



Corporate Social Responsibilities provisions as per Companies Act 2013– A Special Purpose Vehicle for Reducing Inequality

Meera Kumari Singh*

Dr. T.D. Panneerselvam**

Abstract

This article states that the Corporate Social Responsibility in India is a special purpose vehicle to reduce inequality. The Corporate Social Responsibility function performed by the companies as per the provisions of Companies Act 2013 and explains that how they are helpful for the effective to reduce the chasm between the poor and the rich. For India to sustain in the present global era, next part of the article explains CSR Indian scenario i.e. how important legal CSR provisions in S.135 of Companies Act 2013 & its advantages. The boons and banes of mandating CSR initiatives for the sustainable development of the society has been discussed and thus it had been clarified that how this is different and more beneficial from the voluntary CSR spending done by a number of large companies and businesses earlier. The article has thrown light that enhance welfare provisions automatically leads to increase in economic growth without compromising with the future resources. In this article the past case laws are discussed in order to state that in absence of S.135 of Companies Act, judicial system had indirectly supported the society to protect the triple bottom line. The problems and issues involved in the Rules issued by the Government are also highlighted and the paper had offered suggestions as to how these deficiencies can be dealt effectively so as to bridge the gaps of this law. But the major aim of this article is to focus that the statutory CSR provisions is changing the way of thinking and operations of the companies in order to contribute in the welfare of the stakeholders. Due to this positive change, for the corporations and government in India the economic, social and environmental development is major focus in

* Research Scholar, College of Legal Studies, University of Petroleum and Energy Studies (UPES), Dehradun, Uttarakhand, India.

** Advocate & Notary - Individual Law Practitioner, Law Chambers, High Court Chennai.

order to reduce inequality while deciding upon business activities.

Keywords: CSR welfare provisions, Corporate social responsibility, CSR Rules, S.135 of Companies Act 2013, Companies Act 2013.

3.1 Introduction

The said chapter at first highlights the impacts of Corporate Social Responsibilities as a special purpose vehicle for reducing inequality. With the passing of the Clause 135 in the Companies Act 2013, India achieved a historic first of sorts in creating legislation, among the first nations to do so. This has formulated the Indian corporate sector's social responsibility duties and provides an opportunity to them to take a holistic approach on CSR.

Inequality is emerging as a central issue for the post-2015 development agenda and the establishment of the sustainable development goals. Inequalities in income and wealth cause economic instability, a range of health and social problems, and create a roadblock to the adoption of pro-environment strategies and behavior. Social and economic inequalities tear the social fabric, undermine social cohesion and prevent nations, communities and individuals from flourishing.¹

S.135 of Companies Act creates a wider economic, environmental² and social³ impact rather than fragmented contributions. In the case of *Vellore Citizens' Welfare Forum v. Union of India & Ors.*, "A petition under Article 32 of the Constitution of India has been filed by Vellore Citizens Welfare Forum and is directed against the pollution which is being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It is stated that the tanneries are discharging untreated effluent into agricultural fields to, road-Sides, Water ways and open lands. The untreated effluent is finally discharged in river Palar which is the main source of water supply to the residents of the area. According to the petitioner the entire surface and sub-soil water of river Palar has been polluted resulting in non-availability Potable water to the residents of the area. It is stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agricultural University Research Center Vellore nearly 35,000 hectares of agricultural land in the Tanneries Belt, has become either partially or totally unfit for cultivation. It has been further stated in the petition that the tanneries use about 170 types of chemicals in the chrome tanning processes. The said chemicals include sodium chloride, lime, sodium sulphate, chlorium sulphate, fat liquor Amonia and sulphuric acid besides dyes which are used in large quantities. Nearly 35

¹ <http://www.progressiveeconomy.eu/content/reducing-inequality-essential-step-development-and-en>.

² *Vellore Citizens' Welfare Forum v. Union of India & Ors.*, 1996 (5) SCC 647.

³ *Mohd. Ahmed (Minor) v. Union of India & Ors.* (DLH)-2014-2-380 High Court of Delhi.

liters of water is used for processing one kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents being let out in the open by the tanning industry. These effluents have spoiled the physico-chemical properties of the soil, and have contaminated ground water by percolation. According to the petitioner an independent survey conducted by Peace Members, a non-governmental organization, covering 13 villages of Dindigal and Peddiar Chatram Anchayat Unions, reveals that 350 wells out of total of 467 used for drinking and irrigation purposes have been polluted. Women and children have to walk miles to get drinking water. Legal Aid and Advice Board of Tamil Nadu requested two lawyers namely, M.R. Ramanan and P.S. Subramaniam to visit the area and submit a report indicating the extent of pollution caused by the tanneries. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The Authority shall be headed by a retired judge of the High Court and it may have other members preferably with expertise in the field of pollution control and environment protection- to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under Section 5 of the Environment Act and for taking measures with respect to the matters referred to in Clause (v), (vi) (vii) (viii) (ix) (x) and (xi) of Sub-Section (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996. 2. The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology\environment in the affected areas and shall also identify the individuals/families that have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise. “⁴ Hence the protection of environment is existing in law but it will be strengthened, if under CSR provisions proper guidelines will be issued to protect the same. While there may continue to be different thoughts on the CSR law, it is one mandate that may had helped to create to follow the CSR norms for the corporate sector, and is a vital component of a performance matrix. Throughout the world the targets for human development are similar in various permutations and combinations, for example, access to quality and affordable education as well as healthcare, respecting and protecting the vulnerable sections of society, in which includes children⁵, women and the elderly, responsible consumption of natural resources and living in harmony with the environment and

⁴ Supra note 2.

⁵ Gaurav Jain v. Union of India & Ors, 1990 Supp. SCC 709.

eradication of malnutrition and hunger. In the case of *Gaurav Jain v. Union Of India & Ors*, “a class of women is trapped as victims of circumstances, unfounded social sanctions, handicaps and coercive forms in the flesh trade, optimized as ‘prostitutes’, (for short, ‘fallen women’). Seeking their redemptions, a few enlightened segments are tapping and doors of this Court under Article 32 of the Constitution, through a public spirited advocate, Gaurav Jain who filed, on their behalf, the main writ petitions claiming that right to be free citizens; right not to be trapped again; readjusted by economic empowerment, social justice and self-sustenance thereby with equality of status, dignity of person in truth and reality and social integration in the mainstream are their magna carta. An article "A Red light trap: Society gives no chance to prostitutes' offspring" in 'India Today' dated July 11, 1988 is founded as source material and has done yeoman's service to ignite the sensitivity of Gaurav to seek improvement of the plight of the unfortunate fallen women and their progeny. Though Gaurav had asked for establishing separate educational institutions for the children of the fallen women, this Court after hearing all the State Governments and Union Territories which were then represented through their respective standing counsel, observed on November 15, 1989 in *Gaurav Jain v. Union of India & Ors*. [1990 Supp. SCC 709] that "segregating children of prostitutes by locating separate schools and providing separate hostels" would not be in the interest of the children and the society at large. This Court directed that they "should be segregated from their mothers and be allowed to mingle with others and become a part of the society". Accepting the suggestion from the Bar and rejecting the limited prayer of the petitioner, this Court had ordered that "Children of prostitutes should, however, not be permitted to leave in inferno and the undesirable surroundings of prostitute homes". This was felt particularly so in the case of young girls whose body and mind are likely to be abused with growing age for being admitted into the profession of their mothers. While this Court did not accept the plea for separate hostels for children of prostitutes, it felt that "accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified". In that view, instead of disposing of the writ petition with a set of directions, this Court constituted a Committee comprising Shri V.C. Mahajan, R.K. Jain, Senior Advocates and others including M.N. Shroff, Advocate, as its Convener, and other individuals named in the Order; the Court directed the Committee to submit its report giving suggestions for appropriate action. Accordingly, the report was submitted. Arguments we heard and judgment was reserved but could not be delivered. Resultantly, it was released from judgment. We have re-heard the counsel on both sides. The primary question in this case is: what are the rights of the children of fallen women, the modules to segregate them from their mothers and others so as to give them protection, care and rehabilitation in the mainstream of the national life? And as facet of it, what should be the scheme

to be evolved to eradicate prostitution, i.e., the source itself; and what succor and sustenance can be provided to the fallen victims of flesh trade? These are primary questions we angulate for consideration in this public interest litigation. I put a caveat upon myself and I am aware that Article 142 would be used to enforce final judgment or order which, in given special or exceptional circumstances, would include directions of this type to mitigate injustice and to elongate enforcement of fundamental and human rights. Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to reach injustice wherever it is found and to mete out justice. Denial of the constitutional rights to the unfortunate fallen women outrages the quest for justice and pragmatism of constitutional ethos which constrain me to avail Article 142 of the Constitution of India to direct the Union of the India as well as all State Governments to evolve, after in depth discussion at Ministerial level conference, such procedures and principles or programmes, as indicated in this Order, as guidance would help rescue and rehabilitate the fallen women. Otherwise, the fundamental and human rights remain pious platitudes to these miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives. Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversarial litigation and in a keenly contested matters of even public interest litigation, in particular, of recent type cases. However, in the cases of the type in hand, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. Society is responsible for a woman's becoming victim of circumstances. The society should make reparation to prevent trafficking in the women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice, is the constitutional duty of the State. Their economic empowerment and social justice with dignity of person, are the fundamental rights and the Court and the Government should positively endeavor to ensure them. The State in a democratic policy includes its three constitutional organs - the Legislature, the Executive and the Judiciary. Legislature has already done its duty. The Executive and the Judiciary are required to act in union to ensure enforcement of fundamental and human rights of the fallen women. I am also conscience that the Union of India as well as the State Governments are sensitive to the conscience of their constitutional duty under article 23 and are desirous to have the prostitution eradicated from the root with the aid of ITP Act, IPC and other appropriate legislative or executive actions. Sequential rehabilitation of the fallen women rescued from the red light areas and other areas required enforcement. The observations made in this Order, the constitutional provisions, the human rights and other

International Conventions referred to in the Order and the national Policy would aid the Union of India and the State Governments as foundation and guide them to discuss the problems in Ministerial and Secretarial level Conferences and as suggested in this Order to evolve procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights mentioned in the Order. Before parting with the case, we place on record the valuable assistance and yeoman's service rendered by V.C. Mahajan Committee. The directions are accordingly given. The writ petitions are directed to be posted after the compliance report as regards the action taken in that behalf, is furnished by the Union of India for appropriate orders.”⁶ Thus it can be inferred that through the CSR provisions under S.135 of Companies Act 2013, with clear guidelines the central government can make schedule VII omnibus and hence can add a clause of the welfare of prostitutes and their children. Finally the executive planning of the Government to implement the legislations pertaining to the atmosphere have also been explored to assess the willingness on the part of the Government machinery in upholding the environment and especially the atmosphere by implementing S.135 of Companies Act 2013.

3.2 CSR obligations

It is applicable to all companies-director's specific duty towards stakeholders. Section 166(2) of the 2013 Act requires that a director of a company has to act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees⁷, its shareholders⁸, the community⁹ and for the protection of environment¹⁰. Section 166(2) deals with the duties of directors, which apply universally to directors of all companies. Hence directors of a company have a specific duty to harmonize the interests of company and all stakeholders and environment. In the case of *Air India Statutory Corporation v. United Labour Union & Ors.*, “These appeals by special leave arise from the judgment of the Division Bench of the Bombay High Court dated April 28, 1992 made in Appeal No. 146 of 1990 and batch. The facts in appeal arising out of S.L.P. 7417/92, are sufficient to decide the questions of law that have arisen in these appeals. The appellant initially was a statutory authority under International Airport Authority of India Act, 1971 (for short, 'IAAI Act') and on its repeal by the Airports Authority of India Act, 1994 was amalgamated with National Airport Authority (for short, the 'NAA') under single nomenclature, namely, IAAI. The IAAI is now reconstituted as a company under Companies Act, 1956. The appellants engaged, as contract labour the respondent union's members, for sweeping, cleaning dusting and watching of the

⁶ *Supra* note 5.

⁷ *Air India Statutory Corporation v. United Labour Union & Ors.*, (1997) 9 SCC 377.

⁸ *Chiranjit Lal Chowdhuri vs The Union Of India And Others* 1950 SCR 869.

⁹ *Supra* note 2.

¹⁰ *Id.*

building owned and occupied by the appellant. The Contract Labour (Regulation and Abolition) Act, 1970 (for Short, the 'Act') regulates registration of the establishment of principal employer, the contractor engaging and supplying the contract labour in every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as contract labour. The appellant had obtained on September 20, 1971 a certificate of registration from Regional Labour Commissioner (Central) under the Act. The Central Government, exercising the power under Section 10 of the Act, on the basis of recommendation and in consultation with the Central Advisory Board constituted under Section 10(1) of the Act, issued a notification on December 9, 1976 prohibiting "employment of contract labour on and from December 9, 1976 for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government". However, the said prohibition was not apply to "outside cleaning and other maintenance operations of multi-storied building where such cleaning or maintenance cannot be carried out except with specialized experience." It would appear that Regional Labour Commissioner (Central) Bombay by letter dated January 20, 1972 informed the appellant that the State Government is the appropriate Government under the Act. Therefore, by proceedings dated May 22, 1973 the Regional Labour Commissioner (Central) had revoked the registration. By Amendment Act 46 of 1982, the Industrial Disputes Act, 1947 (for short, the 'ID Act') was made applicable to the appellant and was brought on statute book specifying the appellant as one of the industries in relation to which the Central Government is the appropriate Government and the appellant has been carrying on its business "by or under its authority" with effect from August 21, 1982. The Act was amended bringing within its ambit the Central Government as appropriate Government by amendment Act 14 of 1986 with effect from January 28, 1986. Since the appellant did not abolish the contract system and failed to enforce the notification of the Government of India dated December 9, 1976, the respondents came to file writ petitions for direction to the appellant to enforce forthwith the aforesaid notification abolishing the contract labour system in the aforesaid services and to direct the appellant to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the building owned or occupied by the appellant-establishment, with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights/benefits, monetary or otherwise, The writ petition was allowed by the learned single judge on November 16, 1989 directing that all contract workers be regularized as employees of the appellant from the date of filing of the writ petition. Preceding thereto, on November 15, 1989, the Government of India referred to the Central Advisory Board known as While Committee under section 10(1), which recommended to the Central Government not to abolish the contract labour system in the aforesaid services. Under the impugned judgment dated April 3, 1992, the

learned judges of the Division Bench dismissed the appeal. Similar was the fate of other appeals. Thus these appeals by special leave.”¹¹ It can be concluded that employee welfare is also an obligation of corporates. Thus it is a CSR obligation and hence the same should be properly defined under Schedule VII as what are the CSR obligations.

Activities specified in Schedule VII to the 2013 Act Schedule VII as amended by the Notification No. GSR 130(E), dated 27-2-2014, GSR 261(E), dated 31-3-2014 and GSR 568(E), dated 6-8-2014 and Notification F. No. 1/18/2013-CL-V, dated 24-10-2014, specifies activities which companies may include in their CSR Policies. These are activities relating to: (i) Eradicating hunger, poverty and malnutrition – Promoting health care including preventive healthcare and sanitation including contribution to the Swachh Bharat Kosh set up by the Government for promotion of sanitation – Making available safe drinking water (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled – Livelihood enhancement projects and imparting free vocational training courses (iii) Promoting gender equality – Empowering women – Setting up homes and hostels for women and orphans – Setting up old age homes, day care centers and such other facilities for senior citizens – Measures for reducing inequalities faced by socially and economically backward groups (iv) Ensuring environmental sustainability – Ecological balance – Protection of flora and fauna – Animal welfare – Agroforestry – Conservation of natural resources – 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. (v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art – Setting up of public libraries – Promotion and development of traditional arts and handicrafts (vi) Measures for the benefit of armed forces veterans, war widows and their dependents (vii) Training to promote – Rural sports – Nationally recognized sports – Paralympic sports – Olympic sports (viii) Contribution to – The Prime Minister’s National Relief Fund or – Any other fund set up by the Central Government for socioeconomic development and relief and welfare of SC/ST/OBC, minorities and women (ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by Central Govt. (x) Rural development projects. (xi) slum area development. Explanation.—For the purposes of this item, the term slum area shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

3.3 Company are allowed to ‘outsource’ by contributing to established NGOs

Proviso to Rule 4(2) of the CSR Rules provides that a company may also conduct/implement its

¹¹ Supra note 7.

CSR programmes through Trusts, Societies, or section 8 companies which are not set up by the company itself or its holding company or its subsidiary or its associate company only if — (a) such organizations have an established track record of at least three years in undertaking similar programs or projects (b) the company has specified – the 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. However, “contribution to the Prime Minister’s National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the SC/ST/OBCs, minorities and women” does not involve specifying projects or programs to be undertaken, modalities of fund utilization and monitoring and reporting mechanism.¹² Due to this the chasm between the rich and the poor people is narrowing down. Contribution to Corpus of a Trust/society/section 8 companies, etc., will qualify as CSR expenditure as long as (a) the Trust/society/section 8 companies, etc., is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act. Capacity building of personnel 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. Such expenditure including expenditure on administrative overheads shall not exceed 5% of total CSR expenditure of company in one financial year - [Rule 4(6) of the CSR Rules].

Rationale for outsourcing CSR to established NGOs with readymade expertise CSR activities demand expertise. Companies engaged in business and their managers cannot overnight develop the expertise in these areas. Instead of reinventing the wheel, it makes sense for a company to contribute money to established NGOs having a track record in the field. As the companies are really not much aware about the deprived people and the requirement of the society, then NGOs are a mode to reach to the needy people. By this way the inequality will be reduced.

3.4 Principles to evaluate compliance with environmental, social and governance standards

There are several principles to evaluate the environmental, social and governance standards¹³

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability

a. Businesses should develop governance structures, procedures and practices that ensure ethical

¹² http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf.

¹³ http://www.bseindia.com/downloads1/BRR_FAQs%2010052013.pdf.

conduct at all levels; and promote the adoption of this principle across its value chain. Businesses should communicate transparently and assure access to information about their decisions that impact relevant stakeholders.¹⁴ If there will be transparency then the customer's rights will be protected automatically.

b. Businesses should not engage in practices that are abusive, corrupt, or anti-competition.¹⁵ Trust is built on truth and hence the businesses should be ethical in their activities.

c. Businesses should truthfully discharge their responsibility on financial and other mandatory disclosures.¹⁶ The stakeholders are dependent on the reports. Hence there should be clarity in the same.

d. Businesses should report on the status of their adoption of these Guidelines as suggested in the reporting framework in this document.¹⁷

e. Businesses should avoid complicity with the actions of any third party that violates any of the principles contained in these Guidelines.¹⁸

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

a. Businesses should assure safety and optimal resource use over the lifecycle of the product - from design to disposal - and ensure that everyone connected with it - designers, producers, value chain members, customers and recyclers are aware of their responsibilities.¹⁹

b. Businesses should raise the consumer's awareness of their rights through education, product labeling, appropriate and helpful marketing communication, full details of contents and composition and promotion of safe usage and disposal of their products and services.²⁰

c. In designing the product, businesses should ensure that the manufacturing processes and technologies required to produce it are resource efficient and sustainable.²¹

d. Businesses should regularly review and improve upon the process of new technology development, deployment and commercialization, incorporating social, ethical, and environmental

¹⁴ T.N. Godavarman Thirumulpad v. Union of India & Ors. (1997) 2 SCC 267.

¹⁵ Supra note 14.

¹⁶ Venture Global Engineering v. Satyam Computer Services Ltd & Anr, (2008) 4 SCC 190.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ M.C. Mehta v. Union of India, AIR 1987 SC 1086.

²⁰ *Id.*

²¹ *Id.*

considerations.²²

e. Businesses should recognize and respect the rights of people who may be owners of traditional knowledge, and other forms of intellectual property.

f. Businesses should recognize that over-consumption results in unsustainable exploitation of our planet's resources, and should therefore promote sustainable consumption, including recycling of resources.²³

Principle 3: Businesses should promote the well-being of all employees

a. Businesses should respect the right to freedom of association, participation, collective bargaining, and provide access to appropriate grievance Redressal mechanisms.²⁴In the case of *Mumbai Kamgar Sabha, Bombay v. M/S Abdulbhai Faizullabhai,*²⁵

b. Businesses should provide and maintain equal opportunities at the time of recruitment as well as during the course of employment irrespective of caste, creed, gender, race, religion, disability or sexual orientation.²⁵

c. Businesses should not use child labour²⁶, forced labour or any form of involuntary labour, paid or unpaid.²⁷

d. Businesses should take cognizance of the work-life balance of its employees, especially that of women.

e. Businesses should provide facilities for the well-being of its employees including those with special needs. They should ensure timely payment of fair living wages to meet basic needs and economic security of the employees.²⁸

f. Businesses should provide a workplace environment that is safe, hygienic humane, and which upholds the dignity of the employees. Business should communicate this provision to their employees and train them on a regular basis.²⁹

g. Businesses should ensure continuous skill and competence upgrading of all employees by

²² *Id.*

²³ *Id.*

²⁴ *Mumbai Kamgar Sabha, Bombay vs M/S Abdulbhai Faizullabhai* 1976 SCR (3) 591.

²⁵ *Id.*

²⁶ *M C Mehta v. Union of India* AIR 1997 SC 734.

²⁷ *Id.*

²⁸ *Bank Of India And Anr vs Degala Suryanarayana*, (1999) 5 SCC 762.

²⁹ *Visakha v. State of Rajasthan* AIR 1997 SC 3011.

providing access to necessary learning opportunities, on an equal and non-discriminatory basis.³⁰ They should promote employee morale and career development through enlightened human resource interventions.

h. Businesses should create systems and practices to ensure a harassment free workplace where employees feel safe and secure in discharging their responsibilities.³¹

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

a. Businesses should systematically identify their stakeholders, understand their concerns, define purpose and scope of engagement, and commit to engaging with them.³²

b. Businesses should acknowledge, assume responsibility and be transparent about the impact of their policies, decisions, product & services and associated operations on the stakeholders.³³

c. Businesses should give special attention to stakeholders in areas that are underdeveloped.³⁴

d. Businesses should resolve differences with stakeholders in a just, fair and equitable manner.³⁵

Principle 5: Businesses should respect and promote human rights

a. Businesses should understand the human rights content of the Constitution of India, national laws and policies and the content of International Bill of Human Rights. Businesses should appreciate that human rights are inherent, universal, indivisible and interdependent in nature.³⁶

b. Businesses should integrate respect for human rights in management systems, in particular through assessing and managing human rights impacts of operations, and ensuring all individuals impacted by the business have access to grievance mechanisms.³⁷

c. Businesses should recognize and respect the human rights of all relevant stakeholders and groups within and beyond the workplace, including that of communities, consumers and vulnerable and marginalized groups.³⁸

d. Businesses should, within their sphere of influence, promote the awareness and realization of

³⁰ *Id.*

³¹ *Id.*

³² *Supra* note 9.

³³ *Id.*

³⁴ *Supra* note 9.

³⁵ *Id.*

³⁶ *Supra* note 19.

³⁷ *Id.*

³⁸ *Supra* note 9.

human rights across their value chain.³⁹

e. Businesses should not be complicit with human rights abuses by a third party.⁴⁰

Principle 6: Business should respect, protect, and make efforts to restore the environment

a. Businesses should utilize natural and manmade resources in an optimal and responsible manner and ensure the sustainability of resources by reducing, reusing, recycling and managing waste.⁴¹

b. Businesses should take measures to check and prevent pollution.⁴² They should assess the environmental damage and bear the cost of pollution abatement with due regard to public interest.⁴³

c. Businesses should ensure that benefits arising out of access and commercialization of biological and other natural resources and associated traditional knowledge are shared equitably.⁴⁴

d. Businesses should continuously seek to improve their environmental performance by adopting cleaner production methods, promoting use of energy efficient and environment friendly technologies and use of renewable energy.⁴⁵

e. Businesses should develop Environment Management Systems (EMS) and contingency plans and processes that help them in preventing, mitigating and controlling environmental damages and disasters, which may be caused due to their operations or that of a member of its value chain.⁴⁶

f. Businesses should report their environmental performance, including the assessment of potential environmental risks associated with their operations, to the stakeholders in a fair and transparent manner.⁴⁷

g. Businesses should proactively persuade and support its value chain to adopt this principle.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

³⁹ A P Pollution Control Board v. M V Naidu, AIR 1999 SC 812.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Supra* note 34

⁴⁴ M C Mehta v. Kamal Nath 2000 SCC 213.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

- a. Businesses, while pursuing policy advocacy, must ensure that their advocacy positions are consistent with the Principles and Core Elements contained in these Guidelines.
- b. To the extent possible, businesses should utilize the trade and industry chambers and associations and other such collective platforms to undertake such policy advocacy.

Principle 8: Businesses should support inclusive growth and equitable development

- a. Businesses should understand their impact on social and economic development, and respond through appropriate action to minimize the negative impacts.⁴⁸
- b. Businesses should innovate and invest in products, technologies and processes that promote the well-being of society.⁴⁹
- c. Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation of communities who have been displaced owing to their business operations.⁵⁰
- d. Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

- a. Businesses, while serving the needs of their customers, should take into account the overall well-being of the customers and that of society.⁵¹
- b. Businesses should ensure that they do not restrict the freedom of choice and free competition in any manner while designing, promoting and selling their products.
- c. Businesses should disclose all information truthfully and factually, through labeling and other means, including the risks to the individual, to society and to the planet from the use of the products, so that the customers can exercise their freedom to consume in a responsible manner. Where required, businesses should also educate their customers on the safe and responsible usage of their products and services.⁵²
- d. Businesses should promote and advertise their products in ways that do not mislead or confuse

⁴⁸ Deepak Nitrite Ltd v. State Of Gujarat & Ors., (2004) 6 SCC 402.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Rubi(Chandra) Dutta v. M/S United India Insurance Co. Ltd 2011 (1) O.J.R. (717).

⁵² *Supra* note 49.

the consumers or violate any of the principles in these Guidelines.⁵³

e. Businesses should exercise due care and caution while providing goods and services that result in over exploitation of natural resources or lead to excessive conspicuous consumption.⁵⁴

f. Businesses should provide adequate grievance handling mechanisms to address customer concerns and feedback.⁵⁵

The legal issues arise due to the deliberate negligence of the corporations. In order to maintain law and order the businesses should follow all the above stated principles. But these principles should be included in Schedule VII of S.135 of Companies Act 2013, because till today it is just a guideline for business reporting. Corporate Social Responsibility policies of S.135 of Companies Act can also boost the societal benefit that enterprises create with regard to innovation. Innovative practices aiming at better jobs, safer and employee- friendly workplaces⁵⁶, gender mainstreaming and the innovation or technology transfer to local communities and developing countries, leading to a more equitable economic and social development, are further examples of societal benefits created by innovative enterprises.

3.5 Conclusion

The study revealed that one of the main reason for mandating CSR provisions under S.135 of Companies Act is also to reduce inequality, but due to several loopholes in the CSR provisions of S.135 the corporations are not effectively implementing the CSR activities and hence the legal statute is not able to maintain sustainable development in India. The stress by companies on economic and social sector is more in comparison to environmental area. Hence the resources of the future generation are being used. This is directly defeating the whole concept of sustainable development. The water crises, scanty rainfall, shortage of coal as well as minerals, pollution, global warming, depletion of ozone layer are intimating clearly that the main focus should be develop eco-friendly products. Hence in schedule VII the expenditure on the research and development of such product should be added, which should be considered as CSR expenditure. The potential of CSR provisions of S.135 is to strengthen the symbiotic relationship between enterprise and society has already been demonstrated in areas such as sustainable growth, education and social cohesion. It can support the creation of an atmosphere of trust within companies, which leads to a stronger commitment of employees and higher innovation performance. A similar atmosphere of trust in cooperation among other stakeholders (business partners, suppliers and consumers) can increase the external innovation performance. Consumer

⁵³ *Id.*

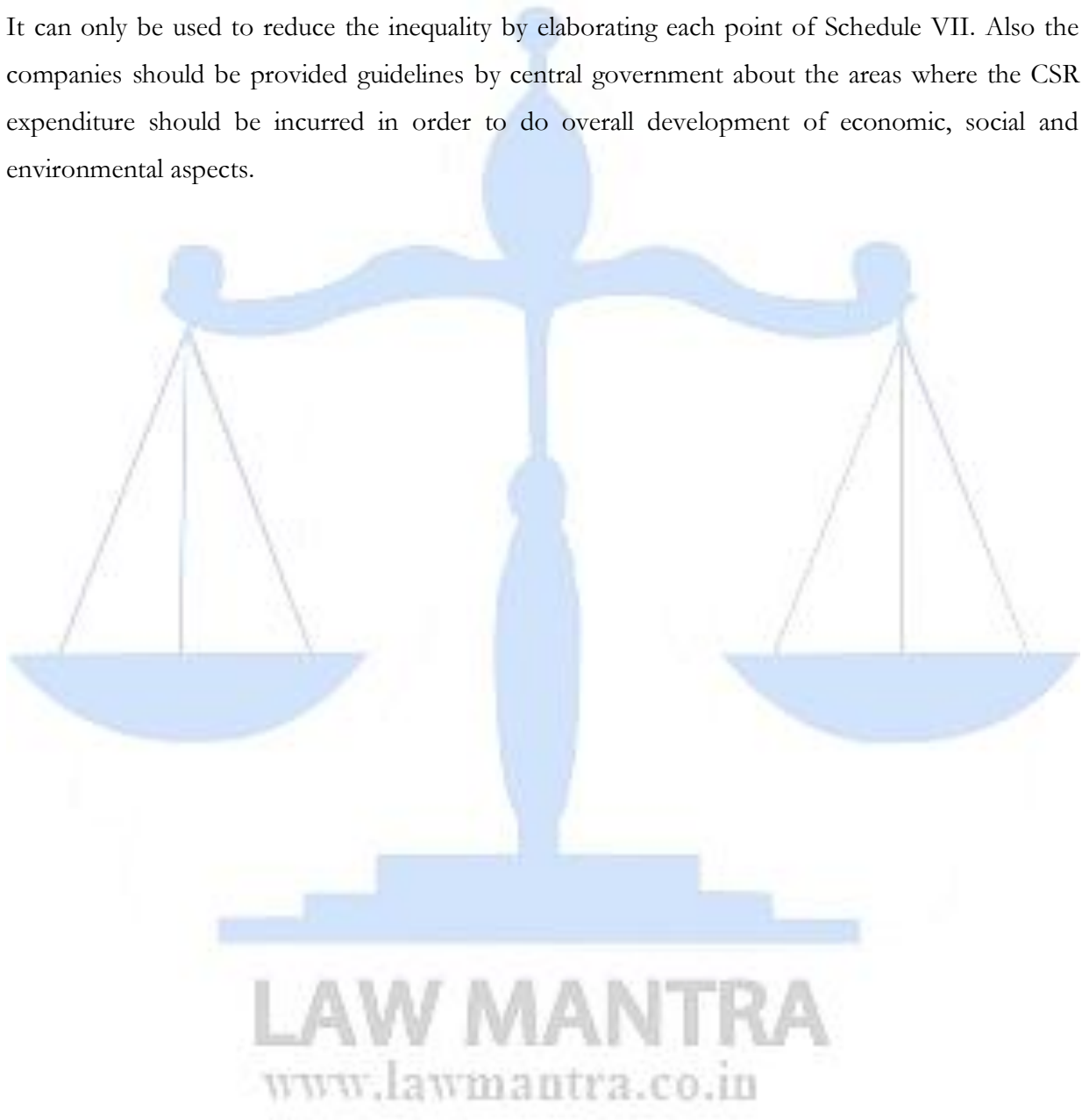
⁵⁴ *Supra* note 43.

⁵⁵ *Id.*

⁵⁶ *Supra* note 24.

confidence fostered through Corporate Social Responsibility provisions of S.135 of Companies Act can be a major contributor to economic growth. More specifically, through CSR practices, enterprises can play an important role in preventing and combating corruption and bribery, and in helping preventing the use of enterprise for money laundering and criminal activities financing.⁵⁷

It can only be used to reduce the inequality by elaborating each point of Schedule VII. Also the companies should be provided guidelines by central government about the areas where the CSR expenditure should be incurred in order to do overall development of economic, social and environmental aspects.



⁵⁷ Venture Global Engineering v. Satyam Computer Services Ltd. & Anr, (2008) 4 SCC 190