

difference towards victims of accidents and those in emergency in medical conditions and even women in labour, who are about to deliver is not peculiar to India but is prevalent in other countries also”

In the United Kingdom there is law making it mandatory for hospital to provide treatment to such patients, failing which that defaulter can be punishable under criminal law.

Taking note of the law, the Commission said no hospital or doctor should refuse to provide urgency medical care. If they refuse without justifiable reason it would be an offence.

Initial Screening

Hospitals and doctors would have to initially screen the persons to decide if there require emergency treatment. If they do they would have to be stabilized and attended to. If the hospital did not have facilities for screening, stabilization, or emergency medical treatment the patient, should be transferred to another hospital.

The report suggested that the State should publish a scheme for reimbursement of

expenditure incurred by the hospitals, medical practitioners or for ambulances and allocate separate funds for this purpose.

The duty of State in this behalf could be traced to Article 21 of the Constitution (right to life) as well as to the Directive Principles of State Policy. The report enclosed a model bill to be introduced by the States. If passed the law would also apply to medical private practitioners.

It is not necessary to multiply authorities on the topic.

Despite judicial activism striking realistic note, which reduced the magnitude of the hardship by modifying the feudalistic principles, that *king can do no wrong* and *king can sue but cannot be sued*, still much needed respite, suitable to the needs and aspirations of the people in a welfare State, has not been given yet. It is high time therefore for the Parliament and State Legislature to ponder over the matter over the issue, to bring a suitable urgent legislation after identifying the areas, and limiting the applicability of the doctrine to these fields as in the case of Crown Proceedings Act 1947 passed by the British Government.

SOCIAL RESPONSIBILITY OF CORPORATE SECTOR – ROLE OF JUDICIAL ACTIVISM

By

—Smt. P. ARAVINDA, L.L.M.
Constitutional Law -Osmania University
Assistant Professor (Law)
Pendekanti Law College, Hyderabad

*“Every Company should adopt the motto **EARN AND DONATE** to be socially responsible and act as means in development of the economy”.*

The concept of Corporate Social Responsibility has been a matter of hot debate for the past one decade in keeping

with its growing necessity, importance and its influence over the society at large.

In general parlance and understanding the word “Corporate Social Responsibility” means “accountability of corporate sector/s to the Nation or Society in the larger

perspective by providing proper regimented support for the welfare and upliftment of the people of the Nation/ society by not just confining to its own growth, welfare of its employees or employers only”.

Companies are born or established to do business and earn profits. The derivative profits or income are gained by the corporate sectors from the public society. The Corporate Sectors in the process of their development utilize natural resources, human resources etc. of the Nation at large and as its residue in the making of profits or income in many cases corporate sectors leave the problems involving various types of pollutions, problems of excessive labour exploitation or inequalities, problems causing disturbance in environmental equalities damaging the balanced approach of natural resources, *etc.*, causing harm to the public and to the nation at large. Further the corporate sectors for the purpose of their well being take several incentives and advantageous schemes formulated by the Central and State Governments for its respective overall growth. Basically, the corporate sector survives basing on the policy decisions of the Central/ State Governments, availability of human resources and natural resources respectively. The corporate sector/ s owe social responsibility to the public and to the nation for having availed the resources involving the people/public and the nature.

There are instances of water pollution where the companies through its production outlets/ factories in the course of its operation have allowed its respective industrial waste and chemicals to stagnate on occasions in and around causing great health hazard not only to its employees but also to the society and to add on occasions allowing the said contaminated industrial waste and chemicals to flow as streams and join into open drains leading to threat of spreading various diseases to the people at large. Similarly, certain companies through its factories are involved in instances of air pollution by allowing of leaving toxic and

poisonous gases covering the open atmosphere in the process of manufacture of their respective products causing great damage to the health conditions of the public at large. Companies involved in mining operations are totally affecting the ecological system provided by the nature by displacement of colonies of people who invariably belong in majority to tribals, deforestation of trees, displacing the rare species of birds and animals, disturbing the ground water tables so also leading to soil erosions and reasons for earth quakes *etc.*

In a developing economy, like India where the corporate sector occupies a major role in generating and earning huge amounts at the behest of the natural and human resources of the nation, the corporate sectors should come forward to support and lend a helping hand of assistance to the Nation in the overall growth of the Country too. This idea of involving corporate sectors in the social responsibility towards the Nation was been in consideration for long.

The best of the various facets revolving around the concept “Corporate Social Responsibility” indicates that there were no legal statutes or even specific guidelines prior to the year 2009 for implementation or enforcement of corporate social responsibility in our country, until the advent of guidelines by the Ministry of Corporate Affairs, Government of India, in 2009 and so also of the guidelines relating to Central Public Sector Enterprises issued by the Ministry of Corporate Affairs, Government of India in 2013. After a series of many deliberations and negotiations with a view to channelize and promote transparency of the investments made by a company towards proper social welfare schemes, the legislation thought it wise to introduce and give the concept “Corporate Social Responsibility” as a legally enforceable responsibility on a company towards the Nation. The Government of India enacted the Companies Act 2013 in August 2013 and in furtherance thereof Section 135 of the Companies Act 2013

came into existence in keeping with its requirement to know the scope and importance of social responsibility by the corporate sectors in India.

The Section 135 of the Act reads thus

“1. Every Company having net worth of rupees five hundred crore or more or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial years shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

2. The Board's report under sub-section (3) of Section 134 shall disclose the composition of the Corporate Social responsibility Committee

3. The Corporate Social Responsibility Committee shall—

- a. formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.
- b. recommend the amount of expenditure to be incurred on the activities referred to in clause (a) and
- c. monitor the Corporate Social Responsibility Policy of the company from time to time.

4. The Board of every company referred to in sub-section (1) shall –

- a. after taking into account the recommendations made by the Corporate Social Responsibility Committee approve the Corporate Social Responsibility policy for the company and disclose contents of such policy in its report and also place it on the company's website if any, in such manner as may be prescribed and

- b. ensure that the Activities as are included in the Corporate Social Responsibility policy of the company are undertaken by the company.

5. The Board of every company referred to in sub-section (1) shall ensure that the company spends, in every financial year at least two percent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social responsibility policy.

Provided that the company shall give preference to the local area and areas around it where it operates for spending the amount earmarked for Corporate Social Responsibility activities;

Provided further that if the company fails to spend such amount, the Board shall in its report made under clause (o) of sub-section (3) of Section 134 specify the reasons for not spending the amount.

Explanation – For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of Section 198.

Thus proviso Section 135 of the Companies Act deals with “Corporate Social Responsibility” in specific. It is pertinent to observe that the net worth, turnover and net profits are to be computed in terms of Section 198 of the Companies Act. It follows that all companies do not automatically come under the shelter or the purview of the “Corporate Social Responsibility” as envisaged under Section 135 of the Companies Act. Sick companies having meager net worth are not required to make investments towards corporate social responsibility and sustainability activities. It is also worthy to note that all the philanthropic investments or funds donated to political parties by companies do not mean satisfying of the ingredients of investments made towards social responsibility. The various social activities which the companies have to adhere towards their corporate social responsibility are enumerated in Schedule VII of the Companies Act.

The Ministry of Corporate Affairs, Government of India in addition to the provisos of Section 135, Section 198 and Schedule VII of the Companies Act, several guidelines on Corporate Social Responsibility, got issued Companies (Corporate Social Responsibility Policy) Rules on the date of 27.2.2014 and these Rules have come into effect from 1st April 2014, for effective monitoring and regulating the corporate sectors approach towards social responsibility.

In a way, the scope and nature of corporate social responsibility has now become clear, well defined and transparent being effectively amenable for judicial scrutiny and legal enforcement.

Indian Judiciary is playing a role model monitoring proper implementation of the corporate social responsibility in India. It can be said that till the recent past, the tool of judicial activism with the main weapon of public interest litigation *etc.*, was the means by which the Indian Judiciary was been able to show its results in removing social imbalances prevailing to an extent in corporate sectors at large and so also making them aware of their responsibility towards the society, not withstanding the fact that there existed no well defined laws in specific governing the ambit of corporate social responsibility.

The Courts in India did exercised its discretionary powers in implementing social responsibility in the corporate sectors by relying and interpreting several socio economic statutes prior to insertion of Section 135 of the Companies Act. The Indian judicial system can be said to have acted in majority of cases in an orthodox pattern not taking the fullest advantage of the weapon of judicial activism. My study reveal that even the scope of judicial activism as afar as implementing welfare schemes relating to employees *inter se* between the companies as a whole has been very strictly interpreted displaying the discrimination. In the case of *Dalco Engineering Pvt. Ltd. v. Shree Satish Prabhakar Padhye and others*, reported in AIR 2010 SC 1576, His Lordships R.V.

Raveendran, J., on behalf of the Bench, held that the proviso of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act applies to only Governmental corporations which came into existence under a statute but does not extend to private companies registered under the Companies Act, disagreeing with the order made by the Disability Commissioner who suggested to the company/employer to undertake a social responsibility by re-employing the employee to discharge any work who became deaf in the course of his employment rather than dismissing from the service. The element of social responsibility as has been expressed by the Disability Commissioner has not been taken into consideration by the company so also did not had the aid of specific sources of law at that period of time.

The inception and development of Section 135 and Section 198 through the Companies (Amendment) Act 2013 has expanded the purview and role of judiciary in India, giving a wide and liberal rope to the institution of judiciary for taking care of corporate social responsibility. The intent of incorporating Section 135 to the Companies Act read with Schedule VII of the Companies Act appears to make the companies which are eligible to be more transparent in the compulsory investment towards social responsibility and so also to be effective in implementation of the same. The specific guidelines are added tools for the better understanding and adjudication on issues involved in corporate social responsibility and so also to bring forth uniformity as to the pattern to be adopted while complying and deciding the mandatory requirements towards achieving of "Corporate Social Responsibility". It is evident on a careful perusal that Section 135 of the Companies Act has to be properly evaluated in tune with Section 198 of the Companies Act. It is to be seen that in the course of adjudicating the issue of corporate social responsibility, the Judiciary has to evaluate not merely the scope of

Section 135 read with Schedule VII of the Companies (Amendment) Act 2013, Section 198 of the Companies Act, Companies (Corporate Social Responsibility Policy) Rules 2014, the several Guidelines as issued by the Ministry of Corporate Affairs, Government of India from time to time, but in addition thereto has to look into the incidental Legal Laws (*viz.*) Environmental laws, Labour laws, Tort laws, Criminal laws, Contract laws *etc.* It is now a settled proposition that several guidelines as issued over a period of time do not supercede or override any provisions of the Companies Act or the Companies (Corporate Social Responsibility Policy) Rules 2014.

The practical application of corporate social responsibility reveal that several renowned private companies have already started implementing their respective social responsibility activities. Private companies like M/s.Cipla, M/s.Ranbaxy, M/s. Tata Consultancy Services, M/s.Bharat Electronics Ltd etc have already extended their activities towards social responsibility and which were duly recognized as being in accordance with the law.

The involvement of Judiciary in the adjudication of the Bhopal disaster case (*Union Carbide Corporation v. Union of India*, (1991) 4 SCC 586), relating to the tragic incident of the year 1984 occurred from Union Carbide Plant in Bhopal is a good example of judicial activism in awakening the social responsibility of the corporate sector towards the society/public at large by extending benefits to all those affected not just restricting to employees of the company only.

The Judiciary is bestowed with responsible job and has to properly appreciate and adjudicate the cases relating to corporate social responsibility in a manner that corporate sectors under the garb of investments towards social responsibility are not violating the true spirit and intention of the provisos of Section 135 read with Schedule VII of the Companies Act along with various connected legislations. Judiciary is the back bone in interpreting and monitoring the due

compliance by the corporate sector's investments towards social responsibility.

A new era has begun. Now, corporate sector investments and its socially responsible activities with its implementations are under the scanner of well established laws and guidelines. Investments towards social responsible activities by the companies have become compulsory for financially well settled companies. It has been seen that Central Government over a period of time has come up with several social schemes calling upon the corporate sectors to participate along with it. Further, as a latest added flavour it was noticed in English daily Newspaper "Times of India" dated 10.2.2015 that the Ministry of New and Renewable Energy, Government of India came with an innovative social welfare scheme idea calling upon the corporate sectors to develop and commit a certain quantum of mega watt units generation of renewable energy as a helping aid to the Renewable Energy Project initiated by the Government of India. Government of India desires active participation of corporate sectors along with it and to share social responsibility in the interest of the people and of the Nation at large. The investment of funds by the corporate sectors in the activities recognized under law with social responsibility can take the Nation's economy to great heights in the coming near future.

It is also a worth to observe that well established companies of our Nation with their involvement in social responsibility activities are developing their goodwill and promoting their business enhancing the values of the Nation in the global market too. The Indian Judiciary, now is well equipped to meet the challenges of interpreting, implementing and defining the ambit and scope of corporate social responsibility.

I am sure that the policy decisions initiated in the corporate sector will bring laurels to our Nation across the Globe and so also will be followed by other countries too.