in a position to formulate and implement the policies on specified principles.									

¹⁶⁰ supra note 154.

3.	The company does not have financial or manpower resources available for the task								
4.	It is planned to be done within next 6 Months								
5.	It is planned to be done within the next 1 Year								
6.	Any other reason (please specify)								

3. Governance related to BR¹⁶¹

Indicate the frequency with which the Board of Directors, Committee of the Board or CEO to assess the BR performance of the Company. Within 3 months, 36 months, Annually, More than 1 year

Does the Company publish a BR or a Sustainability Report? What is the hyperlink for viewing this report? How frequently it is published?

Section E: Principle wise performance

Principle 1¹⁶²

1. Does the policy relating to ethics, bribery and corruption cover only the company? Yes/No. Does it extend to the Group/Joint Ventures/Suppliers/Contractors/NGOs/others?

How many stakeholder complaints have been received in the past financial year and what percentage was satisfactorily resolved by the management? If so, provide details thereof, in about 50 words or so.

¹⁶¹ supra note 154.

¹⁶² *Id.*

Principle 2¹⁶³

List up to three of your products or services whose design has incorporated social or environmental concerns, risks and/or opportunities.

i.....

ii.....

iii.....

For each such product, provide the following details in respect of resource use (energy, water, raw material etc.) per unit of product (optional):

Reduction during sourcing/production/distribution achieved since the previous year throughout the value chain?

Reduction during usage by consumers (energy, water) has been achieved since the previous year?

Does the company have procedures in place for sustainable sourcing (including transportation)?

If yes, what percentage of your inputs was sourced sustainably? Also, provide details thereof, in about 50 words or so.

Has the company taken any steps to procure goods and services from local & small producers, including communities surrounding their place of work?

If yes, what steps have been taken to improve their capacity and capability of local and small vendors?

Does the company have a mechanism to recycle products and waste? If yes what is the percentage of recycling of products and waste (separately as <5%, 5-10%>10%). Also, provide details thereof, in about 50 words or so.

¹⁶³ supra note 154.

Principle 3¹⁶⁴

Please indicate the Total number of employees.

Please indicate the Total number of employees hired on temporary/contractual/casual basis.

Please indicate the Number of permanent women employees.

Please indicate the Number of permanent employees with disabilities

Do you have an employee association that is recognized by management.

What percentage of your permanent employees is members of this recognized employee association?

Please indicate the Number of complaints relating to child labour, forced labour, involuntary labour, sexual harassment in the last financial year and pending, as on the end of the financial year.

S.No.	Category	No. of complaints filed during the financial Year	No. of complaints pending as on end of the financial year
1.	Child labour/forced labour/involuntary labour		
2.	Sexual harassment		
3.	Discriminatory employment		

¹⁶⁴ supra note 154.

What percentage of your under mentioned employees were given safety & skill up gradation training in the last year?

Permanent Employees

Permanent Women Employees

Casual/Temporary/Contractual Employees

Employees with Disabilities

Principle 4¹⁶⁵

Has the company mapped its internal and external stakeholders? Yes/ No

Out of the above, has the company identified the disadvantaged, vulnerable & marginalized stakeholders.

Are there any special initiatives taken by the company to engage with the disadvantaged, vulnerable and marginalized stakeholders. If so, provide details thereof, in about 50 words or so.

Principle 5¹⁶⁶

Does the policy of the company on human rights cover only the company or extend to the Group/Joint Ventures/Suppliers/Contractors/NGOs/others?

How many stakeholder complaints have been received in the past financial year and what per cent was satisfactorily resolved by the management?

Principle 6¹⁶⁷

Does the policy related to Principle 6 cover only the company or extends to the Group/Joint Ventures /Suppliers/ Contractors/NGOs/ others.

¹⁶⁵ supra note 154.

¹⁶⁶ *Id* at 2.

¹⁶⁷ *Id*.

Does the company have strategies/initiatives to address global environmental issues such as climate change, global warming, etc.? Y/N. If yes, please give hyperlink for webpage etc.

Does the company identify and assess potential environmental risks? Y/N

Does the company have any project related to Clean Development Mechanism? If so, provide details thereof, in about 50 words or so. Also, if Yes, whether any environmental compliance report is filed?

Has the company undertaken any other initiatives on clean technology, energy efficiency, renewable energy, etc. Y/N. If yes, please give hyperlink for web page etc.

Are the Emissions/Waste generated by the company within the permissible limits given by CPCB/SPCB for the financial year being reported?

Number of show cause/legal notices received from CPCB/SPCB which are pending (i.e. not resolved to satisfaction) as on end of Financial Year.

Principle 7¹⁶⁸

Is your company a member of any trade and chamber or association? If Yes, Name only those major ones that your business deals with:

- a.....
- b.
- c.....
- d.....

Have you advocated/lobbied through above associations for the advancement or improvement of public good? Yes/No; if yes specify the broad areas (drop box: Governance and Administration, Economic Reforms, Inclusive

¹⁶⁸ SINGH supra note 1.

Development Policies, Energy security, Water, Food Security, Sustainable Business Principles, others).

Principle 8¹⁶⁹

Does the company have specified programmes/initiatives/projects in pursuit of the policy related to Principle 8? If yes details thereof.

Are the programmes/projects undertaken through in house team/ own foundation/external NGO/government structures/any other organization?

Have you done any impact assessment of your initiative?

What is your company's direct contribution to community development projects Amount in INR and the details of the projects undertaken?

Have you taken steps to ensure that this community development initiative is successfully adopted by the community? Please explain in 50 words, or so.

Principle 9¹⁷⁰

What percentage of customer complaints/consumer cases are pending as on the end of financial year.

Does the company display product information on the product label, over and above what is mandated as per local laws? Yes/No/N.A./ Remarks (additional information)

Is there any case filed by any stakeholder against the company regarding unfair trade practices, irresponsible advertising and/or anticompetitive behaviour during the last five years and pending as on end of financial year. If so, provide details thereof, in about 50 words or so.

¹⁶⁹ SINGH supra note 1.

¹⁷⁰ *Id at* .

2.4 GOVERNANCE RELATED TO BR

Indicate the frequency with which the Board of Directors, Committee of the Board or CEO to assess the BR performance of the Company. Within 3 months, 3-6 months, Annually, More than 1 year Does the Company publish a BR or a Sustainability Report? What is the hyperlink for viewing this report? How frequently it is published? Part II of the Report of the Parliamentary Standing Committee on Finance on the Companies Bill, 2011 explains the rationale for mandatory CSR spends provisions of section 135 as under: Corporates in general are expected to contribute to the welfare of the society in which they operate and wherefrom they draw their resources to generate profits. Accordingly, the Committee recommend that section 135(5) of the Bill mandating Corporate Social Responsibility (CSR) be modified by substituting the words 'shall make every endeavour to ensure' with the words 'shall ensure'¹⁷¹. Further, the Committee recommend that the said section shall also provide that CSR activities of the companies are directed in and around the area they operate.¹⁷²

The Bill says that the companies have to spend this money; report it - self reporting and self-declaration - but it will be visible to all, viewed to all. If the companies are not able to spend that money for whatever reason, then they are obliged to state in their books of records and accounts why they have not spent it. If they do not spend and if they do not report, then section 134 will be invoked, and they will be fined and penalized. If some company wants to work through a NGO or a Trust or a Foundation of its own, we must allow them that freedom because if a company has a speciality in education or in certain area, then they have expertise in that.

Ministry of Corporate Affairs (MCA) clarified the CSR provisions before the Parliamentary Standing Committee on finance as under: "There was no

¹⁷¹ http://www.mca.gov.in/Ministry/pdf/The_Companies_Bill_2011.pdf. Last visited on 21-07-2016 at 10.40.

¹⁷² *Id.*

mention in the earlier Companies Act about corporate social responsibility. We are just mentioning that there will be a Corporate Social Responsibility Policy in each and every company beyond a certain limit, which are profitable companies and which are of certain size.” [Para 9.42 of the 2009 Report] Further: “The whole emphasis of the Act is disclosure method. Whatever is being done, what is being done will be in public domain. It will be disclosed. It will be given in the report¹⁷³. It will come to the Ministry and anybody can monitor that way. There is no oversight mechanism that some Government officer will look into it. Mandatory CSR provisions of the 2013 Act made applicable w.e.f. 1-4-2014 The Central Government has vide Notification No. F. No. 1/15/2013-CL.V, dated 27 February, 2014 issued under section 1(3) of the 2013 Act has appointed 1st April, 2014 as the date on which the provisions of section 135 and Schedule VII of the 2013 Act shall come into force. The Central Government has notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 (‘CSR Rules’) vide Notification No. F. No. 1/18/2013- CL.V, dated 27th February, 2014¹⁷⁴. These Rules come into force with effect from 1st April, 2014. The Ministry of Corporate Affairs has issued the following Press Release dated 27th February, 2014: “CSR Rules Finalised After Extensive Consultations - Sachin Pilot Notifications were issued here today to give effect to section 135 and Schedule VII of the Companies Act¹⁷⁵, 2013, which relate to CSR (Corporate Social Responsibility) related spending by companies.

Shri Sachin Pilot, Minister for Corporate Affairs, has said that the concerned rules have been finalised after extensive consultations with all stakeholders. He elaborated that the Rules provide for the manner in which CSR Committee shall formulate and monitor the CSR Policy, manner of undertaking CSR activities, role of the Board of directors therein and format of disclosure of such activities in the Board’s report. After issuance, the Notifications have

¹⁷³ http://www.mca.gov.in/Ministry/annual_reports/annualreport2009/Eng/MCA_AR0910_English.pdf. Last visited on 28-09-2016 at 16.53.

¹⁷⁴ MCA, 2014, CSR Rules, 2014, Ministry of Corporate Affairs, Government of India, New Delhi. http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf. Last visited on 28-09-2016 at 16.53.

¹⁷⁵ *Id.*

been sent for publication in the Official Gazette¹⁷⁶. They are available on the website of the Ministry of Corporate Affairs and would be effective from 1st April, 2014. The following important new activities have been included in Schedule VII¹⁷⁷: (a) Promoting preventive health care and sanitation and making available safe drinking water; (b) Setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups; (c) Ensuring ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air and water; (d) Livelihood enhancement projects; (e) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts; (f) Measures for the benefit of armed forces veterans, war widows and their dependents; (g) Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports; (h) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government; (i) Rural development projects.” India’s mandatory CSR spends provisions makes it ‘corporates’ socialist responsibility’ Nowhere in the world is Corporate Social Responsibility enforced by law by requiring a certain percentage of profits of a company to be spent on specified activities such as eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation, making available safe drinking water etc.

India has become the first country in the world to enforce CSR by making provisions in the Companies Act, 2013 which require companies having specified net worth or turnover or net profit to spend in every financial year at least 2% of average net profits of the company on specified activities such as eradicating hunger, poverty and malnutrition, promoting preventive healthcare

¹⁷⁶ PARANJAPE supra note 51.

¹⁷⁷ SINGH supra note 1.

and sanitation, making available safe drinking water etc. It isn't really even a tax. Tax monies flows into Government's coffers.

Companies to which CSR obligations under section 135 apply There are two aspects of the applicability of CSR obligations to companies: (i) Applicability to Indian companies - i.e. Companies registered in India (ii) Applicability to foreign companies.

2.5 APPLICABILITY OF OBLIGATIONS TO INDIAN COMPANIES

According to section 135(1), mandatory CSR obligations under section 135 of the 2013 Act apply to every company having: a net worth of Rs. 500 crores or more or a turnover (see para) of Rs. 1000 crores or more during any financial year or a net profit (see para) of Rs. 5 crores or more during any financial year "Any financial year" referred under sub-section (1) of section 135 of the Act read with rule 3(2) of Companies CSR Rules, 2014, implies 'any of the three preceding financial years'. - Circular No. 21/2014, dated 18-6-2014¹⁷⁸. If either of the three above criteria in section 135(1) apply, company will have to comply with CSR. CSR obligations shall apply to companies covered by section 135(1) irrespective of their listing status and whether Criteria for applicability of CSR u/s 135(1) Either of the following three criteria, i.e. Turnover criterion Turnover during financial year is Rs. 1000 crores or more Net Profit criterion Net profit during financial year is Rs. 5 crores or more Net Worth criterion Net worth is Rs. 500 crores or more 20 they are public or private¹⁷⁹. This is clear from Rule 5 of the CSR Rules which deals with setting up of CSR Committees for unlisted public companies and private companies. Applicable to every company including its holding company or subsidiary which fulfils criteria in section 135(1) Rule 3(1) of the CSR Rules provides that 'every company, including its holding company or subsidiary' which fulfils the criteria specified in subsection (1) of section 135 shall comply with section 135 and CSR Rules. Question arises what exactly is

¹⁷⁸ supra note 62.

¹⁷⁹ *Id.*

meant by ‘every company including its holding company or subsidiary’ in Rule 3(1).

Section 135(5) provides that “The Board of every company referred to in subsection (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company.....”. In view of section 135(5), it cannot be the intention of Rule 3(1) that the net worth, net profits and turnovers of a company, its holding company and subsidiaries should be clubbed to determine applicability of CSR obligations under section 135. Such an interpretation shall be ultra vires the provisions of section 135(5)¹⁸⁰. Of course, such clubbing may be done in circumstances which justify lifting of the corporate veil between the holding company and its subsidiary. However, such clubbing is not envisaged as a matter of routine by Rule 3(1). Thus, it appears that what Rule 3(1) merely means is that overseas subsidiary/holding company of an Indian company would also be liable to CSR if such overseas company fulfils the criteria in section 135(1). MCA needs to clarify this.

2.6 RELEVANT DATE FOR RECKONING NET WORTH, TURNOVER AND NET PROFIT

It is Turnover or net profit ‘during any financial year’ and not ‘at any time during any financial year’ that is relevant. So, for example, if turnover reaches or breaches Rs. 500 crores mark on say September 2014 and falls below Rs. 500 crores as on 31-3-2015 due to sales returns, CSR under section 135 will not apply for financial year 2014-15 by virtue of this criteria. Likewise if net profit touches or crosses Rs. 5 crores during the financial year but falls below Rs. 5 crores on 31st March due to losses, provisions of CSR under section 135 shall not apply¹⁸¹.

¹⁸⁰ supra note 61.

¹⁸¹ PARANJAPE supra note 51.

“Once under CSR always under CSR”? It’s quite possible that in one financial year (e.g. 2014-15) either of the three above criteria are met while in the next financial year (e.g. 2015-16) none of the above criteria are met. A question arises if CSR obligations will apply for financial year 2015-16 in this case? Section 135(1) of the 2013 Act provides that “Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.....” Section 135(5) provides that “The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy”¹⁸². Conjoint reading of sub-sections (1) and (5) of section 135 seems to suggest that if covered under sub-section (1) “during any financial year”, the minimum CSR spends of 2% of average net profit will have to be ensured “in every financial year” irrespective of whether section 135(1) is fulfilled or not. Thus, “once under CSR always under CSR”.

This is of course subject only to the condition that the average of net profits is a positive figure. This interpretation derives support from Rule 3(2) of the CSR Rules which relaxes the rigours of the “once under CSR always under CSR” rule that flows from sub-sections (1) and (5). Rule 3(2) provides that once a company is covered by section 135(1), it will be out of the purview of CSR only if it ceases to be covered by section 135(1) for three consecutive financial years¹⁸³. Thus, in the above example, CSR will apply to the company for financial years 2015-16, 2016-17 and 2017-18 whether or not section 135(1) criteria is fulfilled for these financial years or not. However, if section 135(1) criteria is not fulfilled for these three financial years then from 2018-19 the company will cease to be under CSR purview till such time it again meets the criteria specified in section 135(1).

¹⁸² supra note 62.

¹⁸³ PARANJAPE supra note 51.

Net profit, the expression 'net profit' is important in two ways in the context of CSR provisions. Firstly, it is one of the criteria to determine whether company is covered by section 135(1) so as to attract CSR provisions. Secondly, minimum quantum of CSR spends is stipulated as a percentage of average net profits. The term 'net profit' is not defined by section 135 or by any other provision of the 2013 Act¹⁸⁴. According to Rule 2(1)(f) of the CSR Rules, 'Net Profit' means net profit as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and (ii) any dividend received from other companies in India, which are covered under and complying with provisions of section 135 of the Act. 31 Rule 2(1)(f) doesn't clarify what net profit means. Nor does it clarify whether it is net profit before tax or after tax. ICAI's Revised Guidance Note on Tax Audit defines "Net Profit" as "net profit before tax" and as "excess of revenue over the expenses in a particular period"¹⁸⁵. A question arises whether adjustments contemplated by section 198 are to be made to calculate 'net profits' both purposes - i.e. to determine applicability of CSR provisions as well as quantifying minimum required CSR spends? The second provision to Rule 2(1)(f) provides 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 and section 198 of the Act. So, in case of a foreign company, adjustments required by section 198 required to calculate net profits for both purposes¹⁸⁶.

In case of an Indian company, it would appear that section 198 adjustments to be made only for quantifying minimum CSR spends required to be made. Whether section 135(1) is attracted on the basis of the Rs. 5 crores net profit criteria is to be determined on the basis of section 2(1)(f) alone. It is desirable

¹⁸⁴ SINGH supra note 1.

¹⁸⁵ <http://www.kmsindia.in/wp-content/uploads/2014/11/Guidance-Note.pdf>. Last visited on 08-08-2016 at 16.40.

¹⁸⁶ PARANJAPE supra note 51.

that MCA clarifies this issue¹⁸⁷. The first provision to Rule 2(1)(f) provides that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the 1956 Act shall not be recalculated in accordance with the 2013 Act. It is clear that this first provision has application only for calculation of average net profits for calculating CSR spends. Question arises whether net profits of past years for which accounts were prepared in accordance with the 1956 Act should be adjusted in accordance with section 198 of the 2013 Act? Or should they be adjusted in accordance with corresponding section 349/350 of the 1956 Act? Or they need no adjustments at all? It appears that, in view of the provisions of the above first provision, net profits of past years for which the 2013 Act was not in force need not be adjusted at all. MCA needs to clarify this issue.

Calculation of average net profit

Section 135 of Companies Act 2013 specifically states that the average net profits will be calculated in accordance with section 198 of the Act which lays down the manner in which net profits of a company for any financial year have to be computed for the purpose of managerial remuneration. To arrive at “net profit” of a company the following adjustments have to be taken into account¹⁸⁸.

Credits to be given:

- Credit shall be given for bounties and subsidies received from any Government or public authority unless and except in so far as the Central Government directs otherwise¹⁸⁹.
- Credit not to be given¹⁹⁰:
 - a) Premium on shares or debentures of the company which are issued or sold by the company.
 - b) Profits on sales by the company of forfeited shares.

¹⁸⁷ supra note 50.

¹⁸⁸ SINGH supra note 1.

¹⁸⁹ *Id* at 416.

¹⁹⁰ *Id*

- c) Profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof.
 - d) Profits from the sale of any immovable property or fixed asset of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consist, whether wholly or partly, of buying a selling any such property or assets. Where the amount for which any fixed asset is sold exceeds the written down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value.
 - e) Any change in carrying amount of an asset or of a liability recognized in equity (reserves) [including surplus in P&L account] on measurement of the asset or the liability at fair value.
- Deductible amounts¹⁹¹:
- a) All the usual working charges.
 - b) Director's remuneration
 - c) Bonus or commission paid or payable to any member of the company's staff, or to any, engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis.
 - d) Any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits.
 - e) Any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf.
 - f) Interest on debentures issued by the company.
 - g) Interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets.

¹⁹¹ PARANJAPE supra note 51.

- h) Interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets.
- i) Interest on unsecured loans and advances.
- j) Expenses on repairs, whether to immovable or to movable property, provided the repairs are of a capital nature.
- k) Outgoings inclusive of contributions made bona fide charitable and other funds. The consolidated payment in respect of leasehold land is virtually indistinguishable from an advance payment of rent for a specified period of years; by this, the purchaser expends a certain sum in advance as a result of which he saves the cost of rent in future years to come. The amount annually amortised in respect of the leasehold land has, therefore, necessarily to be deducted while computing the net profits under section 349, as falling within the scope of the outgoings” in clause (j) of sub-section (4) of 349 of the 1956 Act. Contributions made by a company to a political party or for a political purpose pursuant to section 293A of the 1956 Act should be regarded as “outgoings” only as they are made for commercial expediency. The fact that section 293A is not specifically referred to in clause (j) of section 349(4) is not material since the language used therein, viz, “outgoings inclusive of ..” is only illustrative and does not purport to be exhaustive.
- l) Depreciation to the extent specified in section 123.
- m) Excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained.
- n) Any compensation or damages to be paid in virtue of any legal liability, including a liability arising from breach of contract.

- o) Any sum paid by way of insurance against the risk of meeting any liability referred to in (xiii) above.
- p) Debts considered bad and written off or adjusted during the year of account.
- Non-deductible amounts¹⁹²:
 - a) Income-tax and super tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under (d) and (e) of sub-section (4) of section 198.
 - b) Any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in (xiii) above.
 - c) Loss of a capita nature including loss on sale of the undertaking or any of the undertakings or any of the company or of any part thereof not including any excess of the written down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value.
 - d) Any change in carrying amount of an asset or of a liability recognised in equity (reserves) [including surplus in profit and loss account] on measurement of the asset or the liability at fair value.

2.7 QUALIFYING CSR ACTIVITIES/EXPENDITURE

According to section 135(3)(a) of the 2013 Act, CSR Policy of a company “shall indicate the activities to be undertaken by the company as specified in Schedule VII”. CSR expenditure 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 2013 Act [Rule 7 of the CSR Rules]¹⁹³. According to Rule 2(1)(e) of the CSR Rules: “‘CSR Policy’ relates to the activities as specified in

¹⁹² <http://taxguru.in/company-law/computation-net-profit-csr-contribution-section-198.html>.

Last visited on 18-03-2016 at 10.32.

¹⁹³ supra note 50.

Schedule VII to the Act and the expenditure thereon, excluding the activities undertaken in pursuance of the normal course of business of a company”¹⁹⁴. According to Rule 2(1)(c), “Corporate Social Responsibility (CSR)” means and includes but is not limited to: (i) Projects or programs relating to activities specified in Schedule VII to the 2013 Act. (ii) Projects or programs relating to activities undertaken by the board of directors of a company in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy shall cover subjects enumerated in Schedule VII to the 2013 Act. Circular No. 21/2014, dated 18-6-2014 issued by MCA clarifies that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the 2013 Act, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.

“Spend”; “Spent” The Oxford Dictionary defines “Spend” as “Give (money) to pay for goods, services, or so as to benefit someone or something.” Stroud’s Judicial Dictionary defines ‘Spend’, “Spent” as under: “‘Expenditure’: What do you expend? You expend that which you have. In common parlance, you say that a man has spent more than his income. That is common parlance, but that is not language which you would suppose the legislature to use. A man cannot spend what he has not got; he can mortgage or pledge, but he cannot actually spend” (per Kekewich J., Re Bristol [1893] 3 Ch. 161).¹⁹⁵

‘Average net profit’ shall be calculated as per section 198 of the 2013 Act. According to Rule 2(1)(f) of the CSR Rules, ‘Net Profit’ means net profit as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:— (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and (ii) any dividend received from other companies in India, which are covered under and complying with provisions of section 135 of the Act. The first provision to Rule 2(1)(f)

¹⁹⁴ *Id.*

¹⁹⁵ <https://www.ird.govt.nz/resources/b/2/b2d8420c-6e2b-4cf9-afdc-65ac591e7813/is1303.pdf>. Last visited on 14-01-2016 at 10.31.

provides that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the 1956 Act shall not be re-calculated in accordance with the 2013 Act¹⁹⁶.

The second provision to Rule 2(1)(f) provides 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 and section 198 of the Act¹⁹⁷. Thus, it appears that, in case of companies registered in India, average net profits will have to be calculated as under: (a) Take net profit as per its financial statements prepared in accordance with the applicable provisions of the Act. (b) Make adjustments required by section 198. (c) Exclude the following from net profits: (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and (ii) any dividend received from other companies in India, which are covered under and complying with provisions of section 135 of the Act. (d) Calculate net profit for each of the preceding three financial years as per (a) to (c) above, aggregate them and divide by 3. In case of foreign companies covered by rule 3, the average net profits will have to be calculated as under: (a) Take net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381. (b) Make adjustments to net profit in (a) above as required by section 198. (c) Calculate net profits as per (a) and (b) above for each of the three preceding financial years, aggregate them and divide by 3.

2.8 CALCULATION OF NET PROFITS AS PER SECTION 198

In calculating net profits of a company in any financial year for managerial remuneration purposes¹⁹⁸: Credit shall be given for bounties and subsidies received from any Government or public authority unless and except in so far as the Central Government directs that credit shall not be given for the

¹⁹⁶ SINGH supra note 1.

¹⁹⁷ *Id* at 461.

¹⁹⁸ *Id*.

following sums¹⁹⁹: (i) premium on shares or debentures of the company which are issued or sold by the company; (ii) profits on sales by the company of forfeited shares; (iii) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof; (iv) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets²⁰⁰. Where the amount for which any fixed asset is sold exceeds the written down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value; (v) any change in carrying amount of an asset or of a liability recognized in equity (reserves) [including surplus in P&L account] on measurement of the asset or the liability at fair value.

The following amounts shall be deducted: (a) all the usual working charges; (b) directors' remuneration; (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis; (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits; (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf; (f) interest on debentures issued by the company; (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets; (h) interest on unsecured loans and advances; (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature; (j) outgoings inclusive of contributions made bona fide charitable and other funds [See section 181]²⁰¹; The consolidated payment in respect of leasehold land is virtually indistinguishable from an advance payment of rent for a specified

¹⁹⁹ SINGH supra note 1.

²⁰⁰ <http://taxguru.in/company-law/computation-net-profit-csr-contribution-section-198.html>.

Last visited on 28-02-2016 at 12.23.

²⁰¹ SINGH supra note 1.

period of years; by this, the purchaser expends a certain sum in advance as a result of which he saves the cost of rent in future years to come.

The amount annually amortized in respect of the leasehold land has, therefore, necessarily to be deducted while computing the net profits under section 349, as falling within the scope of the “outgoings” in clause (j) of section 349(4)(j) of the 1956 Act [corresponding to section 198(4)(j) of the 2013 Act]²⁰². Contributions made by a company to a political party or for a political purpose pursuant to section 293A of the 1956 Act [corresponding to section 182 of the 2013 Act] should be regarded as “outgoings” only as they are made for commercial expediency. The fact that section 293A is not specifically referred to in clause (j) of section 349(4) is not material since the language used therein, (k) depreciation to the extent specified in section 123; (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained; (m) any compensation or damages to be paid in virtue of any legal liability, including a liability arising from a breach of contract ; (n) any sum paid by way of insurance against the risk of meeting any liability referred to in (m) above; (o) debts considered bad and written off or adjusted during the year of account. The following amounts shall not be deducted: (i) income-tax and super tax payable by the company under the Income-tax Act, 1961²⁰³, or any other tax on the income of the company not falling under (d) and (e) above ; (ii) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in (m) above; (iii) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value; (iv) any

²⁰² *Id* at 461.

²⁰³ <http://www.smeipolisting.com/downloads/legal-zone/act/income-tax-act-1961.pdf>. Last visited on 02-02-2016 at 22.30.

change in carrying amount of an asset or of a liability recognized in equity (reserves) [including surplus in P&L account] on measurement of the asset or the liability at fair value.

Is there any cap on CSR spends? Section 135 only stipulates mandatory minimum CSR spends of at least 2% of average net profits. It does not stipulate any cap/ceiling on the CSR spends. The CSR Rules also do not stipulate any cap on CSR spends. Is ‘mandatory CSR spend’ a tax? The element of compulsory payment without reference to services in return is there in CSR spends also. But unlike taxes, the money doesn’t flow into the Government coffers. Moreover, if company defaults on CSR, there is no provision for coercive recovery by Government. Does CSR spend differ from charity? Character of charity is that it is purely voluntary and there is no legal obligation to make that contribution. CSR spends even if its contribution to PMNRF lacks this purely voluntary character. Can the company’s CSR policy restrict CSR spends to only donations to PMNRF? Contributions to the Prime Minister’s Relief Fund are one of the CSR activities specified in Schedule VII to the 2013 Act. The speciality of this CSR activity is that the company can simply contribute money and be done with it. There is no need of monitoring the spends like it may be the case with Eradicating hunger, poverty and malnutrition, Promoting preventive healthcare and sanitation, Making available safe drinking water etc. Besides there is 100% deduction of contribution under section 80G of the Income-tax Act, 1961 that goes with it²⁰⁴. This is probably the one CSR activity in Schedule VII where tax treatment is clear²⁰⁵. In view of this, the question arises whether company can frame a CSR Policy to spend entire required minimum CSR spend of 2% of ANP (Average Net Profit) per financial year only on PMNRF²⁰⁶. Answer to the question appears to be “yes”. There appears to be no restriction on company spending all its required CSR spend on any one activity specified in Schedule VII²⁰⁷.

²⁰⁴ supra note 203.

²⁰⁵ *Id.*

²⁰⁶ SINGH supra note 1.

²⁰⁷ PARANJAPE supra note 51.

2.9 SCOPE OF CSR EXPENDITURE

CSR use should incorporate all use including commitment to corpus, or on undertakings or projects identifying with CSR exercises affirmed by the Board on the proposal of its CSR Committee however does exclude any use on a thing not in similarity or not in accordance with exercises which fall inside the domain of Schedule VII of the Act [Rule 7 of the CSR Rules]. Use which won't be considered as CSR spends The CSR Rules indicate the use which won't be viewed as CSR spends as takes after. Use in exercises attempted in compatibility of typical course of business Activities embraced in compatibility of the ordinary course of business of an organization might not be viewed as CSR exercises. Henceforth, consumption on such exercises should not be considered CSR spends. [Rule 4(1)/Provision beneath Rule 6(1)(b) of the CSR Rules].

2.9.1 EXPENDITURE OUTSIDE INDIA

Consumption on just CSR exercises attempted inside India should be considered as CSR spend. Consequently, use on CSR exercises attempted outside India won't consider CSR spends. [Rule 4(4) of the CSR Rules]. Consumption only for the advantage of workers of the organization or their families just exercises which are not only for the advantage of representatives of the organization or their families might be considered as CSR action. Therefore, consumption on exercises which are only for the advantage of representatives of the organization or their families should not consider CSR spends. [Rule 4(5) of the CSR Rules]²⁰⁸. Solely - P.R. Aiyar's Advanced Law Lexicon gives the accompanying meaning of the word 'only': "To the avoidance of all others; without affirmation of any others to interest". Family - There is no meaning of "family" neither in the 2013 Act nor in the CSR Rules. P.R. Aiyar's Advanced Law Lexicon gives the accompanying meanings of 'family': "The father, the mother, and the youngsters, normally constitute a "family". A family constitutes all who live in one house under one head".

²⁰⁸ supra note 50.

(Page 303)²⁰⁹. “Family” is limited or extended in a few cases, to incorporate close related in others beneficiaries or to grasp relations by marriage.” (Page 305)²¹⁰. Words and Phrases. Perpetual Edition, Volume 16. pp. 303, 305) as referred to in *Payal Sawhney v. Meenakshi Suri*, (FB) AIR 1995 J&K 36, 43²¹¹. While the term might be said to have a very much characterized, wide, and far reaching importance by and large, (*Race v. Oldridge*, 32 Am Rep 27)²¹², it is one of extraordinary adaptability and is fit for a wide range of implications as indicated by the association in which it is utilized. Along these lines it might signify “youngsters” 'spouse and kids,' 'blood relations,' or the individuals from the household hover, as per the specific situation; it might be of slender or wide significance as the goal of the gatherings utilizing the word, or as the expectation of the law utilizing it, might be made to show up {*Ferb Rache v. Fabulous Lodge* 1 Mo. Application. 268, 271}²¹³. (Bom. Act 3, 1874).

In its conventional and essential sense the expression “family” implies the aggregate assemblage of people living in one house, or under one head or director, or one residential government; the relations between such people fundamentally being of a changeless or local character, not that of people, standing briefly together as outsiders; a family unit, the individuals who live under similar rooftop with the pater familias who shape his fireside. In its confined utilize the term would incorporate just guardians and their youngsters, however the term, as normally comprehended is not all that constrained (*Bair v. Robinson* 56 Am. Rep. 198)²¹⁴; along these lines it might incorporate grandchildren and every one of the people of similar blood living respectively in the family; so it might incorporate son- in-law and daughter-in-law; in reality it might incorporate all individuals from the family living under the power of the head thereof, as additionally the hirelings utilized in the

²⁰⁹ P.R. Aiyar, “Advanced Law Lexicon”, Words and Phrases. Perpetual Edition, Volume 16. pp. 303, 305.

²¹⁰ *Id.*

²¹¹ *Payal Sawhney v. Meenakshi Suri* (FB) AIR 1995 J&K 36, 43.

²¹² *Race v. Oldridge* 32 Am Rep 27.

²¹³ *Ferb Rache v. Fabulous Lodge* 1 Mo. Application. 268, 271.

²¹⁴ *Bair v. Robinson* 56 Am. Rep. 198.

house, and now and again it might incorporate people who are just tenants visitors.

In spite of the fact that the expression “family” is now and again used to incorporate those plunged or guaranteeing plummet from a typical progenitor: it has regularly, a much more extensive import, it is frequently used to show an assortment of people framed by the individuals who are just associated by blood or partiality; it is in some cases used to incorporate even a group of people who live in one house or under one head. [Oxford Dict., of Vol. 5, p.55 cited in 7 IC 436 (439)]²¹⁵. No positive number of people is important to constitute a family when the term is utilized as a part of its essential sense, aside from that there must be no less than two people, for clearly an accumulation of people must comprise of more than one individual; a couple living respectively without youngsters, workers or any one at all may constitute a family. The word is much of the time utilized as a part of basic discourse without reference to any settled family, however just with the end goal of showing the people related, as spouse, wife or guardians and kids. 'The family comprises of the individuals who live under similar rooftop with the pater familias; the individuals who frame (on the off chance that I may utilize the expression) his fire-side' - Lord KENYON, C.J., *R. v. Occupants of Darlington* (1792), 4 TR 800²¹⁶. “Family” is flexible and fit for various translations. Where a will, which made a decent inheritance of the salary of a house for religious purposes, gave: 'The said house should stay under the control and the supervision of the shebait for now, however might be accessible to every one of the individuals from my' (testator's) 'family both male and female for transitory home and utilize,' held that the expression 'individuals from my family' in the will implied me individuals from the deceased benefactor's family who were existing at the date of his demise and the endowment was legitimate.

Their Lordships see no motivation behind why “family” in this ought to be

²¹⁵ Oxford Dict., of Vol. 5, p.55 cited in 7 IC 436 (439).

²¹⁶ *R. v. Occupants of Darlington* (1792), 4 TR 800.

stretched out to incorporate individuals other than those current when the deceased benefactor passed on. [24 CWN 1026 : 1921 MWN 550 : 61 IC 323 : 28 MLT 453]. Family importance of. See 54 MLJ 357 : 109 IC 661 : 1928 M. 497 : 1928 Oudh 155. Relatives on female side if incorporated into the word 'family'. [See AIR 1928 Oudh 155]. "Family" is not a term of workmanship, but rather depicts a "unit" which has the familial qualities, e.g. presence of blood relationship. *Fitzpatrick v. Sterling Housing Association Ltd.* (1999) 4 All ER 705, p. 747 (HL). [Rent Act, 1977, Sch. I, para 2]²¹⁷. Hindu law—"family" in its famous sense implies youngsters. *Devki Nandan v. Murlidar* AIR 1957 SC 133, 139²¹⁸. "Family" does not mean a gathering of people who are perceived in law as having a privilege of progression or having a case to a partake in the property in question. *Smash Chavan v. Girija Nandini* AIR 1966 SC 323, 329²¹⁹.

The word family in a will held to signify 'the departed benefactor's relatives and their spouses living at the season of his passing. (1 CWN 671 N.) In a joint Hindu family guardians living independently are additionally individuals from the group of their child. *S.K. Dev v. D.C. Gagera* AIR 1985 Del. 169, 175²²⁰. [Delhi Rent Control Act (59 of 1958), S. 14(1), Provision (e)] The nephews ought to be viewed as the individuals from the proprietor's family. *Ram Pershad Singh v. Mukandlal* AIR 1952 Punj. 189²²¹. [Delhi and Ajmeer - Merwara Rent Control Act 19 of 1947, S. 9(1)(e)] Even if individuals from a joint Hindu Family live in better places in view of their being utilized in workplaces or carrying on different hobbies the attach is sufficiently solid to incorporate them inside the expression "family." *Nanak Chand v. Tara Devi* AIR 1953 Pun. 156²²². "FAMILY" implies an essential social gathering comprising of guardians and their posterity and in that capacity the landholder, his significant other and his posterity comprising of three minor children and three minor girls constitute a family.

²¹⁷ *Fitzpatrick v. Sterling Housing Association Ltd.* (1999) 4 All ER 705, p. 747 (HL).

²¹⁸ *Devki Nandan v. Murlidar* AIR 1957 SC 133, 139.

²¹⁹ *Smash Chavan v. Girija Nandini* AIR 1966 SC 323, 329.

²²⁰ *S.K. Dev v. D.C. Gagera* AIR 1985 Del. 169, 175.

²²¹ *Ram Pershad Singh v. Mukandlal* AIR 1952 Punj. 189.

²²² *Nanak Chand v. Tara Devi* AIR 1953 Pun. 156.

State of Gujarat v. Jat Laxmanji Talsji AIR 1988 SC 825²²³. [Gujarat Agricultural Land Ceiling Act (1960), S. 6(3-B)] “FAMILY” indicates a gathering of individuals related by blood or marriage. *C. Krishna Prasad v. C.I.T. Bangalore* AIR 1975 SC 498, 499²²⁴. [Income-charge Act (43 of 1961), S. 2(31), (ii)] Court held that “family” must be given not a confined but rather a more extensive significance to incorporate the leader of the family as well as all individuals or relatives from the basic progenitors who are really living with similar head. The expression “family” should dependably be generously and extensively translated in order to incorporate close relations of the leader of the family. *Baldev Sahai v. R.C. Bhasin* AIR 1982 SC 1091, 1094²²⁵; *Madhuben Natwarlal Joravarnagar v. Prajapati Parshottam Tulsidas* AIR 1996 Guj. 40, 42²²⁶. The gathering comprising of guardians and their kids; those slid or asserting plummet from a typical progenitor; individuals from family; the family, or every one of the individuals who live in one house (as guardians, kids, hirelings etc.).'

Commitment of any sum specifically or in a roundabout way to any political gathering under section 182 of the Act might not be considered as a CSR action [Rule 4(7) of the CSR Rules]²²⁷. This arrangement of Rule 4(7) is deplorable as organizations adding to political gatherings in a straightforward way makes a positive societal effect. Section 182 gives as under: (A) The accompanying organizations are disallowed from making political commitments (i.e. commitments to any political gathering or to any individual for a political reason): (i) Government Company. (ii) an organization (other than a Government organization) which has been in presence for under three money related years. (B) An organization (other than a Government organization) which has been in presence for 3 or more monetary years may make political commitments subject to the accompanying conditions: (i) the sum or, by and large, the total of the sum which might be so contributed by the

²²³ *State of Gujarat v. Jat Laxmanji Talsji* AIR 1988 SC 825, 828.

²²⁴ *C. Krishna Prasad v. C.I.T. Bangalore* AIR 1975 SC 498, 499.

²²⁵ *Baldev Sahai v. R.C. Bhasin* AIR 1982 SC 1091, 1094.

²²⁶ *Madhuben Natwarlal Joravarnagar v. Prajapati Parshottam Tulsidas* AIR 1996 Guj. 40, 42.

²²⁷ supra note 234.

organization in any money related year should not surpass 7.5% of its normal net benefits amid the three instantly going before budgetary years. (ii) a determination approving the making of such commitment is passed at a meeting of the Board of Directors such determination should be regarded to be avocation in law for the making and the acknowledgment of the commitment approved by it.

Extent of 'political commitments' - Section 182(2) characterizes 'political commitments' as under : a gift or membership or instalment brought on to be given by an organization for its sake or for its to a man who, to its information, is carrying on any action which, at the time at which such gift or membership or instalment was given or made, can sensibly be viewed as liable to influence open support for a political gathering u might likewise be considered to be commitment of the measure of such gift, membership or instalment to such individual for a political reason the measure of consumption caused, straightforwardly or in a roundabout way, by an organization on a promotion in any production, being a distribution in the way of a trinket, leaflet, tract, flyer or something like that, should likewise be regard,— (i) where such production is by or in the interest of a political gathering, to be a commitment of such add up to such political gathering, and (ii) where such distribution is not by or for the benefit of, but rather for the upside of a political gathering, to be a commitment for a political reason. The accompanying things will be secured by the section in perspective of the words “specifically or by implication” and the same ought to be collected to figure out if the commitments secured by this section are inside as far as possible: (i) Contribution made straightforwardly to a political gathering whether in trade or out other frame. (ii) Expenditure acquired on printing and appropriation of publications and flyers, either straightforwardly concerned or associated with decisions or generally for a political reason. (iii) Contribution made straightforwardly to a political gathering whether in trade or out other frame for running an instructive organization or for undertaking humanitarian exercises. (iv) A gift, commitment, or other type of support to a Trust, Society

or Association in any of the under noted conditions: (an) If the Trust, Society or Association has any political targets either entirely or even halfway.

(b) If the Trust, Society or Association is framed for any political reason either completely or even mostly. (c) If the Trustees or Governing Council or Committee of the Trust, Society or Association have the caution of utilizing the assets entirely or incompletely for a political reason or in promotion of a political goal. Then again, the simple reality that a portion of the objects of a specific Trust, Society or Association are like the objects of a specific political gathering however are not of a political nature ought not go about as an exclusion. (v) Expenditure acquired on compensation (counting different advantages) to representatives or on other foundation where the administrations of the workers are made accessible regarding the exercises of some political gathering, for example, decisions to authoritative get together, Parliament, and so forth (vi) Making accessible vehicles possessed by the organization to any political gathering or to any hopeful looking for race to any nearby power, get together, Parliament, and so on., either free of cost, or at not as much as market rate. [Guidance Note on section 293A of the Companies Act and the inspector issued by ICAI].

In the event that political gathering sets up a NGO (isolate section 8 organization) covering CSR action, will commitments to NGO consider CSR spends under section 135 or as political commitments under section 182? - Expenditure brought about in promoting in a trinket, leaflet, tract, hand out or diary distributed by an exchange union or a worker's organization framed by a political gathering need not be viewed as hit by the section if the exchange union has a different and particular legitimate substance. In the event that the exchange union or worker's organization shaped by the political party does not have a different and particular lawful element, then such use will must be viewed as hit by section 182(2)(b)²²⁸. This depends on the feeling communicated by ICAI in Guidance Note on Tax Audit under section 44AB of the Income-assess Act, 1961 with regards to section 37(2B) of that Act and

²²⁸ PARANJAPE supra note 51.

condition 17(c) of Form No. 3CD which cover consumption secured by section 182(2)(b). In light of similar one can opine if the NGO is unmistakable lawful substance from the political party and has set up three-year track record, then commitment to it will be CSR spend. Consumption not in congruity or not in accordance with exercises inside the domain of Schedule VII However, it does exclude any use on a thing not in similarity or not in accordance with exercises which fall inside the domain of Schedule VII of the 2013 Act [Rule 7 of the CSR Rules]²²⁹.

Use on erratic occasions does not qualify as CSR spend MCA has encourage cleared up that CSR exercises ought to be embraced by the organizations in venture/program mode [as alluded in Rule 4(1) of Companies CSR Rules, 2014]. One-off occasions, for example, marathons/grants/beneficent commitment/promotion/sponsorships of TV projects, and so forth would not be qualified as a feature of CSR use. - MCA's Circular No. 21/2014 dated 18-6-2014²³⁰. Costs brought about for satisfaction of any statute is not CSR spend Expenses acquired by organizations for the satisfaction of any Act/statute of controls, (for example, Labour Laws, Land Acquisition Act, and so on.) would not consider CSR use under the Companies Act. - MCA's Circular No. 21/2014 dated 18-6-2014. If there should arise an occurrence of outside holding organizations Expenditure brought about by Foreign Holding Company for CSR exercises in India will qualify as CSR spend of the Indian backup if, the CSR uses are directed through Indian auxiliaries and if the Indian auxiliary is required to do as such according to section 135 of the Act. - MCA's Circular No. 21/2014 dated 18-6-2014.

The procedure, frame and substance of globalization, privatization and advancement made weights on organizations to perform as indicated by universally perfect exchange rehearses. CSR is perceived as the essential spine

²²⁹ supra note 182.

²³⁰ http://www.mca.gov.in/Ministry/pdf/General_Circular_21_2014.pdf. Last visited on 02-01-2017 at 05.30.

of the business. The accompanying components are considered for comprehension the significance of CSR:

- Globalization and the related development in rivalry.
- Increased size and impact of organizations.
- Retrenchment or repositioning of government and its parts.
- War for ability; organizations going after aptitude.
- Growth of worldwide common society activism.
- Increased significance of impalpable resources²³¹.

2.10 MEASURING THE IMPACT OF CORPORATE SOCIAL RESPONSIBILITY

Some aspects are amenable to quantification while others are not. Nevertheless, measurement tools are needed to be developed. Since CSR can be operationalized in so many different ways, there are no reliable aggregate numbers available on CSR activity at the present time. The 'Global Reporting Initiative'²³², a key coalition of partnerships, NGO's bookkeeping association, business affiliations, and different partners from around the globe assembled by the United Nations Environment Program, affirmed in 2001 "there is a need to evaluate the take-up of CSR practices and total and disaggregate information from different sources". A case of private-area attempting to build up its own measures is the bookkeeping calling. Bookkeeping firms and expert bookkeeping social orders, including the American Institute of Certified Public Accountants, the Institute of Chartered Accountants in England and Wales, and the Society of Management Accountants of Canada, has outlined structures of CSP (Corporate Social Performance) pointers that organizations can intentionally apply²³³.

²³¹ Maliha Elahi and Shazia Nauman, "Role of Corporate Social Responsibility and Sustainability in Organization's Excellence within Virtual Project Management", http://www.biz-essentials.org/research/role_csr.pdf. Last visited on 10-05-2016 at 07.00.

²³² Global Reporting Initiative guidelines, available at: <http://www.globalreporting.org/Home>. Last visited on 03-09-2016 at 10.28.

²³³ *Id.*

2.11 CONCLUSION

Through the said Chapter, the graveness of the problem has been sought to be discussed and the necessity of the Indian corporate to come out with feasible solutions for addressing the issues related to corporate social responsibility implementation has also been portrayed. Furthermore the Schedule VII of S.135 should be made omnibus. The act is not sufficiently elaborated and hence the confusion is creating a lot of problem. The companies are hesitant to spend CSR fund in many areas as they are not really sure that whether that activity will be considered as CSR or not. In schedule VII all kinds of activity which will be considered as CSR activity should be listed. The adjoined CSR rule under Companies Act 2014 is also not stating all CSR activities.