



# STUDENT PROFESSIONALS TODAY

VOLUME1

ISSUE 6

SEPTEMBER 2017

PAGES 1-20

PRICE: Rs.20



An Initiative by :



**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

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## Invitation for Contributing an Article

Readers are invited to contribute article/s for the Journal. The article should be on a topic of current relevance on Corporate Law, Tax Law, or on any other matter or issue relating to Economic or Commercial Laws. The article should be original and of around 7-8 pages in word file (approx. 2500 words). Send your articles at email id : [articles@vidhimaan.com](mailto:articles@vidhimaan.com) along with your student registration number. The shortlisted articles shall be published in the Journal.

Printed and Published by B P Bhargava on behalf of Vidhimaan Publishers Pvt. Ltd. Printed at Delhi Press Samachar Patra Pvt. Ltd., 36-A, UPSIDC, Site-4, Sahibabad and published at 158 Basant Enclave, Palam Road, New Delhi 110057. Editor : B P Bhargava.

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Dear Students,

तमसो मा ज्योतिर्गमय  
(Brihadaranyaka Upanishad)

*O Lord Keep me not in the Darkness of Ignorance, but lead me towards the Light of Knowledge.*

I am pleased to share with you that in line with the Shaloka from Brihadaranyaka Upanishad, ICSI has embarked on an innovative journey of 'digital transformation' by coming up with one of its kind '24x7 e-learning platform'. The ever dynamic educational environment requires that focus of delivery of education should shift to bringing 'learning to people' instead of bringing 'people to learning'. Therefore, ICSI has attempted integrating boons of technology to the CS curriculum. The first phase of E-learning has already been launched on 15th August 2017, specifically catering to the requirements of the Foundation student registered under New Syllabus (2017). I urge all learners to reap the maximum fruit of this out of the box initiative of ICSI to reach pinnacle of success in your professional journey in the sphere of Corporate Governance.

Youth is the most precious asset of any country. Youth is often envisioned to represent the future as they bring new ideas and energy and add to the pool of knowledge that exists currently. The role of CS youth in shaping Good Governance environment in any nation is also undeniable. They are the ones who will be the guards of Governance in any sphere from Corporate Governance to National Governance. Keeping this in mind, ICSI is organizing its 18th All India Students' Conference at Jaipur on a very dynamic theme "CS Youth: Shaping New Paradigms in Governance". I urge all my dear students to actively participate in this conference and deliberate upon new ideas to shape such new paradigms in Governance.

The ICSI will also be embarking upon the beginning of its Golden Jubilee year on 4th of October 2017, you are welcome to send your innovative ideas and creative suggestions for the same to my Office.

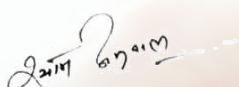
On a signing off note, I wish you all a very **Happy Teachers Day** on 5<sup>th</sup> of September, the birth anniversary of **Dr. Sarvepalli Radhakrishnan**, the Second President of India. It is said that when Dr. Radhakrishnan became the president, his students and friends urged him to celebrate his birthday. Known for his humble and modest nature, he implored, "Instead of celebrating my birthday, it would be my proud privilege if 5<sup>th</sup> of September is observed as Teachers' Day." Since then from 1962, his birthday has been observed as "Teacher's Day" in the country. In India, the importance of Guru has been recognized since ages, even the Sant Kabir has emphasized the significance of Guru as

गुरु गोविन्द दोऊ खड़े, काके लागूं पांय ।

बलिहारी गुरु आपने गोविन्द दियो बताय ।।

(गुरु और गोविंद (भगवान) एक साथ खड़े हों तो किसे प्रणाम करना चाहिए – गुरु को अथवा गोविन्द को? ऐसी स्थिति में गुरु के श्रीचरणों में शीश झुकाना उत्तम है जिनके कृपा रूपी प्रसाद से गोविन्द का दर्शन करने का सौभाग्य प्राप्त हुआ।)

Best wishes.

  
सी एस ( डॉ. ) श्याम अग्रवाल  
अध्यक्ष, भारतीय कंपनी सचिव संस्थान  
Date: 6th September, 2017

## CORPORATE SOCIAL RESPONSIBILITY: OBLIGATIONS IN A NUTSHELL

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*In this article, the author highlights the provisions of sub-section (1) and (5) of section 135. The author further decoded the consequence or way out for non-complying section 135 of the Companies Act, 2013.*

### INTRODUCTION

The Companies Act, 2013 ('Act') ushered in the requirement of corporate social responsibility ('CSR') by introducing the provisions of section 135 of the Act, read with Schedule VII and the CSR Policy Rules 2014. This along with general Circular dated 18th January, 2014, issued by the Ministry of Corporate Affairs ('MCA') provides the broad contours within which eligible companies are required to formulate their CSR policies, including the activities they wish to undertake and implement the same in right earnest. Boards of all eligible companies in terms of the Act have approved their CSR policies, including CSR projects or programs as recommended by their respective CSR committees.

### MANDATE

Every company, which qualifies under section 135 (1) of the Act, shall invest in every financial year at least 2 per cent of the average net profits before tax, made during the three immediately preceding financial years (CSR expenditure). The said CSR expenditure shall be spent-

- a. by the company itself (in any of the specified activities as mentioned in Schedule VII); or
- b. by a registered trust or a registered society or a company established under section 8 of the Act, established by the company singly or jointly with others as per the law; or

The other companies/bodies, etc., can contribute their mandated CSR

expenditure to such a trust or a registered society or a company established under section 8 (said bodies) only after the said bodies have established track record of three years. In the absence of such a track record, the said bodies cannot accept any contribution from any other companies.

### WHAT IS THE QUALIFICATION WHICH MANDATES THE INVESTMENT IN CSR?

Sub-section (1) of section 135 provides that every company:

- having a net worth of Rs. 500 crore or more, or
- a turnover of Rs. 1,000 crore or more, or
- a net profit of Rs. 5 crore or more

During any financial year, it shall constitute a CSR committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The unlisted public company /private limited companies fulfilling the above criteria need not have an independent director in its CSR Committee if, in terms of section 149(4) of the Act, it is exempted to appoint an independent director. Further, a private company having only two directors on its Board is obliged to have only two directors in its CSR committee and not three directors.

One should note that the above thresholds are mutually exclusive and if a company falls within the purview of any one of the above, it will be necessary for it to constitute a CSR committee. Logically, it is meant for the financial year ended 31st March 2014, since the



### Corporate Social Responsibility: Obligations in a Nutshell

Act and section 135 came into effect from the financial year 2014-15. This section only states about constitution of the CSR committee and nothing more.

The obligation to make CSR contribution emanates from sub section (5) of section 135 and not sub section (1) of section 135. It provides that CSR spends should be at least 2 per cent of the average net profits made during the three immediately financial years. So, in sub section(1) of section 135, it is mentioned “any financial year” and in sub section (5) of section 135 it is mentioned “immediately three preceding financial years”. The CSR committee needs to be formed the moment the threshold has crossed, whereas contribution is required to be based on average

aggregate. But the obligation to spend cannot be carried forward.

The question which arises is that does it is required to set up a CSR committee because of fulfillment of any one of the requirements of sub section (1) of section 135, even in case the need to spend under sub section (5) of section 135 is yet to happen. In my view, merely to set up a committee only to satisfy the requirement of the law does not make sense, if the requirement to spend does not arise. The CSR committee, in that case, would only turn up to be an ornamental committee.

To remove the ambiguity in sub section(1) of section 135, the Companies (Amendment) Bill, 2016 has proposed that the expression “any financial year” the expression “immediately preceding financial year” shall be substituted. The Amendment Bill has also proposed a proviso to sub section (1) of section 135 stating that where a company is not required to appoint an independent director under subsection (4) of section 149 of the Act, it shall have its CSR Committee of two or more directors instead of three directors.

**Proviso to sub section (5) of section 135 mentions that if the Company fails to spend amount, the Board shall in its report made under Section 134(3) of the Act, specify the reasons for not spending.**

#### **WHAT HAPPENS IF THE MANDATED SPEND DOES NOT HAPPEN**

of the net profits of three immediately financial years. It is to be noted that though it is obligatory to spend the mandated 2 per cent, a company can always, if they feel so, can spend more than the mandated amount. It is also to be noted in the event one fails to spend in one year the same cannot be carried forward. The unspent amount can be added with the amount of the next year and can be spent in

Proviso to sub-section (5) of section 135 mentions that if the company fails to spend such amount, the Board shall in its report made under section 134(3) of the Act, specify the reasons for not spending. So technically there is no mandated penalty for non-compliance. It is that one must explain in its Board's Report about the reasons for not spending. So, it boils down to the concept of “Comply or Explain”. By separate notifications, specified IFSC, public and private companies have been exempted from fulfilling the requirements of

## Corporate Social Responsibility: Obligations in a Nutshell

section 135 for a period of five years from the commencement of business.

### REPORTING FRAMEWORK

The reporting framework in the Board's report as specified in the Companies (Corporate Social Responsibility Policy) Rules, 2014, in general, is as under

- Brief outline of the company's CSR Policy including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR Policy and projects or programs;
- Composition of the CSR committee.
- Average net profits of the company for the last three financial years.
- Prescribed CSR expenditure (2 per cent of the amount as in item above).
- Details of CSR spent during the financial year:
  - ▶ Total amount to be spent for the financial year
  - ▶ Amount unspent, if any
  - ▶ Manner in which the amount spent during the financial year.
- In case the company has failed to spend the two percent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
- A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy is in compliance with CSR objectives and policy of the company.

It can be observed that the reporting framework is quite comprehensive. So, one needs to be very careful, as to how the reporting should be done, in the event mandated CSR spends have not happened,, Given the above, one should be careful in disclosing the facts of constitution of the CSR committee, details about its CSR policy, the

spends done or not done or carried forward, which are the areas in which spends have happened?, details about the project and so on.

### CONCLUSION

The provision of CSR is unique to India. It is like a social obligation which has been thrust by the government to the corporate sector. In most of the other jurisdictions, it is still voluntary in nature. Before the introduction of CSR, CSR activities by corporates were voluntary, driven directly or through various NGOs. It was more of a philanthropic exercise and had nothing to do with business. It was more like an institution building exercise like establishing research and educational institutions. The thinking has now changed and corporates have started to view CSR as strategic philanthropy linked with responsibility and veering towards community development through various projects. No doubt the legal provisions have provided a bench mark to corporates who have been contributing to CSR before the commencement of the Act on a voluntary basis. But for others, who all have not been contributing, the mandated provisions have become a guidance and an awakening call to be a partner with the government in the development of the social sector.

The provision of CSR is unique to India. It is like a social obligation which has been thrust by the government to the corporate sector. In most of the other jurisdictions, it is still voluntary in nature.

# CORPORATE SOCIAL RESPONSIBILITY

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*This article gives an insight into the evolution of CSR across the world including India. Further, the author discussed various dimensions to CSR along with the contemporary significance of regulatory regime of CSR in India.*

## INTRODUCTION

Social responsibility, in relation to an individual, is an ethical theory which states that actions of an individual must benefit the whole of society. It is aimed at striking a balance between economic growth and the welfare of society as well as environment. Similarly, corporate social responsibility ('CSR') aspires to make each business corporation accountable for its impact on stakeholders, environment and society as a whole. In other words, it refers to ensuring the success of the business by inclusion of social and environmental considerations into a company's operations. It means satisfying the shareholders' and customers' demands while also managing the expectation of other stakeholders such as employees, suppliers and the community at large. The essence of CSR comprises philanthropic, corporate, ethical, environmental and legal as well as economic responsibility.

## BRIEF HISTORY

Since decades, corporate executives have struggled with the issue of the organisation's responsibility to its society. Early on it was argued by some that the company's sole responsibility was to provide maximum financial return to shareholders. It became quickly apparent to everyone, however, that this pursuit of financial gain had to take place with minimal social and environmental impact. The dawn of industrialisation led to an increase in the carbon footprint by businesses

thereby stressing upon the need for corporations to "give back" something to the society.

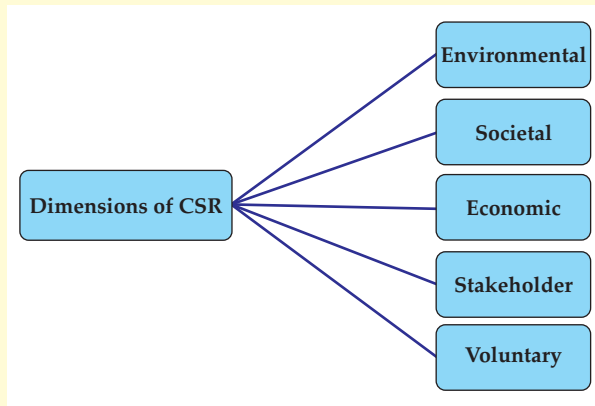
This gave birth to the concept of CSR. In 1953, Howard Bowen made the first significant scholarly contribution by publishing the book, *The Social Responsibilities of the Businessman*. Here he proposed the CSR definition as "the obligations of business to pursue those policies, to make those decisions or to follow those lines of action which are desirable in terms of the objectives and values of our

CSR refers to ensuring the success of the business by inclusion of social and environmental considerations into a company's operations. It means satisfying the shareholders' and customers' demands while also managing the expectation of other stakeholders such as employees, suppliers and the community at large.

society." Since then, various authors from diverse schools of thought have defined CSR with the essence of all remaining the same; encourage accountability of social and environmental impact of businesses.

## Corporate Social Responsibility

### The Five Dimensions of CSR



- ▶ **Environmental** - The environmental dimension of CSR refers to business impact on the environment. The goal, as a socially responsible company, is to engage in business practices that benefit the environment. e.g., use of recycled materials in packaging.
- ▶ **Societal** - The societal dimension of corporate responsibility involves the relationship between business and society as a whole. The business must benefit society as a whole. This could involve sourcing fair trade products, for example, or agreeing to pay employees a livable wage.
- ▶ **Economic** - The economic dimension refers to the effect that CSR has on the finances of the company. In an ideal world, where CSR had no costs, there would be no reason to limit it. But in the real world it is important to recognise the financial impact that these actions have and to balance being a good corporate citizen with making a profit.
- ▶ **Stakeholder** - The stakeholders are all people affected by the company's actions. These include employees, suppliers and members of the public. When considering the stakeholder dimension of CSR, the company must consider how the business decisions

affect these groups. For example, you might be able to increase your output by having employees work more, but you should consider the personal impact it will have on them.

- ▶ **Voluntary** - Actions that fall into the voluntariness dimension are those that are not mandatory. These actions are based in what the company believes is the correct thing to do. For example, the company may believe that using organic products is the right thing to do even if it is not required to do so.

### CASE STUDY –STARBUCKS COFFEE

- ▶ **Starbucks and CSR - Overview** - Starbucks Corporation is an American coffee company and coffeehouse chain. Starbucks was founded in Seattle, Washington in 1971. Starbucks Coffee. The company has been an advocate of CSR movements, especially those pertaining to sustainability in business.
- ▶ **Challenge** - Starbucks, being a successful global company with a position as a market leader has received a lot of attention from various stakeholder groups. Starbucks has acted on this increased pressure and is now engaged in several CSR initiatives, expressed through various communication tools on its corporate website. The aim is to analyse how Starbucks articulated its CSR efforts to specific stakeholder groups, in a legit, transparent and persuasive manner.
- ▶ **Stakeholder Groups** - The following are the main stakeholders in Starbucks Coffee's business:
  - ♦ Employees
  - ♦ Customers
  - ♦ Suppliers (supply firms, coffee farmers)
  - ♦ Environment
  - ♦ Investors
  - ♦ Governments



## Corporate Social Responsibility

### CSR Initiatives

- ▶ **Employees** - As stakeholders, employees typically demand for better working conditions, job security and higher wages. At Starbucks, employees are given wages above the legally mandated minimum wage. In 2014, Starbucks boosted its CSR performance for this stakeholder group by giving scholarships to employees based on a partnership with Arizona State University. In this partnership, Starbucks pays for 56% of tuition fees for employees' junior and senior years at the University.
- ▶ **Customers** - The interests of this stakeholder group are high quality service and products. As the world's most popular specialty coffeehouse chain, Starbucks effectively addresses this interest. The company also includes customers as major stakeholders by extending the Starbucks culture to customers at its cafés.
- ▶ **Suppliers** - The main interest of this stakeholder group is compensation and a growing demand from Starbucks. Farmers aim to increase coffee yield to generate more revenues. Starbucks addresses the interests of these stakeholders through a number of CSR programs. For example, the firm's supplier diversity program ensures that more suppliers from around the world are included in the supply chain. In addition, Starbucks' Coffee and Farmer Equity (CAFE) program requires transparency among wholesale suppliers to ensure that coffee farmers are properly paid.
- ▶ **Environment** - The company's CAFE program has led to higher biodiversity and shade quality in certified coffee farms. Currently, 90 per cent of Starbucks' supply is from CAFE-certified farms.
- ▶ **Investors** - Investors have interests in high

financial performance of the company. Starbucks' global expansion and continued dominance in the coffeehouse industry indicates high financial performance.

- ▶ **Governments** - Starbucks must address the interests of numerous governments as stakeholders, considering the company's global presence. In general, Starbucks complies with rules and regulations. However, the company has been criticised for tax evasion in Europe. Thus, the company's comprehensive CSR efforts can be improved to address this stakeholder group.

### ANALYSIS AND CONCLUSION

Starbucks has run its business by driving CSR as a tool that covers the company in every sector of their business. Starbucks has high CSR performance in addressing the interests of a majority of its stakeholders. By combining its CSR Policy with business strategy, Starbucks Corporation has ensured a loyal customer and supplier base along with growing profits.

### CSR IN INDIA

According to "Altered Images: the 2001 State of Corporate Responsibility in India Poll", a survey conducted by Tata Energy Research Institute, the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches:

- ▶ **Ethical Model (1930–1950)** - One significant aspect of this model is the promotion of "trusteeship" that was revived and reinterpreted by Gandhiji. Under this notion the businesses were motivated to manage their business entity as a trust held in the interest of the community. The efforts of Tata group directed towards the well-being of the society during this phase are also worth mentioning.

### Corporate Social Responsibility

► **Statist Model (1950–1970s)** - Under the aegis of Mr. Nehru, this model came into being in the post-independence era. An important feature was that the state ownership and legal requirements decided the corporate responsibilities.

► **Liberal Model (1970s –1990s)** - The model was encapsulated by Milton Friedman. As per this model, corporate responsibility is confined to its economic bottom line. This implies that it is sufficient for business to obey the law and generate wealth, which through taxation and private charity can be directed to social ends.

► **Stakeholder Model (1990s – Present)** - The model came into existence during 1990s as a consequence of realisation that with growing economic profits, businesses also have certain societal roles to fulfill.

#### **NEED FOR LEGAL RECOGNITION**

The concept of CSR was legislated in the Companies Act, 2013 ('the Act') making it mandatory for certain corporates in India to contribute towards CSR activities. As per FAQs on CSR released by Ministry of Corporate Affairs ('the MCA'), it is apparent that the CSR provisions were inserted not to monitor but to generate conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country.

#### **LEGAL PROVISIONS UNDER COMPANY LAW**

##### ► **Applicability**

With effect from 1st April 2014, every company which either has net worth of Rs. 500 crore or turnover of Rs. 1,000 crore or net profit of Rs. 5 crore, needs to spend at least 2 per cent of its

average net profit for the immediately preceding three financial years on CSR activities.

##### ► **CSR Activities**

The CSR activities must be with respect to any of the activities mentioned in Schedule VII of the Act. The activities briefly include –

- eradicating hunger and poverty
- promoting preventive healthcare
- promoting education and promoting gender equality
- setting up homes for women, orphans and the senior citizens
- measures for reducing inequalities faced by backward groups

The CSR provisions were inserted not to monitor but to generate conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country.

- ensuring environmental sustainability and animal welfare
- protection of national heritage and art and culture
- measures for the benefit of armed forces veterans and their dependents
- rural training to promote nationally recognized sports

### Corporate Social Responsibility

- contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government
- contributions to funds provided to technology incubators located within academic institutions

By way of a Circular, the MCA has clarified that "the entries in Schedule VII must be interpreted liberally so as to capture the essence of the subjects so enumerated". It further asserts that the items are broad-based and intended to cover wide range of

**SEBI, as per its notification dated 13th August, 2012, has mentioned that enterprises are accountable to the larger society and "adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance".**

activities leaving it to discretion of Board of directors.

- **Compliances** - Every company to whom CSR is applicable is required to constitute a CSR Committee to formulate and recommend CSR policy to the Board and to also monitor implementation of CSR activities. The Act prescribes an "Expend-or-Explain" technique by mandating disclosures of CSR Policy, particulars of CSR Spend during the year, and the reasons, if any for not spending the requisite amount in the Directors Report. Thus, in case a company has not spent money on CSR

activities, it becomes evident to all stakeholders from the Financial Statements of the company, thereby impacting the social image of the entity. It is pertinent to note, however, that there are no monetary penalties for contravention of CSR provisions.

#### **LEGAL PROVISIONS FRAMED BY SEBI**

The Securities and Exchange Board of India ('SEBI') is the regulatory authority for securities market in India. SEBI, as per its notification dated 13th August, 2012, has mentioned that enterprises are accountable to the larger society and "adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance". SEBI has mandated the inclusion of Business Responsibility Reports as part of the annual reports of the Top 100 listed entities (revised to Top 500 companies in 2016) based on market capitalisation at Bombay stock Exchange and National Stock exchange. Further, it is mandatory to make these reports available on the website of the company.

#### **THE WAY FORWARD**

To conclude, the concept of CSR has come a long way from mere conduct of social activities to using CSR as a business strategy (as seen in case of Starbucks). The essence of CSR cannot be defined as it evolves corresponding with the growing economy but the true spirit of CSR lies in enhancing every aspect of the corporation by the day, right from its operations to its social impact.

## CORPORATE SOCIAL RESPONSIBILITY-CONTRIBUTION OF JURISTIC PERSON IN ENRICHMENT OF SOCIETY

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*With the enactment of the Companies Act, 2013, India has made it mandatory to spend on corporate social responsibility activities through a statutory provision. This article is intended to focus on the issues of CSR benefits and tax deduction under the Income-tax Act, 1961.*

### INTRODUCTION

Mandatory corporate social responsibility ('CSR') is an initiative by Indian Government. The term is self-sufficient to give the meaning and does not need a precise definition. However, in the simplest form it may be considered as the responsibility or an accountability of organised companies towards the society and its people. As observed by Vidya Bhushan and D.R. Sachdeva:

"In primitive societies the folkways, mores and customs suffice to control the individual behaviour since there is unquestioned compliance with them but in modern civilised societies customs tend to loosen their hold with the result that laws are enacted by the State to control the individual. The transition from

custom to law is just a part of the general rationalisation in modern society<sup>1</sup>."

Thus, if one turns pages to the history he may find that CSR is much older concept and though India has mandated it recently we are following it since ages. The concept of helping poor and disadvantaged has been cited in much ancient literature. Philosophers like Kautilya and Pre-Christian era philosophers in the West preached and urged it as the ethical value<sup>2</sup>. Moreover, one can also find that social responsibility is a part of religious preaching. Dharamada has been defined as an endowment or gift for religious or charitable purposes. Whereas, in Islamic religion Zakat is one of the five pillars of Islam which means obligation for all Muslims who meet the necessary criteria of wealth.

Corporates use resources from the society and is in a way indebted to the same, morally. It has a huge pool of funds in terms of profits and reserves. A small percent of the same if used for the betterment of the society may not harm the company but it can be proven to be very useful for the beneficiaries of the expenditure.

### SALIENT FEATURES OF SECTION 135 OF THE COMPANIES ACT, 2013 AND RULES MADE THEREUNDER

As per section 135 of the Companies Act, 2013 ('Act') companies having an annual turnover of at least 1000 crore, or a net worth of minimum 500 crore, or a net profit of 5 crore and above shall constitute a CSR committee of the Board.

**CSR in simplest form may be considered as the responsibility or an accountability of organised companies towards the society and its people.**

<sup>1</sup> Bhushan Vidya and Sachdeva, An introduction to Sociology, Kitab Mahal, 22A, Sarojini Naidu Marg, Allahabad, 32nd Edition, 1999, p.638.

<sup>2</sup> Corporate Social Responsibility- An Engine for Inclusive Growth (2015), a publication of the ICSI, January, 2015. ISBN 978-93-82207-24-5



**Corporate Social Responsibility–Contribution of Juristic Person  
in Enrichment of Society**

Such companies are required to mandatorily spend percent of their average net profit towards specified CSR activities during the year. The words “every public company and companies having” includes foreign companies. However, the same is not punishable if not spent. The non-compliance of section 135 and Companies (Corporate Social Responsibility Policy) Rules, 2014, will require a mere disclosure in the Board report attached with the financial statements, specifying the reasons for not expending towards CSR.

In the present scenario of corporate world many body-corporates have been engaged in doing CSR expenditure voluntarily, they formulate clear framework and processes to ensure that they fulfill their corporate social responsibility in true letters and spirit. However, the companies Act does bring more companies into the fold and increase the total CSR spend.

Schedule VII of the Act prescribes activities towards which CSR expenditure should be incurred, including eradicating extreme hunger and poverty, promoting education, ensuring environmental sustainability, social business projects, reducing child mortality and improving maternal health, etc.

**TAX BENEFITS AND DEDUCTION  
UNDER THE INCOME -TAX ACT, 1961**

The general rule has been to allow tax deduction for donations, contributions, etc., made for charitable purposes under section 80G of the Income-tax Act, 1961 ('the IT Act') with a view to promote donations and contributions. One may find similar expenditures in Schedule VII of the Act. Which means that incurring those common

expenditures, for the purpose of CSR, will bring tax benefits under section 80G, while other CSR expenditure not falling under 80G will not be allowed the deduction.

Expenses falling under other allowable expenses like sections 35CCA and 35CCB of the IT Act may not be beneficial for tax purposes due to absence of specific provision for allowance in pursuance to compliance of CSR. Section 35CCA speaks about expenditure by way of payment to associations and institutions for carrying out rural development programmes. Rural development projects have been also specified in Schedule VII of the Act. It is pretty evident that section 35CCA has been constructed in a very narrow sense and includes predefined payments. While Schedule VII is to be interpreted in a very liberal construction according to the clarification of Ministry Of Corporate Affairs, in the Official Gazette dated 5th January, 2014. It says, 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. The items enlisted in the amended Schedule VII, are broad-based and are intended to cover a wide range of activities. The matter of considering expenditure of such payments to associations under section 35CCA allowing it to fall under “rural development projects” under Schedule VII is still questionable although interpreted in a wider manner. However, the clarification mentions any “project”. So apparently it seems that such mere payments to associations may be disallowed if deducted. Similar is in the case of section 35CCB deduction in case of payments

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to associations for conservation of natural resources.

The issue of not allowing such deductions is also backed by Circular No. 1/2015 [F.NO 142/13/2014-TPL] dated 21st January, 2015 which strictly prohibits the deductions of CSR under section 35CCA and 35CCB. It further states that the object of CSR is to share the burden of government in providing social services. If such expenses are allowed as deductions, this would result in subsidising around one- third of such expenses by government by way of tax expenditure. General expenditure made voluntarily of CSR before enactment of CSR provision was allowed as deduction under sub-section (1) of section 37 of the IT act. However, after incorporation of CSR it has been specifically mentioned that CSR expense will not be counted as expense incurred by the assessee for the purposes of the business or profession, which is an ingredient of section 37 for allowing the expenditure.

Following donation allowed as deduction under section 80G of the IT Act subject to a maximum of 10 per cent of the adjusted gross total Income:

- Donations to Government for promoting family planning, etc. – 100 per cent allowed
- Eligible for 50 per cent deduction:
- Donations to Government for other charitable purpose
- Donation for housing accommodation/ improvement of cities, towns or villages etc.,

Eligible for 100 per cent deduction without maximum limit:

- Donation to PM's National Relief Fund
- Donation to State Government Fund for Medical Relief to the Poor
- National Illness Assistance Fund

- Chief Minister's or Lt. Governor's Relief Fund
- Approved university or educational institution of national eminence, etc

As a result of above there is a great paradoxical situation as to allow the deductions apart from those mentioned in section 80G. The heart of section 80G is not observed in case of all other expenditures not mentioned in the same which amount to CSR according to the Companies Act.

Prima facie, it seems to me a sheer case of injustice to allow some of the expenditures of Schedule VII of the Act as deductions under section 80G of the IT Act and others as non-allowable. The IT Act, being silent on the rest of expenditures of Schedule VII, makes it seem illogical to permit tax benefit for certain kind of CSR expenses only. The main goal behind

**The object of CSR is to share the burden of government in providing social services. If expenses are allowed as deductions, this would result in subsidising around one-third of such expenses by government by way of tax expenditure.**

section 80G is to encourage donations and contributions ultimately the welfare of public at large. The similar goal can be observed behind incorporation of section 135. But the IT Act has miserably failed to incorporate primitive steps to boost such CSR expenditure by subsequent insertion in the Act for direct deductive provisions relating to CSR

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expenditure.

Sections 35CCA and 35CCB clearly allow the deductions in respect to conservation of natural resources and rural development respectively by any assessee. But the expenditure under the heading CSR is not allowable under the Finance Act.

In order to facilitate the increase on CSR compliance, we hereby suggest either or both of the following options that may be taken by government:

- Making CSR compulsory by inserting a penal provision in section 135 of the Act.
- Incorporating an unambiguous provision defining a method for arriving at net

**From financial reporting perspective, it shall be treated as expense and not distribution of profit, as this appropriation is not limited to shareholders or owners, it extends to the real beneficiaries of the nation, moreover the mankind at large.**

qualifying amount allowable for deduction in case of CSR expenditure in the IT Act giving overriding effect to section 35CCA and 35CCB or any other deduction and section 80G, which may be only applicable to qualifying companies.

***It may include following consideration:***

- If considered to be deductible, in which

year would the expense be deductible? Can deduction be claimed on the basis of provision towards this expenditure, without having actually incurred the expenditure? What about the unspent amount of the provision made? Whether it shall be allowed to carry forward or not?

- From financial reporting perspective, it shall be treated as expense and not distribution of profit, as this appropriation is not limited to shareholders or owners, it extends to the real beneficiaries of the nation, moreover the mankind at large.
- Enacting such a huge piece of provision and not making it mandatory leaves me in a state of perplexity and anguish as the main aim of legislatures is yet not observed. May be down the road Indian legislatures wants to make it mandatory on one hand and provide tax benefits on the other in order to ensure ultimate good of mankind.

#### **CASES IN WHICH CSR EXPENDITURE WAS HELD DEDUCTIBLE**

- Funds provided for establishing drinking water facilities and providing aid to school meant for residents of the locality in which the taxpayer operated<sup>3</sup>.
- Expenditure on community assistance programs and welfare measures undertaken in the vicinity of taxpayer's manufacturing unit.<sup>4</sup>
- Installation of traffic lights in the vicinity of taxpayer's office to improve traffic situation, serving dual purpose of benefiting the employees as also social commitment.<sup>5</sup>

<sup>3</sup> CIT v. Madras Refinery Ltd. [266] ITR 170 (Mad.)

<sup>4</sup> CIT v. Madura Coats Ltd. [24] DTR 24 (Mad.)

<sup>5</sup> Infosys Technologies v. JCIT [109] TTJ 631 (Bang.)

## POSITIVE THINKING

Contributed by Brahma Kumaris,  
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*In this article the author talks about positive thinking: how it affects our day-to-day life, happiness and success, our outlook of the future, our subconscious, etc.*

*Be thankful for what you have, you will end up having more*

ORPHAN WINFREY

### POSITIVE THINKING IS ABOUT MUCH MORE THAN JUST BEING HAPPY

I applied for a new job but didn't believe that I am going to get it. On this thought my self-esteem was already low, and I started considering myself unworthy of success and eventually stopped trying. I had a negative attitude toward the situation and myself which led me to believe that the other applicants were better qualified than me. My mind was occupied with negative thoughts and fears concerning the job, for the whole week, preceding the job interview. I anticipated failure which was fearful. On the day of the interview, I woke up tired as I was not getting proper sleep the night before and to my horror I discovered that the shirt I had planned to wear had wrinkles. It needed ironing. Since, I had a closed mindset to wear that particular shirt for the interview, I started ironing it which got me late and I had to rush without eating breakfast. During the interview, I was tensed, negative, hungry and worried about what might happen. All these, distracted my mind and made it difficult for me to focus on the real thing- the interview. My overall behavior gave out negative vibrations and consequently, my fear materialised and I did not get the job! A few years later, I applied for another job. This time I reflected on the previous incident and all I wanted was to make sure is that I deliver my best and focus on the interview at hand. I approached the matter in a different way. During the week preceding the interview, I often visualised myself making a good impression, communicating well with the interviewers and getting the job. In the evening

before the interview, I sorted my clothes that I was supposed to wear and went to bed a little earlier. On day of the interview, I woke up earlier than usual, had ample time to eat a decent breakfast, and then arrived at the interview before the scheduled time. I was just calm and at peace. So, what do we learn from these two stories? Did I use a magic wand or everything just happened in a natural way? It is just a natural process. We are affected by people we meet as much as we affect them. This happens instinctively on a subconscious level, through our words, thoughts, feelings and body language. It is a natural phenomenon that we get attracted to people who are positive, and tend to avoid anyone displaying negativity. These words might just sound motivational or positive thinking might sound useful on the surface level but research is beginning to reveal that positive thinking is about much more than just being happy or displaying an upbeat attitude. Positive thoughts can actually create real value in your life and help you build skills that will go a long way in your career path.

### POSITIVE THINKING IS SCIENCE

Positive thinking is science that impacts our work, your health, and your life has become an area of research. One of such scholar is Barbara Fredrickson. Fredrickson is a positive psychology researcher at the University of North Carolina, and she published a landmark paper (2009, 2013) that provides surprising insights about positive thinking and its impact on your skills. Her work is among the most referenced and cited in her field, and it is surprisingly useful in everyday life.

Let us explore the science behind thought process and what both positive and negative thoughts do to our brain. What happens when



### Positive Thinking

our brain registers a negative emotion? Let's take the above example; in this case fear of failure. As research suggests, negative emotion programs the brain to react in a specific way. When I think about the interview, I want to run away from the situation, I lack the power to face. The rest of the things do not matter. I am focused entirely on the outcome of the process, the fear it creates and how I can get away from it.

Negative emotion limits our thinking process and we are incapable of broadening our vision to consider other possible options. For instance, I could think of trying harder or preparing better but the brain ignores all of these options because it registers only one predominant emotion and that is fear which eventually forces us to give up or resign. Other options might be usefullike focusing on the job at hand, preparing might be useful but the problem is that our brain is programmed to respond to negative emotions by shutting off the outside world and limiting the options we see around us.

Let's take a daily example, like when we are in a fight with someone, our anger and emotion consumes us to the point where we cannot think of anything else. Or, when we are stressed about a deadline, it is actually harder to get the job done as we are paralysed by the anticipation of the deadline. In each of the cases, our brain closes off from the outside world and focuses on the negative emotions of fear, anger, and stress. Negative emotions prevent your brain from seeing the other options and choices that surround you.

#### **POSITIVE EMOTIONS**

Let's analyze the impact of positive emotions on the brain. The science behind experiencing positive emotions like happiness, contentment, and love is that we will see more possibilities in life. This statement is based on

research findings that suggested positive emotions broaden our sense of possibility and open our mind up to more options.

Further, we will explore the impact of positive thinking. Research suggests that positive thinking helps build skill set. Positive thinking is not a matter of feel good moments. In fact, the biggest benefit that positive emotions provide is an enhanced ability to build skills and develop resources for use later in life.



Let's consider a real-world example. When we are pursuing any activity like cycling with friends or any other such sport, we develop athletic ability (physical skills), the ability to play with others and communicate with a team (social skills), and the ability to explore and examine the world around them (creative skills). In this way, the positive emotions of play and joy prompt us to build skills that are useful and valuable in everyday life.

These skills last much longer than the emotions that initiated them. Years later, the communication skills may blossom into a job offer as a business manager. The happiness that promoted the exploration and creation of new skills has long since ended, but the skills themselves live on.

Fredrickson refers to this as the “broaden and build” theory because positive emotions broaden your sense of possibilities and open your mind, which in turn allows you to build new skills and resources that can provide value in other areas of your life. As we discussed earlier, negative emotions do the opposite. Why? Because building skills for future use is

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irrelevant when there is immediate threat or danger. Modern life often put us in such situations where we often allow negative emotions to narrow our thinking which can be detrimental to both our health and performance. It becomes more difficult for us to open up and to be able to communicate.

### **POSITIVE AND NEGATIVE THINKING**

Let us explore the science behind positive and negative thinking. Negative thinking doesn't work both literally and metaphorically; our sub-conscious brain can't handle it. Further, as latest studies suggest that our brains can't process negative words. So when we hear phrase like "don't do that" or "don't touch that," our subconscious skips over these negative words and simply hears "do that" or "touch that." Our conscious mind can obviously process these words, but it's the subconscious that makes a lot of our decisions without us realising. That is why children are most tempted to do things that are asked not to do or not allowed to do. As we grow older we are still not aware of the process and learning to use our conscious minds to process those negative words and take control of the subconscious to make sure they follow instructions correctly. Following this what we can do henceforth is that try to change our habits or thought patterns when we tell ourselves negative phrases, since only our conscious minds can take those in. We can make this much easier and let the subconscious do its job by using positively-framed phrases.

Secondly, positive thinking can improve our outlook of the future. Noting down things we're grateful for on a regular basis and how that can improve our happiness can reaffirm our positive mindset. A study at the University of North Carolina also showed that positive emotions are more likely to encourage people to plan ahead and think of actions they would like to take or activities they'd like to

participate in the future. Negative emotions, on the other hand, led to participants being less inclined to think positively about their future.

Thirdly, positive thinking impacts our health. Another study from the University of North Carolina used the ancient practice of loving-kindness meditation to test how cultivating positive feelings like love, compassion and goodwill towards others could affect the emotional and physical health of the participants. Compared to the control group who did not participate in the meditation, the people who practised meditation showed increase in positive emotions like amusement, awe and gratitude during the research period. They also reported feeling more socially connected and closer to the people around them. Physically, these participants showed improvements in vagal tone which is linked to cardiovascular health and a general indicator of physical well-being.

All of this research begs the most important question of all: If positive thinking is so useful for developing valuable skills and appreciating the big picture of life, how do you actually get yourself to be positive? How to increase the quotient of positive thinking in life? What you can do to increase positive emotions and take advantage of the "broaden and build" theory in your life? Let's look at some ways of building a habit of being positive.

### **IDENTIFY A POSITIVE**



Now that we are aware of the tools required for defeating, negative thoughts, it's time to help our brain learn what you want it to focus on—the positive. This will come

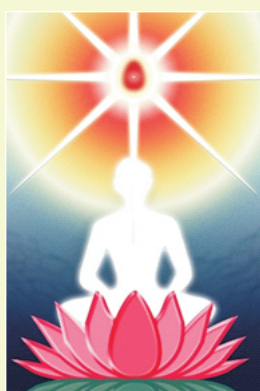
after some practice, but first we have to give our fleeting thoughts a little help by consciously selecting something positive to

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think about. Any positive thought will do to refocus your brain's attention. When things are going well, and your mood is good, this is relatively easy. But when the going gets tough, and your mind is flooded with negative thoughts, this can be a challenge. In these moments, think about your day and identify one positive thing that happened, no matter how small. If you can't think of something from the current day, reflect on the previous day or even the previous week. Or perhaps there is an exciting event you are looking forward to that you can focus your attention on.

The point here is you must have something positive that you're ready to shift your attention to when your thoughts turn negative. At one go, you learned how to strip the power from negative thoughts by separating fact from fiction. Step two is to replace the negative with a positive. Once you have identified a positive thought, draw your attention to that thought each time you find yourself dwelling on the negative. If that proves difficult, you can repeat the process to remind yourself about the positives and consciously focus on that.

#### **MEDITATION**



However, the essential ingredient to positive thinking is Meditation. Recent research by Fredrickson and her colleagues (2013) has revealed that people who meditate daily display more positive emotions than those who do not. As inferred in her study, people who

meditated built valuable long-term skills. For example, people who meditated daily display increased mindfulness, purpose in life, social support, and decreased illness symptoms. Also, if anyone out there is looking for an easy

way to start meditation, there are specialized and guided courses that are provided by professionals. To start with even 2 minutes of meditation can be immensely helpful, which is easy to do and can be developed into a strong habit. After establishing the habit for several weeks, you can slowly increase the length of your meditation sessions to an amount that gives you the most benefit. Meditating is beneficial for the body and mind. It not only improves mindfulness and positive thinking while you're doing it, but it has been shown to decrease illness and improve mindfulness and feelings of purpose in life up to three months after being practised daily for a short period.

#### **BUILDING HABITS**

The next significant step could be to build on habits. The environment we try to build new habits in and break old ones has a huge effect on how successful we are. Environment in this case includes the people we spend time with and the messages we hear or tell ourselves, as well as our physical environment. It also means we inculcate some new discipline in our lifestyle which will qualitatively change our life.

This may also include spending more time with people who are pursuing the habit you have incorporated or if there are people around you who don't do the habit you talk to them about what you're trying to do, and ask for their help. Ask them to support you, and not rag on you all the time for changing. Also, it is realistic to start with small habits so that you can't say no. If you do this to start with, you can focus more on building a habit, rather than on results or how big your habit is.

#### **CHECK THE PROCESS OF THOUGHT FLOW**

Finally, the first step in learning to focus on the positive requires knowing how to stop negative thoughts its tracks. The more you

RNI Regd. No.DELENG/2017/71754  
 Posted on : 12-14 September 2017  
 Published on 9, 10 & 11 September 2017

DELHI POSTAL REGD. NO. DL-SW-1/4199/17-19  
 Place of posting : NDPSO, New Delhi

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brood over negative thoughts, the more power you give them. Most of our negative thoughts are just that—thoughts, not facts. When you find yourself believing the negative and pessimistic things you become heavy, automatically incapable of thinking anything positive. Once you've taken a moment to slow down the negative momentum of your thoughts, you will be more rational and clear-headed in evaluating their necessity. When it feels like something always or never happens, this is just your brain's natural tendency to inflate the perceived frequency of an event. Identifying and labeling your thoughts as thoughts by separating them from the facts will help escape the cycle of negativity and move toward a positive and new outlook.

Well, anything that sparks the feelings of happiness, contentment, and love will do the trick but we have to identify what will work for us. Maybe it's playing the guitar. Maybe it's spending time with a certain person. Maybe it's doing craft activities.

### **HAPPINESS AND SUCCESS**

Another important question to ask ourselves is to evaluate happiness and success and which comes first? There is no doubt that happiness is the result of achievement. Winning a championship, landing a better job, finding someone you love these things will bring joy and contentment to your life. But so often, we wrongly assume that this means happiness always follows success. We are constantly putting off happiness until we achieve some arbitrary goal. But as Fredrickson's "broaden and build" theory proves, happiness is essential to building the skills that allow for success. Therefore, happiness is both the precursor to success and the result of it. Also, gratitude towards what we have in life goes a long way in sustaining it. In the words of Oprah Winfrey, "Be thankful for what you have; you'll end up having more. If you

concentrate on what you don't have, you will never, ever have enough." Positive thinking isn't just a feel-good term. It is a reaffirmation of your mindset. Finding ways to build happiness and positive emotions into your life; whether it is through meditation, writing or picking up new habits improves life qualitatively and provides more than momentary decrease in stress. To simply put it: meditate, be happy and pursue something that you enjoy doing. Your brain will do the rest.



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