

## Corporate Social Responsibility: Significance and Constitutional Perspectives

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### Abstract

Corporate Social Responsibility (CSR) can be defined as a Company's sense of responsibility towards the community and environment (both ecological and social) in which it operates. Companies can fulfil this responsibility through waste and pollution reduction processes, by contributing educational and social programs, by being environmentally friendly and by undertaking activities of similar nature. CSR is not charity or mere donations. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth. CSR is said to increase reputation of a company's brand among its customers and society. The Companies Act, 2013 has formulated Section 135, Companies (Corporate Social Responsibility) Rules, 2014 and Schedule VII which prescribes mandatory provisions for Companies to fulfil their CSR. This article aims to analyse these provisions (including all the amendments therein).

The practice of CSR or Corporate Social Responsibility as a paradigm for firms and businesses to follow has evolved from its early days as a slogan that was considered trendy by some firms following it to the present day realities of the 21st century where it is no longer just fashionable but a business requirement to be socially responsible. This evolution has been necessitated both due to the myriad problems that we as a race face which has changed the environment under which firms operate as well as a realization among business leaders that profits as the sole reason or *raison d'être* for existence can no longer hold good.

The reason why companies must look beyond profits is also due to the peculiar situation that humanity finds itself in the second decade of the 21st century. Given the political, economic, social and environmental crises that humans as a race are confronting, corporations have a role to play since they contribute the most to the economic wellbeing of humanity and in turn influence the political and social trends. Corporate Social Responsibility or CSR makes for eminent business sense as well when one considers the knock-on effect that social and environmental responsibility brings to the businesses. For instance, corporations exist in a symbiotic relationship with their environments (the term environment refers to all the components of the external environment and not to ecological environment alone) where their exchange with the larger environment determines to a large extent how well they do in their profit seeking endeavors.

### Applicability of CSR Provisions

On every Company including its holding or subsidiary having

- Net worth of Rs. 500 Crore or more, or
- Turnover of Rs. 1000 crore or more, or

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- Net Profit of Rs. 5 crore or more during the immediately preceding financial year  
A foreign company having its branch office or project office in India, which fulfills the criteria specified above  
However, if a company ceases to meet the above criteria for 3 consecutive financial years then it is not required to comply with CSR Provisions till such time it meets the specified criteria.

**CSR Committee**

Every Company on which CSR is applicable is required to constitute a CSR Committee of the Board:

- Consisting of 3 or more directors, out of which at least one director shall be an independent director. However, if a company is not required to appoint an independent director, then it shall have in 2 or more directors in the Committee.
- Consisting of 2 directors in case of a private company having only two directors on its Board
- Consisting of at least 2 persons in case of a foreign Company of which one person shall be its authorized person resident in India and another nominated by the foreign company

**Functions of CSR Committee**

The CSR Committee Shall

- Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the Company
- Recommend the amount of expenditure to be incurred on the activities referred to in clause (i)
- Monitor the CSR Policy of the company from time to time
- Institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

**Responsibility of Board of Directors (BoD)**

The BoD of every company on which CSR is applicable shall:

- after considering the recommendations made by the CSR Committee, approve the CSR Policy for the Company and disclose contents of such Policy in Board report.
- ensure that the activities as are included in CSR Policy of the company are undertaken by the Company
- shall disclose the composition of the CSR Committee in Board Report
- ensure that the company spends, in every financial year, at least **2% of the average net profits** of the company made during the 3 immediately preceding financial years, in pursuance of its CSR Policy. The CSR projects/programs/activities undertaken in India only shall amount to CSR Expenditure.

**Note:**

The Company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities and shall specify the reasons for not spending

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whole of earmarked amount (if it fails to spend some) in Board Report.

#### **CSR Policy**

The CSR Policy of the company shall, inter-alia, include the following namely A list of CSR projects or programs which a company plans to undertake specifying modalities of execution of such project or programs and implementation schedules for the same

- Monitoring process of such projects or programs
- A clause specifying that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of the company.

#### **CSR Activities**

- The CSR activities shall be undertaken by the company, as per its CSR Policy, excluding activities undertaken in pursuance of its normal course of business.
- The BoD may decide to undertake its CSR activities approved by the CSR Committee, through
- a section 8 company or a registered trust or a registered society, established by the company, either singly or along with any other company, or
- a section 8 company or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature
- a section 8 company or a registered trust or a registered society, other than those specified in clauses (a) and (b) above, having an established track record of 3 years in undertaking similar programs or projects
- Collaboration 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.
- The CSR projects or programs or activities not to be considered as CSR Activities:
- Expenses for the benefit of only the employees of the company and their families
- Contribution of any amount directly or indirectly to any political party

#### **Display of CSR Activities on its Website**

The BoD shall disclose contents of CSR policy in its report and the same shall be displayed on the company's website, if any.

#### **Other Important Points**

- The balance sheet of a foreign company to be filed under section 381(1) (b) of the Act shall contain an Annexure regarding report on CSR.
- The Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the areas or subjects specified in Schedule VII (given below) of the Act.

#### **Schedule 7**

Activities which may be included by companies in their Corporate Social Responsibility Policies

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relating to:

- Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swacch Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.
- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- Promoting gender equality, empowering women, 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.
- 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 including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.
- 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 art and handicrafts;
- Measures for the benefit of armed forces veterans, war widows and their dependents;
- Training to promote rural sports, nationally recognized sports, Paralympics sports and Olympic sports
- Contribution to the Prime Minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the central govt.
- Rural development projects
- Slum area development.

#### **Corporate Social Responsibility and Constitutional Perspectives**

The VII Schedule of Sec 134 which gives a list of CSR activities to be undertaken by the corporates, indicates that all the activities are related to Fundamental Rights under Art 21 of the Constitution which provides for right to life or personal liberty, though it is not so specifically stated. This can be a possible conclusion arising out of the reading of judicial decisions relating to Art 21 together with CSR activities as enumerated in the VII<sup>th</sup> Schedule. Right to life under Art 21 includes the right to live with human dignity and all that goes with it namely a) basic necessities of life, such as nutrition, clothing and shelter....., Protection of health, right to medical aid, provision for timely medical treatment in Govt., hospitals, that the State to ensure that nobody dies of starvation and the right to water imposing a duty on the State to provide clean drinking water to its citizens. A summary of the above decisions of the court not only explains the ambit of Art 21 but also a clear evidence of what is contained in VII<sup>th</sup> Schedule of Sec 134 of the Indian Companies Act, 2013 listed as number one of CSR activities of corporates which states thus:-

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“To eradicate hunger, poverty and malnutrition, promoting healthcare, including preventive healthcare, sanitation and making available safe drinking water” In other words, CSR activities are to serve as the supporting arm of the Government in giving effect to fundamental rights more specifically to Art 21 of the Constitution.

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