CORPORATE SOCIAL RESPONSIBILITY

CA PAVAN JAYAPRAKASH

SARVA LOKHA HITAM

(the wellbeing of all the stake holders)

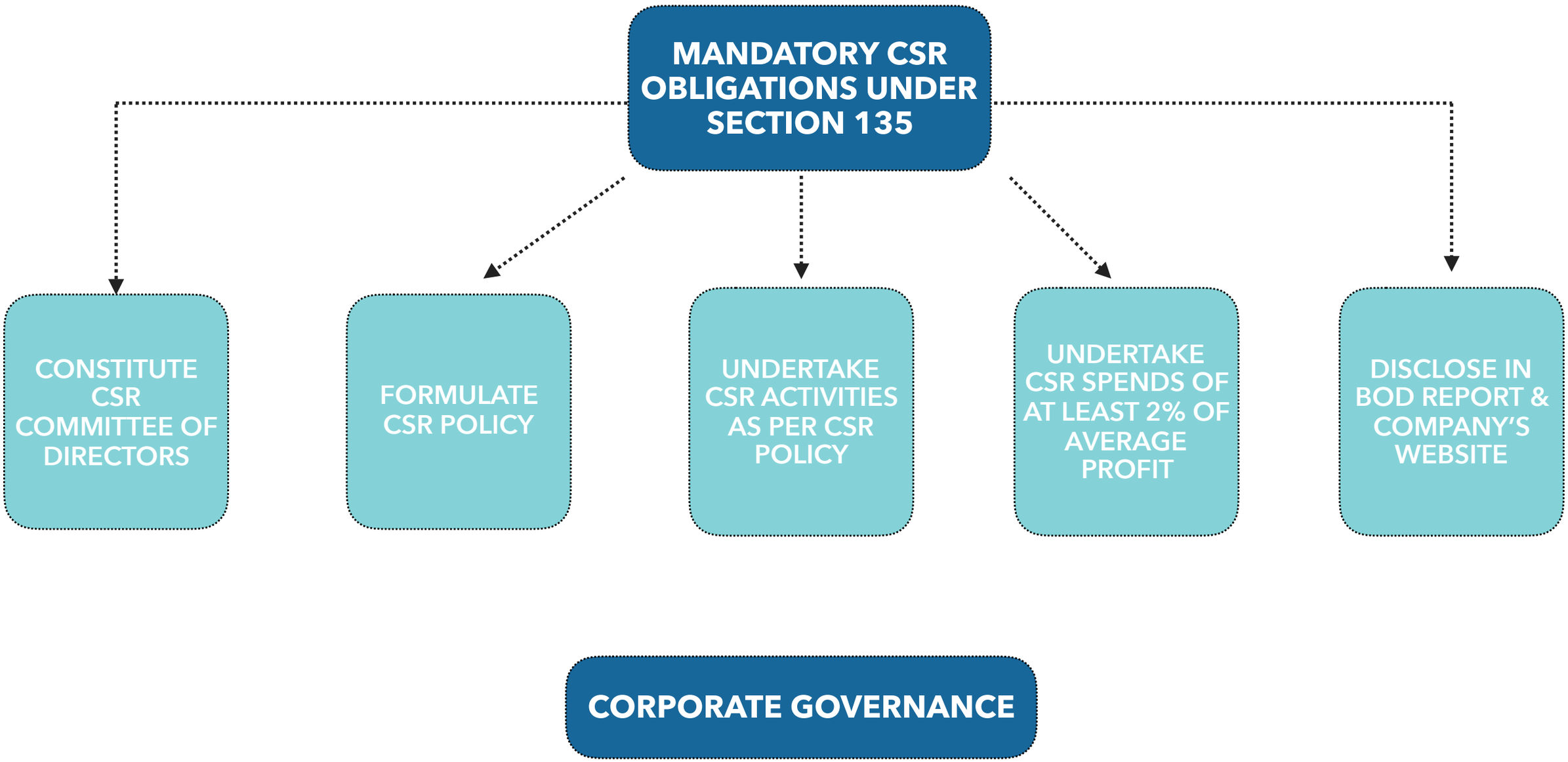
Vedic principles

EVERY COMPANY OF CERTAIN FINANCIAL STRENGTH

If the Financial strength criteria is met, every company is mandatorily required to spend 2% of average net profit of the last 3 years

* every company which ceases to be covered by the above criteria for 3 consecutive financial years shall not be required to comply with the CSR provisions till such time it agains falls within the above threshold limits

MANDATORY OBLIGATIONS ON COMPANIES COVERED U/S 135(1) OF COMPANIES ACT, 2013



OBLIGATION ON BOARD OF DIRECTORS

- The board report laid before the general meeting to contain a statement about details about the policy developed and implemented by company on CSR
- Constitute a CSR Committee consisting of three or more directors (one of which will be independent director).
- Approve the policy and disclose the content of policy in director report and company website
- Ensure that company spends a minimum of 2% of average net profit for the last 3 years
- Ensure that company gives preference to local area around it where it operates
- Specify along with reasons in the board report, if no expenditure is incurred on CSR

PENAL PROVISION

On Company and every officers of the company	Fifty thousand rupees but which may extend to twenty lakh rupees Imprisonment for a term which may extend to 3 years

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE

FORMULATE AND RECOMMEND CSR POLICY

ACTIVITIES TO BE SPECIFIED AS PER SCHEDULE VII

RECOMMEND THE EXPENDITURE

MONITOR THE POLICY OF THE COMPANY FROM TIME TO TIME

- CSR committee shall consist of least 3 directors. Once of whom shall be independent director.

If company are not mandated to appoint independent director, what happens ?

- Private company having only 2 directors may have only 2 directors in CSR committee
- Companies not required to have an ID may have CSR committee without an ID
- In case of foreign company, the authorized representative of the company in India and another person nominated by such company

SCHEDULE VII ACTIVITIES

HOW TO UNDERTAKE CSR ACTIVITIES

- The CSR activities shall be undertaken by the company, as per its CSR policy. (excluding certain activities undertaken in pursuance of ordinary course of business).

On own account

A company established under section 8, registered trust, registered society. (By the Company)

Or established by CG, SG or any entity established under Act or parliament or state legislature

Others

The company established under section 8, registered trust, registered society. Shall have a track record of 3 years in undertaking similar projects

Responsibilities of Companies in such case

- **Company to specify the project or programs to be undertaken**
- **Modalities of utilization of fund**
- **Monitoring**
- **Reporting**

IMPLEMENTATION OF CSR ACTIVITIES

A company has an option to collaborate with other companies for undertaking projects. (However, the companies should report separately on in board report)

Companies may build CSR capabilities of their own personal as well as those of their implementing agencies through institutions with established track records of at least 3 financial years but such expenditure cannot be more than 5% of total CSR expenditure

EXPENDITURES THAT DOES NOT CONSTITUTE AS CSR

- Activities undertaken in the ordinary course of business
- Activities undertaken outside India
- Activities undertaken outside local area of operations
- Projects or activities that benefit employees of the company
- Activities a company is statutorily required to do
- One-off events like blood donation camps, marathons, awards, sponsorships etc.
- Contribution to political party
- Activities not schedule VII of the companies

IS THERE A PENALTY FOR NON-COMPLIANCE

- Currently the responsibility is on the board of directors to disclose all the relevant information about CSR policy and its implementation on annual basis in the board report
- No penalty is prescribed for non-spending

Disclosure of the reason for not spending the said amount is a compliance of the provisions. Non-disclosure, or absence of the details about the CSR policy and its implementation in the Boards' report would attract penalties as above.

PENAL PROVISION → For non-disclosure

On Company and every officers of the company

Fifty thousand rupees but which may extend to twenty lakh rupees

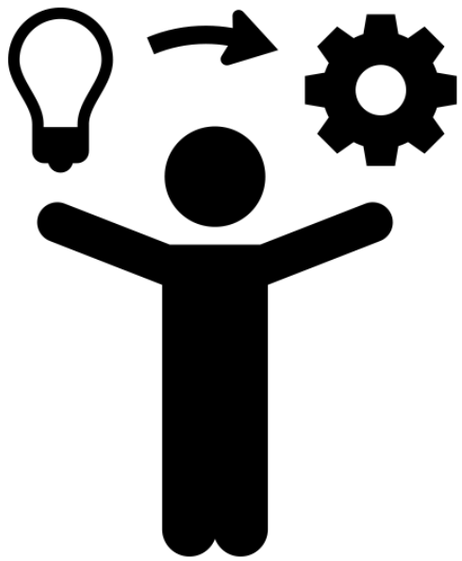
Imprisonment for a term which may extend to 3 years

KEY QUESTIONS

CSR COMMITTEE

- Is it mandatory to have CSR committee?
- IS there a time limit for forming CSR committee?
- How often should the committee meet?
- What is the quorum of CSR committee?

IMPLEMENTATION



- What is relevant date for CSR applicability?
- Does company need to invest in CSR activities even when it is making loss?
- Is handing over CSR amount to implementation partner sufficient for compliance?
- In a state where registration of trust is not required, what would be the term “registered trust” imply?
- Is there a guidance on acceptable reasons for failure?
- Can CSR expenditure be made on activities not mentioned in schedule VII?

KEY QUESTIONS

- Any funds notified by Government for CSR investment?
- Can company take up supplementing Government scheme like mid day meals through additional nutrition under CSR ?
- Is there a monitoring agency approving CSR spending?
- Whether profit arising from surplus of CSR activity will form part of profit of the company
- Will CSR be applicable for holding or subsidiary company if the other holding or subsidiary company fulfill the CSR criteria?
- Are directors liable to be sued by stakeholders for not undertaking proper CSR activities?
- Can contribution be made in kind?
- Can excess expenditure over and above 2% be set-off in the next financial year

Taxation aspects for CSR

Although one contends that CSR investment is essentially like a tax, there is no general deduction for CSR expenditure.

- Through notes to provisions of Finance Act, 2014 the Government has clarified that, CSR expenditure, being an application of income, is not incurred for the propose of carrying on business
- It is also clarified that the objective of CSR is to share the burden of Government. If such expense is allowed as deduction it will amount to Government contributing 1/3 of the such expenses.

DEDUCTION UNDER INCOME TAX

Section	Particulars of deduction	Position under CSR
35	Expenditure on scientific research (upto 200% of investment depending on type of investment)	There is no clarity whether any spending u/s 35 qualifies as deduction as per schedule VII
35AC	Expenditure of eligible projects or schemes (deduction upto 100%)	Government has issued notification that such expenditure shall not qualify as CSR expenditure
35CCA	Expenditure by way of payment to association and institutions for carrying rural development programs	NO clarity yet as to whether spending qualifies as CSR
35CCC	Expenditure on agricultural extension project (expenditure allowed upto 150%)	
35CCD	Expenditure on skill development project (expenditure allowed upto 150%)	
80G	Deduction in respect of donation to certain funds, charitable institutions	Prime Minister national relief is clearly the safest option. However, in the budget speech of 2015-16 Finance ministry has specifically mentioned that no deduction to companies investing in Clean Ganga Fund and Swachh Bharat Kosh

SCOPE FOR IMPROVEMENT

Local area preference needs reconsideration

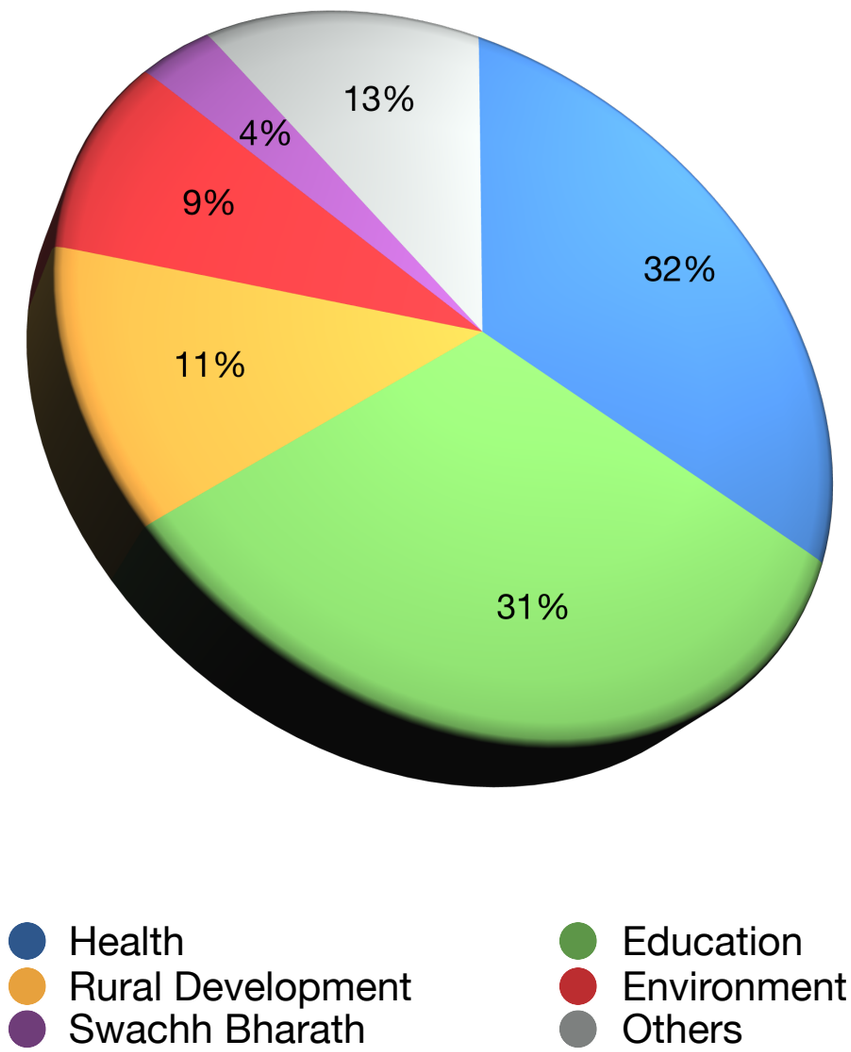
Liability on board is currently restricted to " Comply or explain"

Lack of monitoring

Progressive liability

CSR Audit

CSR FACTS AND FIGURES



A total amount of **Rs. 28,111.63** crore has been spent on CSR activities by eligible companies during the period from April 1, 2014 to November 30, 2017.

63% of the total amount spent in FY 2015-16 has been towards Health and Education

Contribution to Clean Ganga Fund is the least preferred CSR Expenditure in FY 2015-16 with only **0.03%** of the total amount spent towards CSR being contributed for the same.

KEY BENEFICIARIES OF CSR

Children
31%

Women
22%

Environment
17%

Differently-abled
10%

Senior Citizen
Sportsmen
War Veterans
Transgender
20%

ಜಾನಪದ ಶಿಷ್ಟಿಯಲಿ ಸಂಪತ್ಸಮಷ್ಟಿಯಲಿ ।
ಜ್ಞಾನ ಸಂಧಾನದಲಿ ಮೌಲ್ಯ ಗಣನೆಯಲಿ ।।
ಮಾನವತೆ ಮಾನುಷ್ಯ ಧಾರ್ಮಿಕತೆಯೆದ್ದುನಿಲೆ ।
ಆನಂದ ಧರೆಗಂದು ಮಂಕುತಿಮ್ಮ ।।

Discipline among people; equal sharing of wealth;
Knowledge for peace; value-based calculations;
Humanity and cooperation --if all these flourish,
The world will be full of happiness. –Mankuthimma

Thank you

- CA Pavan Jayaprakash